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April 2, 2025

SENT VIA EMAIL

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Chair Lisa Kaplan and Members of the Commission
and Jose C. Henriquez, Executive Officer
Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, California 95814

**RE: April 2, 2025, Sacramento LAFCO Meeting, Agenda Item V-6
Comments on the Airport South Industrial Project and Its
Final Environmental Impact Report**

Dear Chair Kaplan, Members of the Commission, and Mr. Henriquez:

On behalf of Sierra Club, Environmental Council of Sacramento (“ECOS”) and Friends of Swainson’s Hawk, this letter provides comments regarding the Airport South Industrial Project (“Project”) and its Final Environmental Impact Report (“FEIR”).

We understand that the Sacramento County Local Agency Formation Commission (“LAFCO”) and the City of Sacramento (“City”) intend for this FEIR to inform the LAFCO Commission’s decision regarding whether to approve a requested Sphere of Influence amendment (“SOI Amendment”). After reviewing the FEIR, we conclude that the FEIR is woefully inadequate as a document to assist the Commission’s deliberation whether to approve the SOI Amendment.¹

We also reviewed LAFCO’s staff report for its April 2, 2025 hearing regarding the SOI Amendment for the Project. Our comments regarding the staff report are included after our comments regarding the FEIR.

¹ This letter also transmits comments on the FEIR’s inadequacy prepared by Shawn Smallwood (Exhibit 1), Dan Smith (Exhibit 2), and Ralph Propper and Earl Withycombe (Exhibit 3), which are incorporated by reference. A flash drive containing reference materials supporting comments on the DEIR and FEIR is being separately transmitted.

LEGAL BACKGROUND

The lead agency must evaluate comments on the draft environmental impact report (“EIR”) and prepare written responses in the FEIR. (Pub. Resources Code, §21091, subd. (d).) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (Cal. Code Regs., tit. 14, § 15088, subd. (c).) Failure to provide a substantive response to comments render the EIR legally inadequate. (*Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020). If the public suggests a feasible mitigation measure or alternative, the agency may only decline to implement it if it provides substantial evidence that the mitigation measure or alternative is infeasible. (*Covington v. Great Basin Unified Air Pollution Control District* (2019) 43 Cal.App.5th 867.)

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not adequate responses. (Cal. Code Regs., tit. 14, § 15088, subs. (b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348; *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 628 [“Non-specific, general, or conclusory responses unsupported by empirical information, scientific authorities or explanatory information ‘fail to crystallize issues’”]; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841 [Responses to comments must “set forth in detail the reasons why the particular comments and objections were rejected . . .”].) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.App.3d 761.) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*California Oak Foundation v. Santa Clarita* (2005) 133 Cal.App.4th 1219.)

If significant new information is added to an EIR after notice of public review has occurred, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for comments and consultation. (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5.) “Significant new information” triggering the need for EIR recirculation includes information showing that: (1) a new or more severe environmental impact would result from the project, (2) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of a project but the project proponent declines to adopt it, or (3) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Cal. Code Regs., tit. 14, § 15088.5, subd. (a)(1)–(4).) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record. (Cal. Code Regs., tit. 14, § 15088.5, subd. (e).)

The FEIR fails to meet these legal standards as it is riddled with conclusory and outright false statements lacking any factual support or analysis. The discussion below is organized according to the FEIR’s characterization of comments and responses:

Responses to Comments 22-1 through 22-6:

Our prior comment letter included extensive analysis explaining how CEQA requires one lead agency for a project, and that this so-called “dual lead agency” scheme prejudiced informed decision-making. Indeed, the lead CEQA treatise plainly states, “There can be only one CEQA lead agency for a particular project.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2022) § 3.2, p. 3-3 [“Kostka Treatise”].) As the Third Appellate District plainly advises, “Neither the language of the statute nor the facts of this case support a so-called shared principal responsibility.” (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 906.) Thus, ensuring that a CEQA document is prepared by the proper CEQA lead agency is unquestionably a significant environmental issue. (*City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1174; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297-1298; *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960, 973.) Our prior comment letter also explained in detail that LAFCO was the proper CEQA lead agency.

The FEIR’s responses fall well below the standard of good faith. Rather than address the numerous legal authorities plainly demonstrating that the “dual lead agency” scheme is unlawful, the FEIR merely asserts, “The City and LAFCO disagree with the

commenter’s interpretation of CEQA and the CEQA Guidelines.” Thus, the FEIR makes no attempt whatsoever to support its flagrantly unlawful “dual lead agency” scheme.² The FEIR does not explain why this attempt to have dual lead agencies is distinguishable from the cases cited above that hold that dual lead agencies are improper. Moreover, the FEIR makes no attempt to address LAFCO’s own policies demonstrating that LAFCO, and not the City, is the proper lead agency here.

Responses to Comments 22-7 – 8:

The FEIR makes no attempt to respond to these comments, which highlight how the “dual lead agency” status have resulted in a DEIR that ignores LAFCO’s own prior comments about this Project on areas squarely within its jurisdiction. As quoted in our DEIR comment letter, LAFCO previously asserted, “Future development of the project could conflict with the assumptions regarding species, habitats, and preserves underlying the NBHCP’s conservation strategy.” By purporting to refer to different comments relating to biological resource issues, the FEIR does not attempt to reconcile the inconsistency raised in the comment.

Responses to Comments 22-9 – 14:

Our DEIR comments provided extensive analysis explaining that the EIR’s project description violates CEQA because the DEIR inconsistently analyzes Parcel 8 and the other so-called “non-participating” parcels. In short, the DEIR includes the impacts from so-called “non-participating” parcels’ when doing so would not trigger a significance determination, but excludes inclusion of impacts from Parcel 8 and other non-participating parcels when its inclusion would trigger a significant impact (as the case with cancer risk from TAC emissions). We explained that this inconsistent project description had the effect of minimizing Project impacts.

Rather than address this comment in good faith, the FEIR piecemeals the comment and its response, and then fails to address the overall point, namely that the EIR’s unlawful shifting and inconsistent project description minimizes Project impacts and

² The FEIR’s failure to support is its “dual lead agency” scheme with any legal authority is contrasted with the FEIR’s responses to other public comments, including but not limited to Comment 23-12, where the FEIR cites three cases purporting to support the EIR’s analysis. A reviewing court will likely view this as evidence that the City and LAFCO know full well that the “dual lead agency” scheme is unlawful.

thereby avoids mitigation. Further, the FEIR's piecemealed response includes several false and misleading assertions that are also addressed below.

Response to comment 22-9 asserts, "details of future buildout are not currently available." As explained in our DEIR comments, this assertion is false because the EIR found adequate details to be available to assess impacts—at least in those resource areas where including "non participating parcel" impacts would not lead to significance determinations and the need for mitigation. The FEIR does not address this inconsistency. Further, and as explained more fully in response to comment 22-13, the City's claim of "additional entitlement requests and review pursuant to CEQA" is belied by the City Zoning Code.

Response to comment 22-12 is nonsensical. First, identifying baseline water features is in no way dependent on specific development plans. Second, the response simply ignores evidence that we submitted showing that the existing water features at Parcel 8 are well documented. Thus, the EIR's strategy of deferred mitigation violates CEQA because the EIR fails to explain why deferral is required in the first place.

The FEIR's response to comment 22-13 asserts that Parcel 8 would not be allowed as a matter of right, asserting, "Any development proposed for the nonparticipating parcels would require additional entitlement requests and review pursuant to CEQA." The FEIR's response is inexcusably false and misleading. The FEIR conspicuously fails to identify this "entitlement," much less explain whether it would be discretionary or ministerial. In fact, the referenced page from the DEIR explains that Parcel 8 would be zoned "M-1." Contrary to the FEIR's intentionally misleading information, City Code section 17.220.110 provides that warehouses and distribution centers are permitted uses in the M-1 Zone. Further, a permitted use does not require any discretionary approval and so would also be exempt from CEQA. (Pub. Resources Code, § 21080, subd. (a).)

The response to comment 22-14 asserts that the health risk from DPM emissions is based on "highly specific truck circulation routes and load dock locations in order to provide a reasonable analysis." A reference to DEIR Figure 3-3 reveals that this does not support assigning zero DPM emissions from Parcel 8, which is the closest parcel to the most sensitive receptors. Even if the loading docks were located at the farthest location on Parcel 8, they would still be closer than those facilities located on any other parcel. Further, the roadways are set forth in Figure 3-3 and so are known at this point. Thus, assigning zero DPM emissions from Parcel 8 is unsupported, and appears intentionally designed to mislead the public by justifying a finding that the Project's cancer risk to be less than significant.

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Further, the FEIR asserts that the failure to assign any TAC emissions for Parcel 8 is somehow cured because “Mitigation Measure 4.3-3, which required an additional health risk analysis at the time that Parcel 8 is proposed for development, to ensure that health risks associated with Parcel 8 do not occur.” This is misleading to say the least. First, as established above, the proposed warehouse on Parcel 8 is a permitted use under the City’s Zoning Code and so is exempt from any discretionary action and associated CEQA review. Second, a health risk assessment limited to parcel 8 does nothing to disclose and mitigate the health risks from the Project. If a reasonable TAC emission for Parcel 8 were estimated, it would put the Project’s TAC emissions (presently estimated at 9.53 without Parcel 8 TAC emissions) above the relevant significance threshold. This, in turn, would require mitigation measures for the health impacts resulting from the Project’s TAC emissions. By conspicuously assigning zero TAC emissions from Parcel 8, the EIR fails to set forth all feasible mitigation measures for those health impacts to residents and school children. A future HRA that is limited to Parcel 8’s TAC emissions would not result in mitigating the Project’s health risk impacts, which is classic piecemealing.

Responses to Comments 13-30, 13-31, 40-4, 66-3, 66-4, 73-14:

Numerous comments, including but not limited to those identified above, note that the NBHCP does not cover the majority of the Project site that is without the NBHCP’s Permit Area. According to the City, it could seek NBHCP coverage for the entire Project site because there are some “unallocated” or ungraded properties within the 8,050. According to the FEIR, the City can simply transfer NBHCP coverage from these other properties to the Project.

This is nonsense. The City cannot transfer NBHCP coverage to a property that is outside of the NBHCP’s Permit Area. What is more, the City knows full well this is false because it executed an agreement expressly limiting NBHCP coverage to the identified Permit Area. The NBHCP’s Implementation Agreement could not be more clear on this point: “CITY agrees not to approve more than 8,050 acres of Authorized Development **and to ensure that all Authorized Development is confined to the CITY’s Permit Area** as depicted on Exhibit B to this Agreement.” What is more, the City expressly agreed that the effectiveness of the NBHCP was dependent upon limiting development in the Natomas Area to the Permit Area: “[T]he effectiveness of the NBHC’s Operating Conservation Program is based upon CITY limiting total development to 8,050 acres **within the CITY’s PERMIT AREA.**” Finally, the City expressly agreed that violating its agreement to limit urban development to the Permit Area would require separate ESA permitting and also call into question the NBHCP itself:

Thus, CITY and SUTTER further agree that in the event this future urban development should occur, prior to approval of any related rezoning or pre-zoning, such future urban development *shall trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development*, and/or possible suspension or revocation of CITY's or SUTTER's Permits in the event the CITY or SUTTER violate such limitations.

(NBHCP IA, § 3.1.1(b), emphasis added.)

The FEIR tellingly provides no explanation, and cites no authority, supporting its conclusory allegation that the City can somehow transfer NBHCP based on "surplus acreage." This is not an issue where there is any confusion or where reasonable minds can disagree. The portion of the Project site (i.e., the majority) that is outside of the NBHCP's Permit Area may not utilize the NBHCP as its mitigation strategy for Project impacts to special-status species or their environment. The FEIR fails to provide good faith responses to these comments, and the EIR fails as an informational document with respect to these impacts.

Responses to Comments 2-10, 13-26, 13-27, 13-29:

In response to comments asserting the Project is inconsistent with the NBHCP and will reduce its effectiveness, the FEIR repeatedly asserts, "[T]he success of the Natomas Basin HCP does not require a certain amount of agricultural land remaining in the basin." This is false and misleading. As agreed by the City in the NBHCP's Implementation Agreement, "Because the effectiveness of the NBHCP's Operating Conservation Program is based upon CITY limiting total development to 8,050 acres *within the CITY's Permit Area* . . . approval by either City or SUTTER of future urban development within the Plan Area or outside of their respective Permit Areas would constitute a significant departure from the Plan's Operating Conservation Program." (Emphasis added.) The City has expressly agreed that the effectiveness of the NBHCP is based upon the City limiting urban development to the Permit Area. This Project would extend urban development outside of the Permit Area, and so unquestionably calls into question the success of the NBHCP. The FEIR, therefore, provides false and misleading information; approval of this Project is both inconsistent with the NBHCP and brings into question the effectiveness of the entire NBHCP.

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Responses to Comment 13-28:

The FEIR asserts, “The Draft EIR did not preclude the potential for obtaining an incidental take permit.” This willfully misconstrues the issue. The issue is not whether the DEIR precludes obtaining an incidental take permit, but whether the EIR discloses the to the public and decision-makers the need for obtaining an incidental take permit and provides the public information relevant to that process required by CEQA. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 942 [*Banning Ranch*] [“Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal”].) Indeed, the City previously acknowledged this requirement for the Greenbriar project, explaining:

The NBHCP, Implementation Agreement, Biological Opinion and ITPs provide that because the NBHCP’s Operating Conservation Plan is based upon the City limiting total development to 8,050 acres within the City’s Permit Area, approval by the City of future urban development beyond the 8,050 acres or outside of its Permit Area would “constitute a significant departure from the NBHCP’s OCP” and would trigger reevaluation of the NBHCP, a new effects analysis, potential amendments and/or revisions to the NBHCP and ITPs, a separate conservation strategy Greenbriar Development Project EDAW City of Sacramento 1-5 Analysis of Effects on the Natomas Basin HCP and the need to obtain a new ITP by the Permittee for that additional development, and/or possible suspension or revocation of the City’s ITP in the event the City were to violate such limitations without having completed the required reevaluation, and amendments or revisions if necessary, or having obtained a new permit.

(Greenbriar Development Project, Analysis of Effects on the Natomas Basin Habitat Conservation Report (2006), p. 1-4.)

The DEIR woefully fails to comply with this informational requirement and is not corrected in the FEIR since it doggedly clings to the patently false notion that the City can transfer NBHCP coverage to properties located outside of the NBHCP Permit Area.

Responses to Comment 22-15:

Our DEIR comment letter explained in detail how the Project was inconsistent with the NBHCP as set forth in the plain language of the NBHCP itself, the

Implementation Agreement, and its EIR. The FEIR makes no attempt to respond to this inconsistency. Rather, the FEIR refers to its responses to comments 2-5 and 2-17, which propose specific mitigation measures and do not address the EIR's informational deficiency pursuant to the *Banning Ranch* decision for failing to address inconsistency with the NBHCP.

After improperly referring the reader to irrelevant responses, the FEIR merely asserts, “[P]roject mitigation has been revised to address potential impacts to biological resources outside of the Natomas Basin HCP permit area.” The FEIR makes no attempt to identify the relevant mitigation measures, explain how they are revised, or explain how their revisions address the identified informational deficiencies.

We note that the FEIR purports to revise mitigation measures applicable to GGS (MM 4.4-3(b)) and Swainson's Hawk (MM 4.4-5(b)) impacts to address a scenario where “the City's surplus HCP coverage be made available to the proposed project.” Setting aside these mitigation measures are improperly deferred, they do not address the DEIR's informational deficiency associated with approving development outside of the NBHCP's Permit Area. The NBHCP IA directly addresses this occurrence, and provides in relevant part:

Because the effectiveness of the NBHCP's Operating Conservation Program is based upon CITY limiting total development to 8,050 acres within the CITY's Permit Area, and SUTTER limiting total development to 7,467 acres within SUTTER's Permit Area, approval by either CITY or SUTTER of *future urban development within the Plan Area or outside of their respective Permit Areas would constitute a significant departure from the Plan's Operating Conservation Program*. Thus, CITY and SUTTER further agree that in the event this future urban development should occur, prior to approval of any related rezoning or pre-zoning, such future urban development *shall trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development*, and/or possible suspension or revocation of CITY's or SUTTER's Permits in the event the CITY or SUTTER violate such limitations.

(NBHCP IA, § 3.1.1(b), emphasis added.)

The FEIR's revisions to mitigation measures addressing GGS and Swainson's Hawk impacts make no reference to the Project's need for "reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development, and/or possible suspension or revocation of CITY's or SUTTER's Permits," and so do not cure the obvious *Banning Ranch* informational deficiency.

Responses to Comment 22-16:

The FEIR fails to provide a good faith response regarding the DEIR's failure to disclose and analyze UFP emissions and resulting human health impacts. Please see Exhibit 3.

Responses to Comment 22-18:

Our DEIR comment letter provided specific comments addressing the EIR's project objectives in individual detail. The FEIR fails to provide good faith responses for these comments. For example, with respect to Objective 6, we wrote, "This objective is supported by an off-site location located elsewhere in the 'region'." The FEIR provides no specific response to this comment. Do the City and LAFCO seriously dispute that the objective of "attract[ing] new businesses and jobs to the City" could be met by other locations? The FEIR's refusal to address this, and other specific comments, both violates CEQA and strongly indicates that it has no serious response.

Indeed, the FEIR claims that this comment "does not provide any evidence supporting the commenter's claims of manipulation." The FEIR willfully misconstrues the word "manipulation." As we plainly explained, "The DEIR here includes several project objectives that are not supported by substantial evidence and are otherwise manipulated in order to exclude from consideration otherwise feasible project alternatives." (FEIR, p. 2-279.) The so-called "evidence" supporting this claim would have been apparent from detailed responses purporting to justify the objectives, which is likely why the FEIR declined to provide that information.

Further, the FEIR argues, "While the project objectives are a component of CEQA, they are intended to identify the goals of the project, as proposed by the project applicant. The project objectives are generally defined by the applicant with input from the lead agency." (FEIR, p. 2-369.) This is legal error. The lead agency, not a project applicant, establishes project objectives. (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143,

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1163 [*In re Bay-Delta*] [“The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency”]; *We Advocate Thorough Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692 [*We Advocate*] [invalidating EIR because “The County largely defined the project objectives as operating the project as proposed”].) If private project applicants were allowed to dictate their own CEQA project objectives for their projects, then reduced-density or off-site alternatives could always be avoided since a project applicant always wants to develop a project on its own property; this is certainly not the case. (See, e.g., *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179 [“Ownership of the land used and the identity of the developer are factors of lesser significance”].)

The City and LAFCO’s uncritical option of the applicant’s objectives is demonstrated with clarity by the first project objective, which is “to amend the City’s Sphere of Influence, followed by Annexation of the project site into the City of Sacramento.” (DEIR, p. 7-2.) It may well be the project applicant’s objective to obtain a SOI Amendment and annexation for its property, but it is nonsensical for this to be LAFCO’s objective since it is LAFCO’s duty to determine whether these approvals are required in the first place. Including these approvals as a project objective would support a finding that a project alternative not requiring these approvals is infeasible, which impermissibly constrains LAFCO’s authority to consider whether SOI Amendment and annexation are required in the first place.

It is the public agency that defines a project’s objectives, since those objectives guide the lead agency’s consideration of project alternatives and any statement of overriding considerations adopted by the public agency. (CEQA Guidelines, §§ 15124, 1526.6.)

Contrary to the FEIR’s comment, project applicants do not dictate project objectives. The FEIR’s response manifests an inexcusable abdication to a private party. Since the FEIR concedes that the City and LAFCO allowed the applicant to dictate project objectives, an entirely new Draft EIR will now need to be prepared that is free from this undue influence. As explained in *We Advocate*, “In taking this artificially narrow approach for describing the project objectives, the County ensured that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR’s alternatives section—often described as part of the ‘core of the EIR’ (*In re Bay-Delta, supra*, 43 Cal.4th at p. 1162)—into an empty formality.” (*We Advocate, supra*, 78 Cal.App.5th 683, 692.) That is precisely what occurred here.

Responses to Comment 22-19:

Our DEIR comment letter explained how the DEIR failed to comply with CEQA because it dismissed from consideration any off-site alternative without finding that any such off-site alternative would fail to satisfy most project objectives. We even suggested two specific alternative locations, Sutter Pointe Specific Plan and McClellan Park, explaining, “Both of these sites would satisfy most of the Projects’ objectives (at least those that were not manipulated in order to exclude any offsite alternative) and do not require SOIA, annexation or any amendments to the NBHCP.” (FEIR, p. 2-283.)

Incredibly, the FEIR makes no attempt to analyze these additional sites, much less explain how they would fail to meet most project objectives. This flagrantly violates CEQA. Even worse, the FEIR reinforces the City and LAFCO’s abandonment of land use authority by now asserting, “[A]n Off-Site Alternative was determined to be infeasible because the project applicant does not own any off-site locations that could accommodate the proposed project.” The FEIR provides no legal authority supporting this abdication of land use authority to private developers; case law rejects this justification for refusing to consider offsite alternatives. *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179-1180 explains:

Hyatt contends that ***because it owns the Haskell’s Beach site and no other feasible site*** in the general area, it would be unreasonable to require consideration of another site as an alternative. [citation] Further, it suggests that its development of Haskell’s Beach as a hotel will not foreclose hotel development of any other feasible site.

Both of these contentions are questionable. From the viewpoint of the public interest, a visitor-serving development in the general area has been found to be desirable. Whether its location should be Haskell’s Beach or elsewhere depends upon the relative merits and demerits remaining after maximum amelioration of environmental impacts. Serving the public purpose at minimal environmental expense is the goal of CEQA.

Ownership of the land used and the identity of the developer are factors of lesser significance.

...

Reason requires that the agency charged with the duty to protect the environment compare impacts at feasible alternative locations.

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(*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179-1180, emphasis added.)

And while CEQA Guidelines includes ownership as a factor relevant to feasibility of an alternative, it is just one factor out of many:

Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). ***Not one of these factors establishes a fixed limit on the scope of reasonable alternatives.***

(CEQA Guidelines, § 15126.6, subd. (f)(1), emphasis added.)

The FEIR violates this CEQA Guideline by purporting to justify consideration of offsite alternatives based solely on ownership, which is a factor of “lesser significance.”

In short, the DEIR and FEIR violate CEQA by rejecting all offsite alternatives from detailed analysis, even specific proposed offsite alternatives, because the project applicant does not own these alternative sites. This also manifests an inexcusable abdication of LAFCO’s authority over the SOI Amendment to private landowners.

Responses to Comment 23-20:

Our DEIR comment explained how the DEIR’s failure to address inconsistency with the NBHCP tainted the EIR’s consideration of alternatives pursuant to the *Banning Ranch* decision. (*Banning Ranch, supra*, 2 Cal.5th 918, 937 [“the regulatory limitations imposed by the Coastal Act’s ESHA provisions should have been central to the Banning Ranch EIR’s analysis of feasible alternatives”].) Once again, the FEIR fails to address this comment at all and instead directs the reader to comments 13-27 through 13-31. While those comments and responses concern the NBHCP in other context, they simply do not address how the Project’s inconsistency with the NBHCP affects the EIR’s alternatives analysis.

Responses to Comment 23-12:

This comment explains that the EIR’s project description is inadequate because the applicant and City have not yet disclosed the proposed Development Agreement for the Project. This comment is correct. As explained above, for example, the FEIR falsely claims that the proposed warehouse on Parcel 8 is not allowed as a matter of right and requires CEQA review. While we explain above that the FEIR’s claims are false, the development agreement would provide additional confirmation regarding this, and other uncertainties associated with the so-called “non participating” parcels. The FEIR cannot rely on unknown and unanalyzed provisions of an unknown and undisclosed development agreement that may or may not actually be approved to support its conclusions.

Further, the FEIR does not provide a good faith response to this comment. The cases cited in the FEIR do not address the situation presented here, where the development agreement has not been publicly released prior to public approval. While the cases cited in the FEIR hold that a detailed analysis specific to the development agreement (i.e., distinct from the underlying project) is not required, the development agreements themselves were available in order to inform decision-makers and the public about the underlying project. (*Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 910 [“Here, the EIR gave adequate notice of the existence of the development agreement and provided a means for determining the terms of that document”]; *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 291 [“it is sufficient if, as here, the development agreement is included in the notice of the public hearing on the Project before the city council”]; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 926-927 [“The approval of the development agreement was duly noticed and considered at the public hearings on the project before the City Council, along with the certification of the EIR and other project approvals”].) No case has held that the decision-makers and the public must be forced to speculate about how a project may be modified by an undisclosed development agreement.

The Project Will Result in Cumulatively Significant Impacts to Biological Resources

The EIR concludes that the Project’s cumulative impact to special-status species would be mitigated to less than significant. (See Impact 4.4-15, DEIR, pp. 4.4-78 – 83.) Substantial evidence does not support this conclusion. First, the EIR attempts to rely solely on mitigation for project-level impacts to mitigate the cumulative impact. This is improper because it ignores that a project’s cumulative impact is distinct from a project’s

cumulative impact. Indeed, while the DEIR purports to set forth various mitigation measures, the DEIR fails as an informational document by explaining how these mitigation measures will reduce the Project's cumulative impact to less than significant.

In response to comment 80-1, the FEIR asserts, “[T]he Natomas Basin HCP is specifically designed to address potential impacts to biological resources on a cumulative scale within the basin.” Wholly omitted in this response, however, is that purporting to approve urban development outside of the Project area triggers “reevaluation of the Plan and Permits . . . and/or possible suspension or revocation of CITY’s or SUTTER’s Permits.” (NBHCP IA, § 3.1.1.) Since the Project could individually result in “reevaluation” or even outright “revocation” of the entire NBHCP, this refutes the FEIR’s conclusory assertion that the Project’s incremental contribution would be less than significant.

Finally, the DEIR and FEIR dismiss the Project’s cumulative impact in combination with the Upper Westside Project by asserting that the Draft EIR for that project was not available, and further that the project is not yet approved. (DEIR, p. 4.4-81 [“publicly available information regarding the potential biological impacts of the Upper Westside Specific Plan is not available”]; FEIR, p. 2-30 [“the proposed Upper Westside and Grandpark projects have not yet been approved by Sacramento County, and thus have not yet removed agricultural land from the Basin”].) For purposes of cumulative impacts, it is irrelevant that the Upper Westside project has not yet been approved. Further, the Draft EIR for the Upper Westside Project was released back in August 2024. The EIR fails as an informational document by not analyzing and disclosing the severity of the cumulative impact to the NBHCP.

The FEIR’ Revision to DEIR Table 4.9-6 Fails to Cure the Informational Deficiency

The FEIR includes revisions to DEIR Table 4.9-6. However, this revision is inadequate to cure that table’s informational deficiencies.

First, Table 4.9-6 claims that the Project is consistent with LAFCO’s policy 3, which provides, “The Sphere of Influence amendments shall precede applications for annexations.” The DEIR asserts, “Prior to Annexation of the project site into the City of Sacramento limits, the proposed project would require approval of a SOI Amendment to modify the City’s SOI to include the project site.” This does not establish consistency with the policy, which requires the SOI Amendment to precede the application for annexation. The DEIR makes no attempt to address the timing of the annexation application. Attachment D plainly establishes that an application for annexation was

filed long ago, and so any approval of the SOIA annexation does not “precede applications for annexations.” The DEIR and FEIR fail to disclose this obvious inconsistency with LAFCO policy, much less acknowledge how this demonstrates disorderly development that is driven by private landowners and not public agencies charged with conserving public resources within the county.

Second, Table 4.9-6 completely ignores many LAFCO policies that are directly applicable to the Project, and LAFCO’s discretionary action presently at issue. Specifically, LAFCO’s Policy Manual plainly identifies policies that are applicable to its approval of a SOIA amendment:

The LAFCo’s policies will be applied to applications for amendment to a Sphere of Influence as if it were an annexation planned for the mid- to long-range future. For that reason, each of the following sets of policies will apply to applications for amendments to Spheres of Influence:

- a. General policies;
- b. Specific policies and standards for annexations to cities and special districts; and
- c. Specific policies and standards or amendments to Spheres of Influence.

(LAFCO Policy Manual, p. 50.)

Incredibly, however, the DEIR and FEIR simply ignore LAFCO’s general policies pertaining to “Agricultural Land Conservation” that unquestionably apply here. (LAFCO Policy Manual, pp. 31-32.) These include:

E. AGRICULTURAL LAND CONSERVATION

LAFCo will exercise its powers to conserve agricultural land pursuant to the following standards.

1. LAFCo will approve a change of organization or reorganization which will result: in the conversion of prime agricultural land in open space use to other uses only if the Commission finds that the proposal will lead to the planned, orderly and efficient development of an area. *For purposes of this standard, a proposal leads to the*

planned, orderly and efficient development of an area only if all of the following criteria are met:

- a. The land subject to the change of organization or reorganization is contiguous to either lands developed with an urban use or lands which have received all discretionary approvals for urban development.
- b. The proposed development of the subject lands is consistent with the Spheres, of Influence Plan, including the Municipal Service Review of the affected agency or agencies.
- c. Development of all or a substantial portion of the subject land is likely to occur within five years. In the case of very large developments, annexation should be phased wherever feasible. If the Commission finds phasing infeasible for specific reasons, it may approve annexation if all or a substantial portion of the subject land is likely to develop within a reasonable period of time.
- d. Insufficient vacant non-prime lands exist within the applicable Spheres of Influence that are planned, accessible and developable for the same general type of use.
- e. The proposal will have no significant adverse effect on the physical and economic integrity of other agricultural lands. In making this determination, LAFCo will consider the following factors:
 - (1) The agricultural significance of the subject and adjacent areas relative to other agricultural lands in the region.
 - (2) The use of the subject and the adjacent areas.
 - (3) Whether public facilities related to the proposal would be sized or situated so as to facilitate the conversion of adjacent or nearby agricultural land, or will be extended through or adjacent to, any other agricultural

lands which lie between the project site and existing facilities.

- (4) Whether natural or main-made barriers serve to buffer adjacent or nearby agricultural land from the effects of the proposed development.
 - (5) Applicable provisions; of the General Plan open space and land use elements, applicable growth-management policies, or other statutory provisions designed to protect agriculture.
2. LAFCo will not make the affirmative findings that the proposed development of the subject lands is consistent with the Spheres of Influence in the absence of an approved Spheres of Influence Plan. ***LAFCo will not make the affirmative findings that insufficient vacant non-prime land exists within the Spheres of Influence Plan unless the applicable jurisdiction has:***
 - a. ***Identified within its Spheres of Influence all “prime agricultural land” as defined herein.***
 - b. ***Enacted measures to preserve prime agricultural land identified within its Spheres of Influence for agricultural use.***
 - c. ***Adopted as part of its General Plan specific measures to facilitate and encourage in-fill development as an alternative to the development of agricultural lands.***
3. The LAFCo will comment upon, whenever feasible, Notices of Preparation for Environmental Impact Reports or projects which involve the development of large tracts of open space and agricultural land and that are not scheduled for urbanization within a five-year- period. Potential adverse impacts related to the loss of open space or agricultural land also will be commented upon by LAFCo.

4. LAFCo’s analysis for changes of organization or reorganization or sphere of influence amendments related to territory subject to Williamson Act contracts shall be consistent with Government Code Sections 56426 et seq.

(LAFCO Policy Manual, pp. 31-32, emphasis added.)

Incredibly, the DEIR makes no attempt to address the Project’s consistency with these LAFCO policies. The wholesale failure to address Policy 2 is particularly egregious since it imposes substantive constraints on LAFCO’s authority to find that sufficient alternative land is available for annexation within the existing Sphere of Influence. The DEIR purports to find that insufficient land is available (DEIR, pp. 4.9-21 and -21), and yet does not address the above-quoted conditions that must be satisfied in order to make that finding.

In sum, the EIR fails as an informational document by not addressing all relevant LAFCO policies.

Comments Regarding the LAFCO Staff Report

LAFCO’s cursory staff report provides false and misleading information regarding the nature of LAFCO’s action to approve the SOIA, the NBHCP and the Project’s consistency with established LAFCO policies. Accordingly, LAFCO’s approval of the SOIA amendment would constitute an abuse of discretion in violation of LAFCO polices and the Cortese-Knox-Hertzberg Act.

The Staff Report Misconstrues the Proposed Approval

The staff report asserts, “Approving an SOI expansion does not mean that LAFCo is endorsing the ASI project, or approving future SOI expansions into the City or other projects in the area. Each of those will be considered based on their own facts should they come before you at some other time.” This is untrue. As a CEQA lead agency for a project that includes significant and unavoidable impacts, LAFCO must adopt a statement of overriding considerations for the underlying development project, which necessarily means that LAFCO believes the project’s benefits outweigh all identified environmental impacts.³ Thus, LAFCO is endorsing the project.

³ While CEQA requires LAFCO to adopt findings and a statement of overriding considerations, LAFCO has not done so. LAFCO’s Resolution LAF2025-07 purports

LAFCO Fails to Disclose Inconsistency with LAFCO Policies

“Attachment F” to the staff report purports to analyze consistency with applicable LAFCO policies. Conspicuously absent is any mention of LAFCO’s third policy regarding SOI Amendments, which provides, “The Sphere of Influence amendments shall precede applications for annexations.” The application attached to the staff report as Exhibit D unquestionably establishes a single application for both SOI Amendment and annexation. Thus, an application for SOI Amendment did not precede an annexation for application as required by LAFCO’s policies. Thus, the project is unquestionably inconsistent with LAFCO Policy. LAFCO’s apparent strategy to handle this obvious inconsistency is to treat the policy like it does not exist. This is the hallmark of arbitrary and capricious conduct.

Similarly, the staff report ignores LAFCO policies regarding annexations even though LAFCO’s Policy Manual plainly states that these policies “will apply” to LAFCO’s consideration of SOI amendments: “[E]ach of the following sets of policies will apply to applications for amendments to Spheres of Influence: . . . Specific policies and standards for annexations to cities and special districts. . . .” (LAFCO Policy Manual, p. 50.) The same is true regarding LAFCO’s “Agricultural Land Conservation” general standards that unquestionably apply here. (LAFCO Policy Manual, pp. 31-32.)

The Staff Report Misconstrues the NBHCP

The staff report finding of consistency with the NBHCP is based upon the “There is surplus acreage under the City’s Natomas Basin HCP allocation that may be available for use by the remainder of the project site.” As we demonstrate above, this assertion is wholly false and misleading. The existence of any so-called “surplus acreage” is irrelevant, and in no way supports NBHCP take coverage, since the NBHCP does not

to adopt findings set forth in “Exhibit A,” but those findings clarify that they are only findings by the City and not LAFCO. (See, e.g., p. 7 of 100 [“LAFCo will prepare its own procedural findings of fact for its consideration of the SOI Amendment and Annexation”]; p. 10 of 100 [“In these Findings, the City first addresses the extent to which each significant environmental effect can be substantially lessened or avoided through the adoption of feasible mitigation measures.”]; In the Statement of Overriding Considerations found at the end of these Findings, the City identifies the specific economic, social, and other considerations that, in its judgment, outweigh the significant environmental effects that the proposed project will cause”].) Thus, the “Exhibit A” findings preclude adoption LAFCO by their own terms.

Chair Lisa Kaplan and Members of the Commission
Jose C. Henriquez, Executive Officer
Sacramento LAFCO
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allow transferring NBHCP permit coverage to property outside of the NBHCP's Permit Area. (NBHCP IA, § 3.1.1 ["CITY agrees not to approve more than 8,050 acres of Authorized Development *and to ensure that all Authorized Development is confined to the CITY's Permit Area* as depicted on Exhibit B to this Agreement. . . [T]he effectiveness of the NBHC's Operating Conservation Program is based upon CITY limiting total development to 8,050 acres *within the CITY's PERMIT AREA*"].) The staff report's reliance on so-called "excess acreage" to find consistency with the NBHCP is contrary to law and an abuse of discretion.

* * *

Thank you for the opportunity to comment. The FEIR confirms that the City and LAFCO's unlawful "dual lead agency" scheme prejudices informed decision-making and public participation regarding this Commission's decision whether to authorize the City's request for a sphere of influence amendment. The FEIR is woefully inadequate as a document of informed decision-making and public participation. The same is true regarding LAFCO's staff report. We urge the Commission to deny the requested SOI Amendment.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/mre

Attachments:

- Exhibit 1: Comments from Shawn Smallwood, PhD
- Exhibit 2: Comments from Smith Engineering & Management
- Exhibit 3: Comments from Earl Withycombe & Ralph Propper

References and Other Cited Material are provided separately to LAFCO on a flash drive

EXHIBIT 1

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Scott Johnson, Senior Planner
City of Sacramento Community Development Department
Sacramento, CA 95814

31 March 2025

RE: Airport South Industrial Park and City Annexation DEIR

Dear Mr. Johnson,

I write to rebut the City's responses to my comments on the potential impacts of the Airport South Industrial Project on wildlife. In my comments below, I adopt the numbering of responses initiated by the City, but I further distinguish some of them by sequential lettering to address multiple issues addressed in some individually numbered responses.

Response 22-37: The comment is an introductory statement and does not address the adequacy of the Draft EIR.

Reply: A portion of the cited introductory text does address the adequacy of the DEIR, but only in summary form. I will add that my introductory paragraphs summarized my experience with the NBHCP and my research of wildlife in the project area. These summaries identify me as one of the experts the City could have consulted as part of its preparation of its characterization of the environmental setting. The CEQA Guidelines recommends that the lead agency should consult with "Any person who has special expertise with respect to any environmental impact involved." Bargas (2023), however, fails to disclose that they consulted with me or any other expert on the NBHCP or on the species at issue. Furthermore, Bargas (2023) cites nothing of the scientific literature on the NBHCP or on the species at issue. As examples, no reports or papers are cited on the ecology and conservation of giant gartersnake or Swainson's hawk. My introductory comments could have been more directly stated, but their point was that the DEIR is deficient, partly because it ignores the available expertise on the existing environment setting, and subsequently because it mischaracterizes the environmental setting and the project's potential impacts to plants and wildlife.

Response 22-38: The comment does not address the adequacy of the Draft EIR.

Reply: The response is inaccurate. Our site visit was intended to check on the completeness and credibility of the wildlife surveys that were performed by the City's environmental consultants. In fact, we detected 18 species of vertebrate wildlife that the City's consultants did not, and these species included two special-status species – the yellow warbler and the tricolored blackbird. The tricolored blackbird is listed as threatened under California's Endangered Species Act.

Our survey also revealed that our rate of new species detections exceeded the upper bound of the 95% confidence interval of models I fit to our survey outcomes at sites located throughout the Sacramento-San Joaquin Valley. This finding reveals that the project site is richer in wildlife species than most other sites in the region, and the site is therefore more important to wildlife than is characterized in the DEIR.

Bridging our findings to my findings from a more intensively studied research site also supported my prediction of the number of diurnally active wildlife species that use the project site. The pattern in our species detection rates support my prediction that the site provides habitat to 212 species of diurnally active vertebrate wildlife, including 31 special-status species. The project site is much more valuable to wildlife than is portrayed by the DEIR, partly because there was insufficient survey effort in support of the DEIR, but largely because the DEIR's analyses of data are deficient and conclusions drawn from the data are unsupportable and misleading.

Response 22-39a: The comment is an introductory statement describing to commentor's opinion on initial "steps" to characterize the existing environmental setting for a site. The comment states that Step 1, biological surveys of the site, and Step 2, literature/database review, are incomplete and misleading. Chapter 4.4, Biological Resources, of the Draft EIR, which includes the information provided in the BRA prepared for the proposed project (Appendix E of the Draft EIR), thoroughly discusses the biological field surveys (commentor Step 1) and desktop literature/database reviews (commentor Step 2) conducted for the project. The introductory comment statement does not raise and specific issues on adequacy of the Draft EIR.

Reply: My introductory comment does raise specific issues on the adequacy of the DEIR, but it does not go into the details of comments that appear after it.

Response 22-39b: The commentor provides the opinion that the surveys conducted as part of the BRA are inadequate based on the commentor's equation model of species detected per hour of survey. The equation model presented by the commentor is not an industry-accepted practice/standard or appropriate methodology for several reasons. The commentor's model provides a biased result, likely greatly overstates the number of species that occur on the site, and infers that few species were detected each survey. When in fact, the majority of the species were detected repeatedly during each survey, which is a common result. The surveys conducted for the project were intentionally conducted between fall through summer to provide opportunity to capture resident and migratory wildlife species utilizing the site.

Reply: The response refers to an equation model, which is an unfamiliar term to me, but what I reported were empirical models, or more specifically best-fit mathematical functions to patterns in real data, where best fits were decided by least sums of squared deviations of observations from the mean. Least-square regression models are probably the most common type of modeling in science. My use of them allows me to draw more meaning from the data than one can get from the simple list of species observed in the DEIR. The DEIR's list of species detected provides no context with which to interpret or to compare the findings, and in fact it is not compared to findings from any other time

or place. The modeling I use, and which the City complains is not accepted industry practice, provides the context of survey effort and a framework for comparing my survey findings to the findings from other times and places.

The response alleges my model (1) overstates the number of species that occur on the site due to bias, and (2) infers few species were detected each survey. It is unclear to which model the response refers, it provides no evidence of the alleged bias, and it neglects to explain how the bias came about. On these points, the response asserts empty accusations of bias and misdirected inference.

It is unclear which model the response alleges to be biased, considering that the response spans my comments addressing three models, the first depicted in Figure 1, the second depicted in the text on page 18, and the third depicted in Figure 2 of my 16 July 2024 comment letter. Even less clear is that portion of the response that claims my model infers “few species were detected each survey.” My final point on this lack of clarity is that it is not the model that draws inferences, but rather the analyst making use of the model. I fail to understand the point of the response regarding inference pertaining to bias and surveys.

The methods I used in my comment letter have been found acceptable to the scientific community. Nonlinear model-fitting and analytical bridges have been around for many decades. The modeling methods I used in my comment letter underwent scientific peer review (e.g., Smallwood and Smallwood 2023), which is a higher standard than a purported industry standard. All said, I still cannot understand how or why my comments are characterized by the City as out of compliance with industry standards, because the Response does not make this clear.

Response 22-39c: In response to the comment that the biological survey did not detect certain wildlife species identified by the Smallwood survey, the comment is misleading and does not accurately characterize the site. Many of Smallwood’s observations were avian “flyovers” of the site or species detected off-site. Merely because a bird flew over the site does not suggest the site is utilized or inhabited by that species. Unless the bird is observed hunting, foraging, perching, or preening, flyovers are generally not included in the list of avian species that inhabit a site.

Reply: The response cites no evidence in support of its assertion that most of the wildlife we detected on the site were flyover or off the site. According to my records, of the 48 species of vertebrate wildlife we detected, 48 were detected directly on the site; that is, none of them were strictly off site. The response is inaccurate on this point.

As for flyovers, none of my notes indicate that any of the species merely flew over the site, and I do not recall that any of them did so. Except for perhaps one of two species (possibly double-crested cormorants and Canada geese), members of all the species we detected made contact with soil, water or vegetation on the project site during our survey. On this point the response is short on evidence and is grossly inaccurate.

Even had most of the animals we saw been “mere flyovers,” wildlife are not two-dimensional; their environment spans from bedrock to great heights into the atmosphere, otherwise known as the aerosphere (Kunz et al. 2008, Diehl et al. 2017). That portion of the aerosphere with which Noriko and I concerned ourselves during our survey was the portion that would be affected by the project. In other words, we considered birds flying low over the project site as having selected the project site for their flight paths. And by low, we also considered the soaring behaviors of Buteo hawks such as Swainson’s hawks, because soaring is used for travel, socializing, and foraging – all behaviors of which are of critical importance to the survival of the birds involved. Therefore, merely because a bird flew over the site does in fact mean that the site is utilized by that bird. I will add that it is not always clear why a bird is flying over a site, as it might be pursuing multiple objectives of travel, foraging and socializing, so the response’s condition for determining habitation is contrived.

Response 22-39d: The commentor’s statement about tricolored blackbird being detected on-site is unfounded, given that Bargas conducted several surveys on-site. If tricolored blackbird resided on-site, the species would have been detected during surveys of the site, but was not. Potential impacts to tricolored blackbird are addressed under Impact 4.4-7 in Chapter 4.4, Biological Resources, of the Draft EIR. As discussed therein, nesting habitat does not occur within the project site. Furthermore, in the unlikely event that tricolored blackbird would be present on-site, Mitigation Measures 4.4-9(a) and 4.4-9(b) require surveys, avoidance, and coordination with the City and CDFW if nesting birds and raptors protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (CFGF), which includes tricolored blackbird, are found actively nesting on-site. Therefore, the Draft EIR adequately addresses potential impacts to tricolored blackbird.

Reply: The response claims that our tricolored blackbird detection is unfounded, which is another way of claiming that we falsified our detection. However, in anticipation that we might one day have to rebut claims of falsification (this is the first time it has happened to us), we paid extra for cameras fit with global positioning systems (GPS). In Photo 1, I show one of our tricolored blackbird photos along with its photo attributes that include our spatial coordinates when the photo was taken. We were on Bayou Way at the north side of the project site when this photo was taken, and Noriko was aiming her camera to the west-southwest of our position (note the angle of the reflected sunlight off the tricolored blackbird’s primary feathers – the sun was east-southeast of the birds).



Photo 1. *Our spatial coordinates are shown at the upper right portion of this image of tricolored blackbirds on the project site, 14 May 2024. This photo was taken by Noriko Smallwood.*

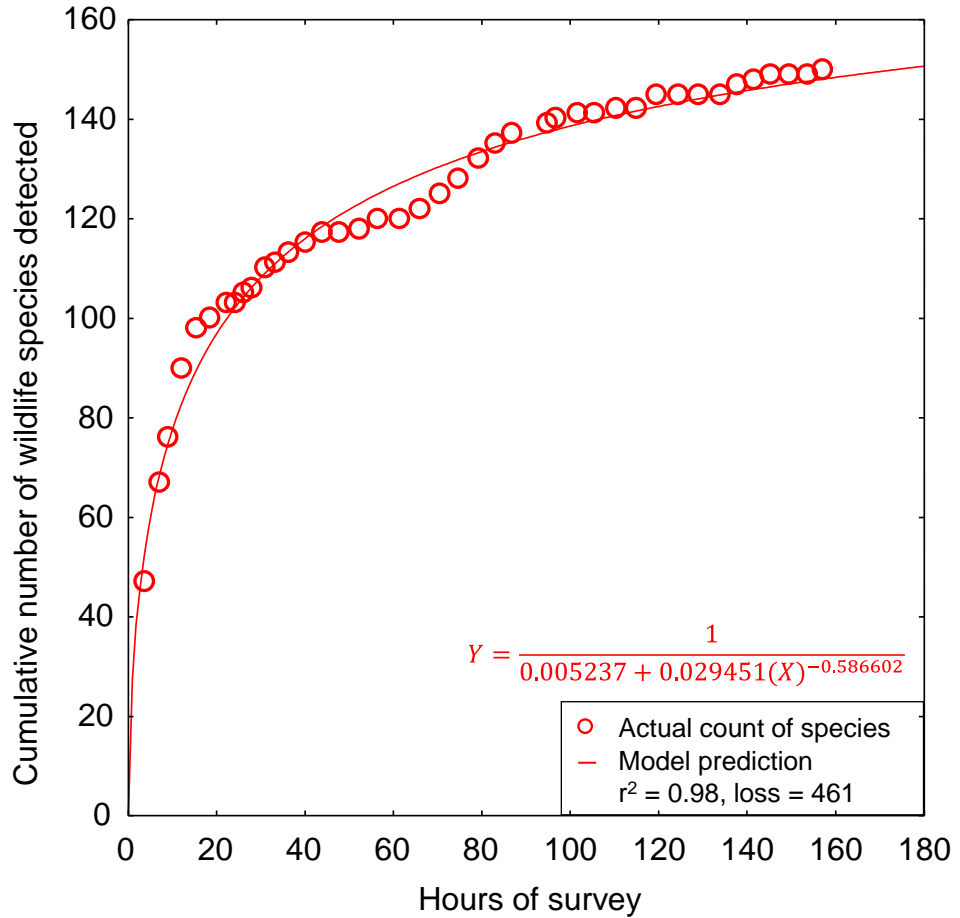
The tricolored blackbirds in Photo 1 were not the only tricolored blackbirds we saw on the site. We observed flocks of them (Photo 2). That Bargas missed this species after several surveys is not evidence in support of the City's claim that we could not have detected the species. As the City itself admits in its Response 22-40, biologists are not going to see all the species that occur at a site – not in one survey, and not in several surveys. Biologists miss species because they were looking one way when the species was detectable from the other way, or because the species was present earlier or later in the day than when the survey occurred, or because the species was present during a season other than when the survey was performed. Tricolored blackbird colonies happen to be spatially dynamic, meaning that they change centers of activity from year to year. Anyhow, that species are often missed was the point of Figure 2 in my comment letter of 16 July 2024. As I commented in my letter of 16 July 2024, on average I detected within my first hour of survey only 12% of the total number of species I would detect at my cited research site, and on average I detected within my first three hours of survey only 22.6% of the total number of species I would eventually detect. Figure 1, below, shows the accumulation of species I detected over 41 surveys at another site in the Sacramento area. In this example, the species I detected after the first several surveys numbered only 50% of the 149 species I detected after 41 surveys, and only 34% of the 191 species the best-fit model to the data predicts (Figure 1). The response's basis for determining that our detection of tricolored blackbird is being unfounded is not supported by the data.



Photo 2. *Part of a flock of tricolored blackbird on the project site, 14 May 2024.*

The response attempts to cover the possibility that we really did observe tricolored blackbirds (we really did, in fact, observe them) by arguing that the DEIR’s mitigation measures would adequately address any impacts. Specifically, the response cites Mitigation Measures 4.4-9(a) and 4.4-9(b). However, Mitigation Measure 4.4-9(a) applies to raptors. Tricolored blackbirds are not raptors, so this Measure does not apply. Measure 4.4-9(b) applies to songbirds. Tricolored blackbirds are songbirds, but tricolored blackbirds are not mentioned in the Measure, probably because the City did not anticipate the occurrence of this species due to the negative findings of the consultants’ reconnaissance surveys. The problem with not mentioning tricolored blackbird in Measure 4.4-9(b) is that the tricolored blackbird is not just any songbird, but it is listed as threatened under California’s Endangered Species Act. The recommended survey protocol for determining presence or absence requires at least three surveys separated by three weeks each during April through June (Airola et al. 2024). This protocol cannot be achieved by the single preconstruction survey required in Measure 4.4-9(b). Therefore, the DEIR is deficient.

Figure 1. Accumulation of wildlife species detections at a Sacramento-area site over 41 surveys, ending at 149 species. However, the pattern in the data indicates via modeling that 191 species would eventually be detected after additional surveys.



Moreover, the tricolored blackbird is present. We saw them, and we photographed them. What is needed now are more substantial surveys to ascertain how many tricolored blackbirds are foraging or nesting on the site. Even if the tricolored blackbird is nesting off site, members of the species are obviously foraging on the project site during the breeding season. These foraging activities are in support of nesting regardless of whether the nesting is on or off site. More needs to be learned about the tricolored blackbirds on the project site so that accurate impact predictions can be prepared, along with the formulation of appropriate mitigation measures.

Response 22-39e: As for site access and surveys on the nonparticipating parcels, Bargas was informed that they did not have permission to access these lands; thus, survey of these areas were conducted along the periphery with sight assistance via binoculars.

Reply: I appreciate the response’s information that Bargas was denied access to the nonparticipating parcels. However, the response does not address my related comments about the consequences of lack of access. Unable to survey from directly on the nonparticipating parcels, Bargas was even less prepared for determining the absences of multiple special-status species. Field surveys from the peripheries of these parcels could not have possibly sufficed as evidence of absence of any species of wildlife, let alone

giant gartersnake. The DEIR needs to disclose any deficiencies of the survey effort, and it needs to report only those determinations that are supportable by the survey effort.

Response 22-39f: With respect to rare plants, Bargas's surveys were conducted during the appropriate timing to detect rare plants. The use of reference sites can be helpful, especially for determining magnitude of populations of rare plant expression. However, the use of reference site(s) is not a requirement for conducting presence/absence rare plant surveys, and often those off-site reference locations are not accessible due to lack of permissible access. Ultimately, based on the literature searches and desktop database queries, as well as the site-specific conditions, it was determined the site does not support habitat for special-status plants and that none are expected to occur such that would warrant focused rare plant surveys. The nearest records of rare plants were over five miles from the site.

Reply: The response implies but does not state that reference sites were unavailable to Bargas. I also note that none of the recommendations in CDFW (2018) are survey requirements. However, the implementation of CDFW (2018) would have supported determinations that 14 rare plant species are absent from the project site, if in fact the findings still turned out to be negative. Having not achieved the recommended standards of CDFW (2018), the appropriate determinations would be to err on the side of caution by not determining absences of these species.

Response 22-40a: As presented in Section 3.1.2.1 of the BRA prepared for the proposed project by Bargas (Appendix E of the Draft EIR), the CNDDDB records search area included the Regional Study Area, which was defined in Section 1.3 in the BRA as the project site and the surrounding five miles.

Reply: I appreciate the clarification. I suggest that the methods more clearly state the CNDDDB query buffer so that the readers need not bounce around the document to find critical details.

Response 22-40b: The desktop database searches (including use of CNDDDB and other sources) are not the sole factor in determining presence/absence of special-status species. Therefore, Bargas supplemented the desktop database searches with field surveys of the site, which were intentionally performed by Bargas between fall to summer. Thus, the commentor's claim that the analysis of special-status species occurrence is flawed is not true. Further, it is acknowledged that biologists are unlikely to observe all species that occur on a site through site surveys alone. Thus, the BRA follows accepted practice to evaluate the potential for species to occur on-site by conducting site surveys and creating a list of species not observed but considered to have potential to occur based on on-site resources, including habitat types and vegetation communities, historic observations, species extents, geographic range, population sizes, and distribution, etc.

Reply: The response reveals internal inconsistencies in the FEIR's responses. For example, here the City acknowledges that biologists performing reconnaissance surveys are unlikely to observe all species that occur on a site. I agree, but earlier the City

expressed incredulity at our detection of tricolored blackbird after Bargas failed to detect this species over several surveys. The City attempts to have it both ways.

Supplementing the desktop review with reconnaissance surveys is not enough for determining absences of species. As noted in the response, biologists performing reconnaissance surveys are unlikely to observe all species that occur on a site. It is for this reason that absence determinations are not supportable by reconnaissance surveys. The outcomes of reconnaissance surveys do not get around the CNDDDB's warning that appears on its website about misinterpreting or misrepresenting CNDDDB query results as evidence of absence (see my comment letter of 16 July 2024). Evidence of absence can only be found in the negative outcomes of adequate implementation of protocol-level detection surveys. No detection surveys have been completed. And no onsite reconnaissance surveys have been completed on Parcel 8.

Neither a CNDDDB query nor the implementation of a few reconnaissance surveys can support determinations of species absences, unless a very compelling case can be made for the species' habitat not existing on the site. To follow accepted practice to evaluate the occurrence likelihoods of species based on these types of evidence, statements of uncertainty over species occurrences would have been needed. Stating that a species is absent without having implemented the types of surveys that have been formulated to detect the species when it is present is the type of determination that has long been established as inappropriate when addressing the fates of precious resources in the face of uncertainty (National Research Council 1986).

Response 22-40c: The commentor's use of iNaturalist can be helpful but is not a typical reliable source in the eyes of the State and Federal Wildlife Agencies. State and federal databases (i.e., USFWS, CDFW, etc.) serve as the primary sources of reliable data references for biological studies because they are species and sub-species specific, credible, vetted by specialists, and provide site- and observation-specific location information.

Reply: The response cites no source in support of its representation of USFWS and CDFW. In which document does CDFW or USFWS state that iNaturalist or eBird are insufficiently reliable for use as sightings records? In which document is it stated that state and federal databases qualify as the primary sources of occurrence records? I do not recall seeing that either agency has issued such proclamations, and it is my experience that the agencies encourage lead agencies to consult all available sources of information value regarding the species that could be at issue.

Response 22-40d: Public websites such as eBird and iNaturalist may be referred to as secondary resources as they are considered citizen-based science efforts. Any member of the public can record an unverified observation, which may or may not be accurate. Such observations from non-professional contributors may therefore be unreliable as to species and locational information. Additionally, even if accurate, the records provide general information, often not to the sub-species level, and depending on the species sensitivity, do not provide site specific or observation location information. The information on these sites may not be credible and they are not considered a credible

primary resource by the City. Furthermore, while iNaturalist data often provides general information on a regional scale, the State and federal databases provide site-specific observation information that can be very useful when analyzing a specific property.

Reply: State and federal databases provide site-specific occurrence records only for sites that have been surveyed by biologists and the survey findings reported to the state and federal databases. Take Parcel 8, for example. If biologists in addition to those of Bargas were denied access to it, then there are unlikely to be occurrence records from Parcel 8 in the CNDDDB. On the other hand, any biologist or bird enthusiast with a pair of binoculars can see into the aerosphere of Parcel 8 to detect birds, and these detections can be reported to eBird. Furthermore, CNDDDB is only interested in reports of species that happen to be designated with special status at the time of the sighting. Therefore, species more recently designated as special-status species are less likely to be represented with records in the CNDDDB, but this is not the case for eBird or iNaturalist.

Response 22-40e: Public databases are becoming more recognized as technology and screening advances, but currently there is still much uncertainty in the accuracy and validity of what is posted on those public forums.

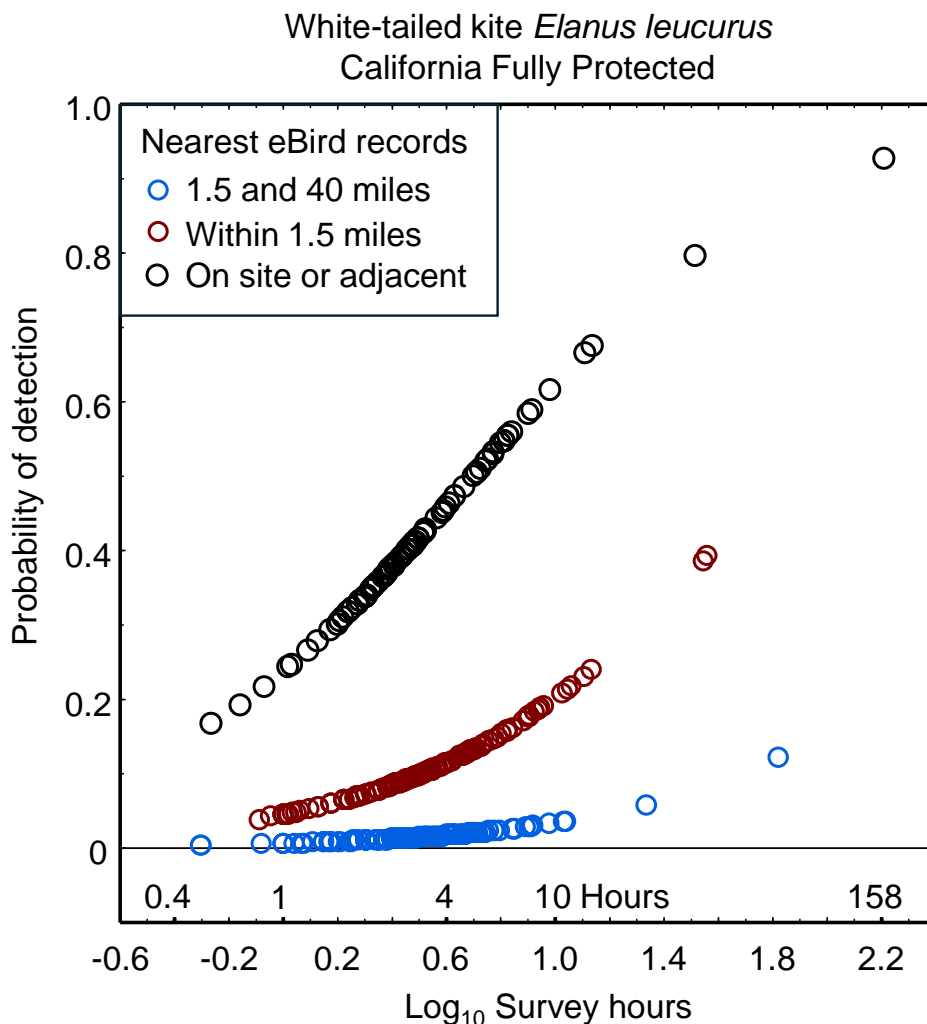
Reply: Here and earlier in the response, the City mischaracterizes eBird and iNaturalist as having undergone less scrutiny than occurs with occurrence records submitted to the CNDDDB. And to be clear, there is no similar occurrence database maintained by the federal government, so every insinuation in the response that such a database exists is misleading. In fact, the occurrence records in the public databases can undergo multiple levels of scrutiny, one level of which is accomplished by participating members of the public. Occurrence records to these databases often include photos, sonograms or other evidence that can be examined by peers, whereas the same cannot be said about the records in the CNDDDB. eBird includes algorithms to detect irregularities. Experts at the Cornell University Lab of Ornithology often follow up on eBird records by contacting and questioning reporters of flagged records. The details of the vetting processes at these databases are available on the websites. I will add that thousands of papers based on eBird records have been published in peer-reviewed scientific papers, whereas few have been published based on CNDDDB records. Inaccuracies certainly occur in eBird and iNaturalist records, but nowhere near the levels implied by the response.

Response 22-40f: The evaluation by the commentor of species recorded up to 30 miles from the project site is misleading, unnecessary, and not applicable to the species that could likely occur on the project site. Simply because a species has been reported as occurring in the 30-mile region does not mean that they have a potential for presence at the project site, which would largely depend on whether suitable habitat is present.

Reply: The response is inaccurate because it is looking at our proximity domains (within 1.5 miles, between 1.5 and 4 miles, and between 4 and 30 miles in the case of my letter of 16 July 2024) in the wrong way. The proximities of occurrence records serve as a useful predictor of the likelihood of detection of a species on a given site (Figure 2). As shown in this case for white-tailed kite, occurrence records that are more distant from a site decrease the likelihood of detection at a given level of survey effort, but they do not

preclude detections altogether (consistent with the tenet that occurrence records should not lead to determinations of absence). More distant records more accurately inform of the need for greater survey effort to detect the species on the site. In the example of the white-tailed kite, the addition of proximity domains informs us that to achieve a 10% likelihood of detection, even a brief survey should be all that is needed if the nearest occurrence record was on site or adjacent to the site, but four hours would be needed if the nearest record was within 1.5 of the site, and 10 hours would be needed if the nearest record was between 1.4 and 40 miles of the site.

Figure 2. The probability of detection of white-tailed kite at a given site within its geographic range in California is a function of both survey duration and proximity of occurrence records in eBird.



Response 22-41a: See Response to Comment 22-40. Using credible databases, reasonable distances, on-site conditions, and various database tools, Bargas focused the project analysis to those species with the reasonable potential to occur on-site. Doing so is standard technique purposely used to screen out species unlikely to occur in the target survey study area. In addition, to ensure thorough evaluation of special-status species, Bargas conducted multiple biological surveys at the project site over a nine-month span.

Reply: This part of the response repeats earlier responses. It is simply not “standard technique,” as alleged in the response, to use the CNDDDB to screen out species from the

study area. As previously documented, this flagrantly violates the warning from the CNDDDB to not use their data in this manner. To the extent this is Bargas' "standard technique," it confirms that Bargas' surveys are inconsistent with accepted industry practice. As I commented in my letter of 16 July 2024, the CNDDDB is a database that relies on volunteer reporting of sightings made by biologists who enjoyed access to certain properties; it is not derived from a program of observations based on scientific sampling, and it is even more ad hoc in its geographic representation than eBird or iNaturalist. But regardless of the occurrence-records database, and whether one's opinion of it as credible or not, positive-sightings databases cannot be used to conclude that any species is absent from a site. These databases can be used to conclude a species is present, but not that it is absent. Special survey protocols have been developed for the purpose of supporting absence determinations, and none of these have been implemented at the project site.

Response 22-41b: The commentor is misinterpreting the discussion presented in Section 3.1.3 of the BRA (Appendix E of the Draft EIR). The "further distinguished" is additional consideration and not the sole/primary factor of the analysis, as inferred and interpreted by the commentor. Biological surveys were intentionally conducted by Bargas between fall through summer to provide opportunity to capture resident, migratory, and transient, wildlife species utilizing the site.

Reply: My comment was directed to the statement at issue, which I had quoted in full from the Bargas report. As I commented, that statement, whether additional to other considerations or not, qualifies the analyses of special-status species occurrence likelihoods as inaccurate and unreliable.

Response 22-41c: The commentor's claim that Bargas did not extend evaluation to the nonparticipating parcels is not correct. As explained on page 4.4-38 of the Draft EIR, the terminology in the BRA prepared by Bargas varies slightly from that of Chapter 4.4 of the Draft EIR, but the industrial park area and nonparticipating parcels area were evaluated at an appropriate level. Potential impacts to the industrial park and nonparticipating parcels were evaluated throughout Chapter 4.4 of the Draft EIR.

Reply: What would be appropriate would be to put biologists' boots on the ground of the nonparticipating parcels, to do so as part of appropriate detection surveys for the multiple special-status species that possibly occur there, and to otherwise prepare determinations of species occurrence likelihoods that are defensible given the available information. Determinations of species' absences are not at present defensible.

Response 22-42a: See Response to Comment 22-40. The commentor suggests that white-faced ibis should be noted as present and/or using the site. The commentor is again misunderstanding and misrepresenting the data presented in the BRA. For clarity, Section 4.6.2.4 of the BRA prepared for the proposed project (Appendix E of the Draft EIR) acknowledges that white-faced ibis has the potential to occur within the on-site canals and adjacent agricultural areas. Potential impacts to white-faced ibis are addressed under Impact 4.4-7 in Chapter 4.4, Biological Resources, of the Draft EIR.

Reply: I understand that the DEIR assigns a low occurrence likelihood to white-faced ibis. The DEIR's occurrence likelihood is not supported by the evidence.

Response 22-42b: As for loggerhead shrike, Section 4.6.2.4 of the BRA states that although the species does occur within the Natomas Basin, suitable scrubby habitat preferred by the species is not present on-site. Potential impacts to the species are addressed under Impact 4.4-8 of the Draft EIR. As discussed therein, implementation of Mitigation Measure 4.4-8 would be required to reduce potential impacts to loggerhead shrike to a less-than-significant level.

Reply: I understand that the DEIR assigns a low occurrence likelihood to loggerhead shrike. The DEIR's occurrence likelihood is not supported by the evidence.

Response 22-42c: Modesto song sparrow is also evaluated and described in Section 4.6.2.4 of the BRA as potentially occurring within the canals that border the site; however, the project site was found to contain limited low quality habitat for the species. Potential impacts to the species are addressed under Impact 4.4 9 of the Draft EIR. Given that numerous biological surveys of the site were conducted by Bargas across a nine-month span, the foregoing species would have been detected if present. As stated within the BRA, white-faced ibis, loggerhead shrike, and Modesto song sparrow were not observed on-site.

Reply: I understand that the DEIR assigns a low occurrence likelihood to Modesto long sparrow. The DEIR's occurrence likelihood is not supported by the evidence.

Response 22-42d: Given that numerous biological surveys of the site were conducted by Bargas across a nine-month span, the foregoing species would have been detected if present. As stated within the BRA, white-faced ibis, loggerhead shrike, and Modesto song sparrow were not observed on-site.

Reply: Again, as the City itself admits in its Response 22-40, biologists conducting reconnaissance surveys are not going to see all the species that occur at a site. Response 22-42, however, revisits the indefensible notion that no species that occur on the project site could have escaped Bargas's detection. I am confident that Bargas's biologists were sufficiently skilled to perform the surveys asked of them, but I also know for certain that no biologists are sufficiently skilled to detect all the species that occur at a site over a few surveys. The eBird occurrence records I presented in Figures 3 and 4 of my 16 July 2024 comment letter readily refute the City's assertion that Bargas's biologists detected all the species that were available to be detected. Even the occurrence records that are off the project site refute the City's assertion, because members of all the species at issue are mobile and would occur at many other nearby locations in addition to where they were specifically reported.

Response 22-43: The comment does not address the adequacy of the Draft EIR.

Reply: Yes, it does. In Response 22-433, the City identifies my Table 2 as a comment, but Table 2 is referenced and discussed in text that the City numbers as its Response 22-

40. The City has split my comments into two Responses, neither of which addresses my comments. Here is the text of my comments:

“In my assessment of our database review and our site visit, 103 special-status species of wildlife are known to occur near enough to the site to be analyzed for occurrence potential at one time or another (Table 2). Of these, 13 have been documented on the project site (we confirmed 7 of these), and 26 (25%) have been documented in databases within 1.5 miles of the site (‘Very close’), 24 (23%) within 1.5 and 4 miles (‘Nearby’), and another 34 (33%) within 4 to 30 miles (‘In region’). More than half (63) of the special-status species in Table 2 have been reportedly seen within 4 miles of the project site. Therefore, the site supports multiple special-status species of wildlife, and likely supports many.

Bargas (2023) analyzes occurrence likelihoods of only 17 of the special-status species of wildlife in my Table 2. Of these 17 species, Bargas (2023) determines 5 do not occur, 6 have low likelihood to occur, and 1 has moderate likelihood to occur. Of the six species determined to have low to moderate likelihoods of occurrence, 2 have been documented on the project site, 2 have been documented within 1.5 miles of the site, and 1 has been documented between 1.5 and 4 miles from the site. Bargas’s (2023) determinations of occurrence likelihood poorly comport with the evidence from reconnaissance surveys and occurrence likelihood databases.”

The tallies in the above quoted comments are from Table 2. None of these comments are addressed by the City’s responses.

Response 22-44a: See Responses to Comments 22-40 and 22-41. The determination that tricolored blackbird has low potential for occurrence within the study area is based on database records, site-specific conditions, and the result of the biological field surveys conducted across nine months.

Reply: The DEIR’s determination of low occurrence likelihood was inaccurate, no matter what the determination was based on. We know for certain that tricolored blackbirds occur on the project site. The response indicates that the City intends to maintain its incorrect determination regardless of the evidence. This determination is inconsistent with the spirit and intent of the California Environmental Quality Act.

Response 22-44b: The commentor’s statement that bank swallow is difficult to identify is unfounded and solely the opinion of the commentor. The swallow species is very easily identifiable and distinguishable from other swallow species by their plumage and vocalizations. Given the extent of biological surveys of the site conducted by Bargas, bank swallow would have been easily detected, if present; none were observed.

Reply: It is great to learn that the responder finds it easy to identify bank swallow. In my experience, many biologists struggle to determine the species of most swallows, because they are small and fast, and their availability to be identified only fleeting. Nevertheless, the response fails to address the rest of my comments regarding bank swallow. I commented that it is inappropriate to determine that bank swallow has no

likelihood of occurrence on the project site. I also commented that Bargas's hedge against someone actually seeing a bank swallow on the site by claiming such sightings would be of mere flyovers is misleading, as flyovers are how bank swallows forage.

I find it relatively easy to distinguish tricolored blackbirds from other species of blackbirds, perhaps just as the responder finds it easy to distinguish bank swallows, but this does not mean that every survey is going to detect tricolored blackbirds even though Noriko and I established the species' presence. The same applies to even more conspicuous species such as black-crowned night-heron and ring-necked pheasant; how did Bargas's biologists miss these species? How did they miss the Botta's pocket gophers, whose sign is always visible. How did Noriko and I miss the great blue heron and snowy egret observed by Bargas's biologists? The answers are that reconnaissance surveys fail to detect all the species that are present, and in fact they detect only fractions of the local wildlife community. To claim otherwise is inaccurate and misleading.

Response 22-45a: The comment is incorrectly inferring the "greater risk of bird-aircraft strike," which is not stated or suggested in the BRA prepared for the proposed project (Appendix E of the Draft EIR). The BRA states facts regarding the existing condition of the site and relationship with the airport and FAA zone. The BRA does not state or suggest that development of the site would result in fewer bird strikes.

Reply: No, I interpreted the statement accurately. The quoted statement provides: "The current lack of development surrounding the Airport provides for substantial risk of bird strikes with departing or arriving aircraft..." This statement implies greater risk of bird-aircraft strikes by leaving the project site undeveloped. And if this is not the intended meaning, then what is the intended meaning? And why even include this analysis?

Response 22-45b: The commentator's opinion and request to measure and study bird flight heights in an experimental setting is typically not part of an effective project impact analysis under CEQA. Furthermore, such study is neither necessary nor required for the Draft EIR and does not raise new or additional environmental issues concerning the adequacy of the Draft EIR.

Reply: What should be typically part of CEQA analysis is whatever is needed to achieve the goals and objectives of the California Environmental Quality Act. If the City is going to claim that not developing the project site substantially increases the risk of bird-aircraft strikes, then it needs to support the claim with appropriate data. A risk analysis is most effectively performed with data, and the data that would be relevant in this case are bird flight paths and heights above ground, as I commented.

I noticed evasive responses to a similar issue, and that was in responses to 13-26 and 13-64, to which I reply below.

Response to Comment 13-26: As noted on pages 4.4-56 and 4.4-57 in Chapter 4.4, Biological Resources, of the Draft EIR, Aleutian Canada goose and white-faced Ibis are not expected to occur on-site. ...

Reply: It is not true that the DEIR determines the Aleutian Canada goose and white-faced ibis are not expected to occur on the project site. The determination for both species is of low likelihood of occurrence. Bargas assigns its low occurrence likelihood to “Species with few known recent recorded occurrences/populations near the Biological Study Area and habitat within the Biological Study Area is highly disturbed or extremely limited.” A different standard is applied to species not expected to occur. This error of the response pointed out, I will add that I disagree even with the DEIR’s assignments of low occurrence likelihoods. I have seen Aleutian Canada goose and white-faced ibis all around the project site. Furthermore, there are many eBird occurrence records of both species around the project site (Figures 3 and 4), all of which add to the likelihoods that both species occur on the site (indeed, one record of white-faced ibis is on the site).

The addition of 86 acres of detention basins would increase the likelihoods of occurrences of these species on the project site, unless, that is, the Wildlife Hazard Management Plan would resort to extreme or even lethal measures to discourage them (more on this below).

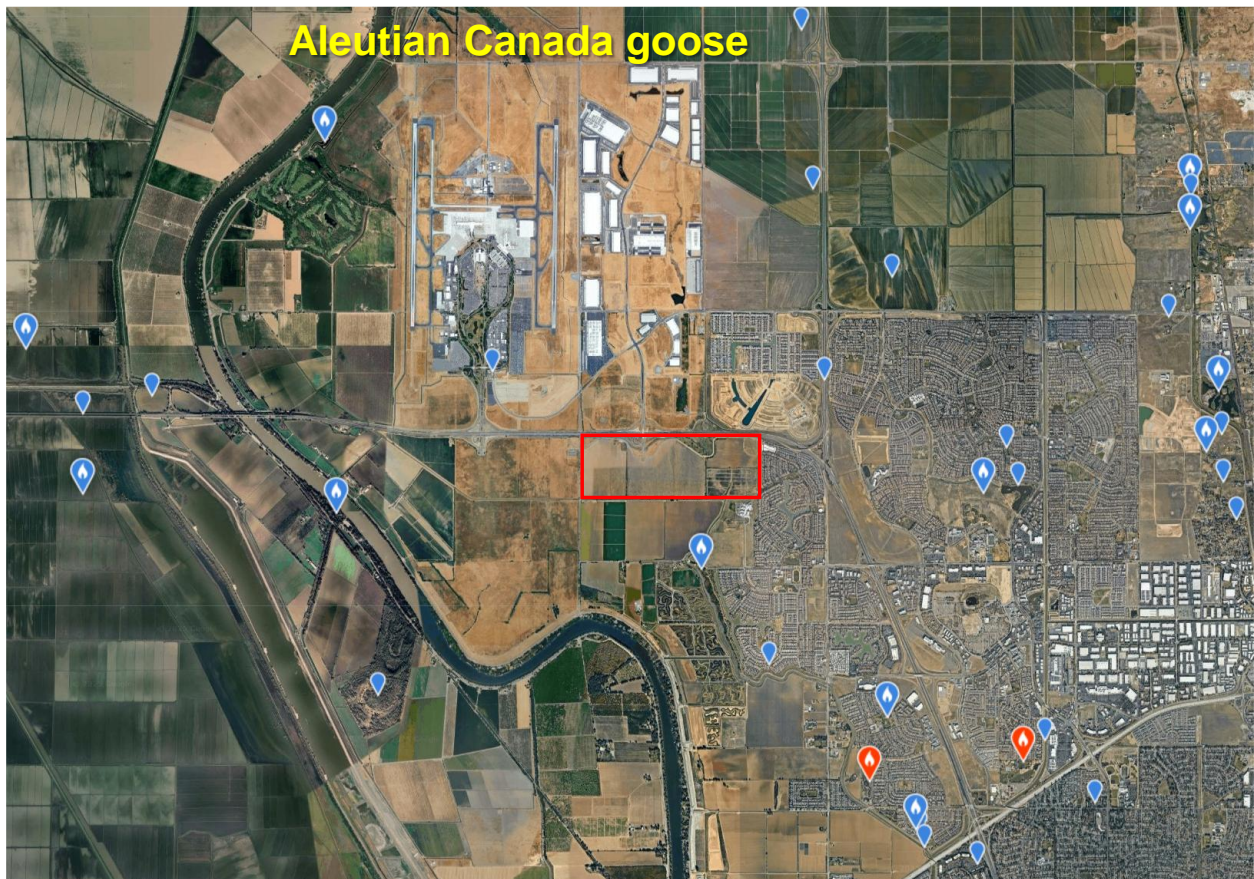


Figure 3. eBird occurrence records (teardrop symbols, where red symbols identify

records reported in the past month) of Aleutian Canada goose in the area of the project site (red polygon).



Figure 4. eBird occurrence records (teardrop symbols) of white-faced ibis in the area of the project site (red polygon). One record is on the project site.

Response 13-64a: The reference by the commenter to FAA Advisory Circular 150/5200-33C is taken out of context. As stated in Section 3, Application, of the FAA Advisory Circular 150/5200-33C, “This [Advisory Circular (AC)] does not constitute a regulation, is not mandatory, and is not legally binding in its own right. It will not be relied upon as a separate basis by the FAA for affirmative enforcement action or other administrative penalty. Conformity with this AC is voluntary, and nonconformity will not affect rights and obligations under existing statutes and regulations [...]”.³ Contrary to the claim of the commenter, the language included in Advisory Circular 150/5200-33C is not a federal standard, but is a series of recommendations to be considered to minimize wildlife hazards associated with various land uses, including new stormwater management facilities.

Reply: The FAA’s Advisory Circular 150/5200-33C does not need to be legally binding or mandatory to result in adequate analysis of a potentially significant impacts of the proposed detention basins to wildlife. Whether adherence to the Advisory Circular is mandatory is not the issue. The issue is whether the addition of 86 acres of detention basins has been adequately analyzed for their impacts to wildlife, and whether volant

wildlife would be attracted to the basins in numbers and in manners that would increase risk of bird-aircraft collisions.

Response 13-64b: The recommendations in Advisory Circular 150/5200-33C are also intended to be examined with other best-management practices in consultation with the City of Sacramento and the Sacramento County Department of Airports; in the case of the proposed project, through the preparation of a Wildlife Hazard Management Plan as required by Mitigation Measure 4.7-5. The plan will identify the best management practices for the detention basin operations to minimize wildlife hazards to the Sacramento International Airport.

Reply: The more important question is whether the proposed detention basins should be constructed in the first place.

Response 13-64bc The recently approved Greenbriar Project located directly north and east of the project site includes approximately 40 acres of permanent lakes that are operated in conformance with an approved Wildlife Hazard Management Plan. The lakes also lie within the 10,000-foot separation zone. A similar collaborative approach of determining the best management practices will be used for the proposed project.

Reply: The approval of the Greenbriar Project and its 40 acres of lakes north of the project only heightens concerns over the impacts to both wildlife and aircraft safety. If the project goes forward as planned, there would be 126 acres of open water bodies to attract volant wildlife to areas within 10,000 feet of the Airport's runway. My concern is that these water bodies might increase the numbers and types of avian flight activity that would increase bird-aircraft strike hazard, and would subsequently result in lethal measures to discourage birds from visiting the detention basins. The Wildlife Hazard Management Plan might turn into the type of bird control plan that already exists at the Airport, or worse. The detention basins, located in the middle of the Pacific Flyway and right next to the Sacramento International Airport, could be turned into ecological sinks for many species of birds, including special-status species such as Aleutian Canada goose, white-faced ibis, American white pelican, double-crested cormorant, and bald eagle, among many others. The DEIR is deficient in its analysis of the potential impacts to wildlife of the proposed water detention basins.

Response 22-46a: See Response to Comment 2-6. As discussed in Section 4.7.1 of the BRA prepared for the proposed project (Appendix E of the Draft EIR), implementation of the project would not result in significant habitat fragmentation or adversely affect wildlife corridors. Such impacts are also addressed under Impact 4.4-12 of the Draft EIR. As discussed therein, aquatic species could be affected by the proposed project; however, implementation of the proposed mitigation measures presented in Chapter 4.4, Biological Resources, of the Draft EIR would reduce the impact to less than significant. Furthermore, although the term "habitat fragmentation" is not used in the Draft EIR, as discussed under Impact 4.4-12, implementation of the project would not result in significant habitat fragmentation because habitats present that could provide sufficient shelter that would support typical wildlife movements/corridors are not present on-site. Suitable habitats exist off-site and beyond the project site that are larger

contiguous habitats and could provide higher quality resources and serve as wildlife movement corridors.

Reply: As I commented in my letter of 16 July 2024, habitat fragmentation is not analyzed in the DEIR. Neither is it adequately addressed in the response. Habitat fragmentation needs to be analyzed at the landscape level, and not just at the project level, and it is not all about corridors and movement. In fact, in my comments I did not mention corridors in the context of habitat fragmentation, but I did define habitat fragmentation. The response appears to have not noticed the definition of habitat fragmentation, and so it resorts to discussing corridors instead of habitat fragmentation.

Habitat fragmentation multiplies the negative effects of habitat loss on the productive capacities of biological species. It can do this through insularization by blocking movement into or out of the habitat fragments, or by leaving habitat fragments that are each too small to support a significant demographic unit of the species. The potential effects of habitat fragmentation need to be analyzed at a landscape level that puts the project site into context of other patches of habitat used by the species at issue. For the giant gartersnake, the Natomas Basin would qualify as a landscape sufficient in scope for analysis. The response's statement that the "implementation of the project would not result in significant habitat fragmentation" is conclusory. Considering all the development and loss of habitat within the Natomas Basin, and considering the ongoing rapid decline of the giant gartersnake, the response's statement is ridiculous.

Response 22-46b: Potential impacts to giant gartersnake as a result of project implementation are discussed under Impact 4.4-3 in Chapter 4.4, Biological Resources, of the Draft EIR. As discussed therein, implementation of mitigation would reduce impacts to giant gartersnake, including its habitat, to a less-than-significant level.

Reply: The DEIR's discussion of potential impacts to giant gartersnake is inadequate, as I commented. The DEIR only assumes that giant gartersnakes are present, and this assumption serves as the basis for the DEIR's prescribed mitigation. An estimate of the abundance of the giant gartersnake on the project site is needed but not provided. Mitigation needs to be formulated based on knowledge of the abundance of the giant gartersnake.

Response 22-46c: The comment suggests conducting survey/analysis of productive capacity for giant gartersnake, which is acknowledged. However, the suggestion is a concluding opinion and such study is not necessary or required for the Draft EIR and does not raise new or additional environmental issues concerning the adequacy of the Draft EIR.

Reply: The response fails to explain how my recommendation is a concluding opinion. It is not. And even if it is, I fail to see what difference that would make in terms of providing a response. The response seems to be in search of an excuse to justify ignoring my comments.

Appropriate surveys would be the best way forward to estimate the abundance of the giant gartersnake on the project site. I also recommended the alternative approach of estimating giant gartersnake abundance by drawing inference from the comparison of existing density estimates regressed on the sizes of the study areas used to estimate density. In fact, I performed the analysis already, and the resulting abundance estimate of 121 adult giant gartersnakes is available in my comment letter (and herein). The approach I used has been peer-reviewed and published (Smallwood 2001), so there is strong foundation for relying on it.

The claim is misleading that my comments failed to raise new or additional environmental issues regarding the adequacy of the DEIR. Before my comments, the City had no abundance estimate of giant gartersnakes on the project site. And now, after my comments, the City does have an abundance estimate.

Response 22-47a: The commentor's assumptions and predictions, as well as calculation by the commentor's model, suggest that implementation of the project would deny the production of 11,361 birds per year to the State of California. The comment states that such loss would qualify as a significant project impact to birds that has not been quantitatively addressed in the Draft EIR. The commentor's argument draws conclusions and speculation about the project site from studies (over 75 years old) in the mid-west portion of the United States that have no relation to the project site.

Reply: The response is based on a misread of my comments. I cited Young (1948) and Yahner (1982) to introduce the metric and methods of total nest density, but I made no use of their estimates other than the average number of fledglings. Before I continue, however, I will note that the ages of the estimates from Young and Yahner are irrelevant, as birds have not changed their nesting patterns over the past 75 years. Moreover, if I relied on our review of the numbers of fledglings produced per nest of 322 bird species across North America, the average is higher than the value of 2.9 I borrowed from Young (1948). As for the density estimates themselves, I mostly relied on our own data (I also relied on an estimate from Jorgenson et al. 2014), as I commented.

Response 22-47b: The potential for the project site to support 3,564 bird nests per year is unlikely, speculative, and unsupported by substantial evidence.

Reply: The evidence consists of actual data from actual study sites, one of which is located only 7 miles to the southwest of the project site. My approach includes a few assumptions, but it is not speculative. Scientific inference is not speculation.

Response 22-47c: Additionally, the mathematical analysis used by the commentor to extrapolate bird nests and reproductive success for a particular site is misleading and inaccurate.

Reply: The mathematical model is just an indicator-level model. It was peer reviewed and published in wildlife biology's premier scientific journal (Smallwood 2022).

Response 22-47d: The analysis is based on two studies which have no relation to and are not comparable to the project site. One study (i.e., Young 1948) relies on data from over 75 years ago that was taken from a single park site in Wisconsin, which is substantially different than the project site. The other study (i.e., Yahner 1982) presents data over 40 years old from farmsteads located in Minnesota, with row plantings of trees and shrubs, which is also substantially different habitat/vegetation than the project site. In addition to the location and age of this data, the bird species and associated habitats are different than those on the project site. The commentor's opinion on future impacts, which is based on an unknown number of bird nests from habitat removal calculated using outdated or inapplicable surveys, is highly speculative and inappropriate. Such speculation is a misrepresentation of the site and is typically not part of an effective project impact analysis under CEQA.

Reply: As I commented above, the ages of the cited studies are irrelevant. I only borrowed the average number of fledglings per nest from Young (1948), and I used none of the data from Yahner (1982), just as my comments stated in my letter of 16 July 2024. My analysis is not speculative, all assumptions are stated, the methods are peer-reviewed and published, and it has appeared in CEQA review many times, contrary to the claims in the response. What is especially notable about the response is that it continues to leave the DEIR without any analysis of the potential losses of productive capacities of birds and other species that would result from habitat loss.

Response 22-47e: Although nests were observed on-site during the biological surveys conducted by Bargas, the Draft EIR determined that potential impacts to nesting birds if construction were to occur during the nesting season would be reduced to a less-than-significant level with implementation of Mitigation Measures 4.4-9(a) and 4.4-9(b) in Chapter 4.4, Biological Resources, of the Draft EIR, consistent with the MBTA and CFGC.

Reply: The prescribed mitigation measures would be inadequate. They consist of one-time preconstruction surveys that do not carry anywhere close to the same level of detection likelihoods as would the types of surveys performed for estimating total nest density. It is highly unlikely that the preconstruction survey would detect more than a small fraction of the number of nest sites on the project site. Even if the survey did detect them all, it would not avoid the permanent loss of productive capacity that would result from the project's habitat destruction.

Furthermore, the language of Mitigation Measures 4.4-9(a) and 4.4-9(b) allows a single individual to make subjective decisions, outside the public's view, to determine the buffer area for any given species. This measure lacks objective criteria, and it is unenforceable.

Response 22-48: See Response to Comment 22-46. Section 4.7.1 of the BRA prepared for the proposed project (Appendix E of the Draft EIR) discusses habitat fragmentation. As discussed therein, the BRA finds that implementation of the project would not adversely affect wildlife corridors. Based on the biological surveys and setting of the project site, it was determined that the likelihood for quadruped movement to and from

the site is low, and the site is not considered a wildlife corridor. In addition, given the lack of natural habitats present on-site that provide sufficient shelter to support typical wildlife movements or corridors, implementation of the project is not expected to result in habitat fragmentation. The BRA does acknowledge contiguous habitats are present beyond the project site that could provide higher quality resources and serve as wildlife movement corridors. The BRA, as well as the discussion under Impact 4.4-12 in Chapter 4.4, Biological Resources, of the Draft EIR, states that aquatic species on-site could be potentially impacted by project buildout; however, implementation of the proposed mitigation measures would reduce the impact to a less-than-significant level.

Reply: The response provides circular logic, repeating the DEIR's conclusory findings that the site is not a wildlife corridor, but there is no compelling reason given for why the loss of up to 475 acres would have no significant impact on wildlife movement in the region. There is no answer to my comment that the CEQA's concern is not restricted to whether the project would interfere with the function of a corridor, but that it primarily goes to whether the project would interfere with wildlife movement regardless of whether one or more corridors are involved.

There is no statement in Bargas's report that indicates Bargas's biologists set out to determine whether or how wildlife move across the project site. No study objective was directed to this question. No data were collected that could have gone to the question, other than Bargas's observations of species on the site, and presuming that members of the detected species got to the site by moving to it.

Noriko and I saw abundant movement of wildlife onto, out of, and across the project site. We saw flocks of birds of various species moving across the site. The project site is obviously important to wildlife movement in the region, and it is important to regional movement and continued persistence of the giant gartersnake.

Response 22-49a: The commentor's opinion and prediction that the project would result in over 9,000 road kills per year is highly speculative, misleading, and presents a misrepresentation of the site. The study used by the commentor to predict road kills is from an extremely highly traveled and known dangerous roadway (Vasco Road - Wikipedia), which does not reflect the conditions at the project site.

Reply: The roadways of the project site are also highly traveled, and they would be even more highly traveled as a result of the project, as the DEIR predicts 16,828,967 annual VMT. And again, the City misconstrues scientific inference as speculation. The DEIR relies heavily on speculation, whereas I strive to rely on inference as much as possible.

Response 22-49b: Thus, the magnitude of such an impact is not known and to presume such a significant impact based on a stretch of road in Contra Costa County is inappropriate, misleading, and not directly relatable to the proposed project.

Reply: But this is how scientific predictions are made. Scientific predictions are often made by drawing inferences from scientific investigations at other times or places. It is true that we do not know the magnitude of project-generated traffic on wildlife, but we

have the means to predict the impact, and scientists do this all the time. When we find our predictions are in error or are biased in one way or another, we adjust our assumptions to improve the accuracy of the next predictions.

On the topic of accuracy, I have since adjusted some of the assumptions of my estimates of mortality from the Mendelsohn et al. (2009) study. During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road daily, so the vehicle miles that contributed to my estimate of wildlife fatalities was $19,500 \text{ cars and trucks} \times 2.5 \text{ miles} \times 365 \text{ days/year} \times 1.25 \text{ years} = 22,242,187.5 \text{ vehicle miles}$ per 9,462 wildlife fatalities, or 2,351 vehicle miles per fatality. What has changed here is the estimate of wildlife fatalities, which I reduced from 12,187 to 9,462. The change came about by my more recent use of species-specific estimates for the detection likelihoods of road-killed animals linked to their average body mass. The change also results in my new prediction that the project would result in 7,158 annual wildlife fatalities on roads used by project-generated traffic.

Since my comments of 16 July 2024, I have been conducting my own study of wildlife fatalities on roads. Seven months into my daily searches for fatalities along 2.7 km of collector and minor arterial roads in north Davis, California, have tallied 259 fatalities of vertebrate wildlife species. My rate of fatality finds is on pace for 444 fatality discoveries in a year, but my number of discoveries is only a fraction of the total number killed. Many of the animals killed by cars and trucks disappear from the roadway before I get the chance to find them, most especially Sierran treefrogs and western toads, most of which are gone within only a few hours after death. Once I finish monitoring roadkill fatalities in my study, I will model the removal times of each species. I expect the estimated number of fatalities to at least double the number I find, which would result in an estimate of 525 fatalities per mile, or 17% of the number per mile at Vasco Road. The true number of wildlife fatalities resulting from the project-generated traffic would be some number per mile in between my Davis estimate and the estimate from Vasco Road, and I would favor an estimate that is closer to between 50% and 80% of my estimate for Vasco Road, or between 4,731 and 7,597 fatalities per year.

I have no doubt that the roads of the project area collect more wildlife fatalities caused by automobile collisions than do the roads of Davis. I have driven those roads many times, and on some of them I have monitored for wildlife fatalities over 36 years. One of my survey transects terminates at the northwest corner of the project site. But the important point here is that I am striving for an accurate estimate of wildlife mortality while the City does nothing other than criticize my efforts. The City needs to analyze the potential impact. If the City distrusts my analysis, then it ought to hire another ecologist who is prepared to perform a suitable analysis. In the meantime, pretending that nearly 17 million vehicle miles per year would impart no significant impacts to wildlife is woefully deficient.

Response 22-49c: The fatality rates presented by the commenter are neither supportable by professional standards nor supportable by standard CEQA review practices.

Reply: The response tellingly fails to identify the professional standards that my estimated fatality rates allegedly fail to meet. I have been estimating fatality rates over many years, and have published many papers on fatality estimation, including on how to accurately estimate fatalities. In the absence of such support, the response is simply evasive.

Response 22-49d: Wildlife mortality as a result of collisions with vehicle traffic is a known risk and will not be exacerbated by the project.

Reply: This is a remarkably unsubstantiated and evasive statement considering that the DEIR predicts 16,828,967 annual VMT would result from the project. The response fails to explain how nearly another 17 million miles per year would avoid wildlife on roads traveled to and from the project site. And if the risk is a known risk, as the response claims, then what is it? The DEIR needs to disclose the potential impacts.

Response 22-49e: Given the project is not creating a new arterial roadway and is not anticipated to generate significant traffic impacts, significant wildlife mortality is not expected.

Reply: Whether a project triggers a significance threshold for traffic impacts, as determined in the DEIR, has nothing to do with wildlife mortality. It has to do with traffic circulation. Therefore, the response is disingenuous.

Response 22-49f: Furthermore, the project would not widen the size of existing off-site roads and new off-site roadways would not be constructed. The project site is not considered a wildlife corridor, and there is little expectation that wildlife is not expected to predominantly cross the roads used by project traffic in the area. Given the nature of the proposed project and the results of the technical reports related to traffic prepared for the proposed project, which determined the project would have minimal contribution to existing roadway volumes, a substantial adverse effect to wildlife species would not occur. Additional analysis of such impacts is not required by standard CEQA review practices for approval of the Draft EIR.

Reply: This response is wildly speculative and difficult to understand. Especially difficult to understand is the statement, “there is little expectation that wildlife is not expected to predominantly cross the roads used by project traffic in the area.” Nowhere in my comments did I suggest that wildlife would need to predominantly cross roads used by the project in order for my predicted mortality to be accurate. However I try to interpret it, this portion of Response 22-49 is nonsensical and evasive.

Response 22-50: See Responses to Comments 13-30, 22-15, and 22-46.

Reply: Response 13-30 fails to clarify my understanding of the mitigation strategy of the DEIR, so it does not effectively address my comments the City labeled collectively as 22-50. Regardless of how the City calculates surplus acreage, the City cannot use those acres to mitigate project impacts to giant gartersnake and Swainson’s hawk, at least not without meeting with the CDFW, USFWS, and the Conservancy reevaluate the “Plan and

Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development...” (2003 NBHCP).

I fail to see how Response 22-46 addresses my comments identified by Response 22-50.

Response 22-51: See Response to Comment 22-15.

Reply: Response 22-15 refers to Responses 2-5 and 2-17. Response 2-5 includes language change to mitigation measures to “clarify” how surplus acreage *might* be used to mitigate project impacts to giant gartersnake and Swainson’s hawk. Response 2-17 refers to Response 2-16, but Response 2-16 identifies a minor language change to a mitigation measure for potential impacts to jurisdictional aquatic resources. Response 22-51 succeeds at giving the reader the run-around, but it does not address my comments.

Response 22-52: The comment does not address the adequacy of the Draft EIR. See the Master Response.

Reply: Not so. My comments consist of the analysis that the City should have performed, but did not, in order to determine whether the proposed project would interfere with the NBHCP. This analysis is essential. It reveals that Swainson’s hawk breeding performance in the Natomas Basin is limited by the availability of forage, which is a limitation that the project would exacerbate.

Response 22-53: The Draft EIR discusses the proposed project’s consistency with the Natomas Basin HCP throughout Chapter 4.4, Biological Resources, of the Draft EIR; the analysis therein is consistent with the requirements of the CEQA Guidelines. The recommendations of the commenter have been noted for the record and will be forwarded to the decision-makers for their consideration.

Reply: “Comment noted” is an inadequate response. One of CEQA’s primary objectives is to consider public comment for the purpose of identifying issues and feasible alternative mitigation measures. Agencies are required to provide “detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful.” (*City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.)

Response 22-54a: See Response to Comment 22-50. While the development of the proposed project would preclude the use of the project as preserved habitat for the Natomas Basin HCP, as discussed under Response to Comment 13-30, adequate acreage exists elsewhere.

Reply: Where is this “adequate acreage”? My analysis of Swainson’s hawk data from the Natomas Basin indicates that the Basin currently provides insufficient foraging

opportunities for the existing population of Swainson's hawk. My comments also address the ongoing rapid decline of giant gartersnake. These situations fail to support the claim in the response that adequate acreage exists elsewhere.

Response 22-54b: In addition, the discussion of the No Project (No Build) Alternative's impact related to biological resources, as presented beginning on page 7-8 of Chapter 7, Biological Resources, of the Draft EIR, acknowledges that the Alternative would not have any other impacts to such resources, and, by extension, would be beneficial in terms of achieving the goals of the Natomas Basin HCP. Nonetheless, because the Natomas Basin HCP would not receive funds under the No Project (No Build) Alternative, which would hinder the HCP's ability to operate as compared to operations with the funds generated by the proposed project, the potential impact to the Natomas Basin HCP would be slightly greater under the Alternative.

Reply: It is unclear how this conclusion was derived. The Swainson's hawk and the giant gartersnake are in need of more than funds for their conservation; they are in need of what is left of their habitats in the Natomas Basin.

Response 22-55: See Response to Comment 22-50. As discussed on page 4.4-82 in Chapter 4.4, Biological Resources, of the Draft EIR, the proposed project's contribution to the significant cumulative impact would be cumulatively considerable; however, with the implementation of mitigation, the impact would be reduced to a less than cumulatively considerable level. As such, the Draft EIR adequately addresses such impacts. Furthermore, the Draft EIR adequately addresses the role of the proposed project in meeting the overall goals of the HCP.

Reply: Having seen the same claim many times before, Noriko Smallwood and I tested whether mitigated projects in California avoid cumulative impacts to species. As I commented, "Noriko and I revisited 80 sites of proposed projects that we had originally surveyed in support of comments on CEQA review documents, and where the project's environmental review documents claimed that the wildlife at issue would experience less-than-significant impacts due to the proposed mitigation measures (Smallwood and Smallwood 2023). We revisited the sites to repeat the survey methods at the same time of year, the same start time in the day, and the same methods and survey duration in order to measure the effects of mitigated development on wildlife. We structured the experiment in a before-after, control-impact experimental design, as some of the sites had been developed since our initial survey and some had remained undeveloped. We found that mitigated development resulted in a 66% loss of species on site, and 48% loss of species in the project area. Counts of vertebrate animals declined 90%. "Development impacts measured by the mean number of species detected per survey were greatest for amphibians (-100%), followed by mammals (-86%), grassland birds (-75%), raptors (-53%), special-status species (-49%), all birds as a group (-48%), non-native birds (-44%), and synanthropic birds (-28%). Our results indicated that urban development substantially reduced vertebrate species richness and numerical abundance, even after richness and abundance had likely already been depleted by the cumulative effects of loss, fragmentation, and degradation of habitat in the urbanizing environment," and despite all of the mitigation measures and existing policies and regulations." To

summarize, I have seen the same claim as made in Response 22-55, and with Noriko's help, I have tested the veracity of the claim and found it wanting. Removing hundreds of acres more of habitat would, in combination with recent, ongoing and foreseeable developments, cause significant cumulative impacts to wildlife that could not possibly be mitigated by the measures prescribed in the DEIR.

Response 22-56a: See Responses to Comments 2-5, 2-17, and 22-47. As discussed in Responses to Comments 2-5 and 2-17, mitigation measures in Chapter 4.4, Biological Resources, of the Draft EIR have been revised to address potential impacts to special-status species located outside of the Natomas Basin HCP permit area. The commenter falsely mischaracterizes the mitigation measures included in the Draft EIR for biological resources as only requiring preconstruction surveys. For example, subsequent to preconstruction surveys, Mitigation Measure 4.4-1(a) requires transplantation of special-status plant species and/or consultation with USFWS to determine appropriate measures to avoid and minimize loss of individual special-status plant species within the Natomas Basic HCP area, and Mitigation Measure 4.4-1(b) requires the project applicant to consult with the appropriate agency to develop appropriate mitigation for impacts to special-status plant species. Furthermore, contrary to the claim of the commenter, Mitigation Measures 4.4-9(a) and 4.4-9(b) in Chapter 4.4, Biological Resources, of the Draft EIR, establish specific protocols to address potential impacts to nesting songbirds and raptor species protected under the MBTA and CFGC that are discovered on-site during preconstruction surveys, such as delaying construction activities until the young have fledged and establishing appropriate avoidance buffers, consistent with the MBTA and CFGC. Therefore, the claim of the commenter that the Draft EIR does not include adequate mitigation to address potential impacts to special-status species is inaccurate.

Reply: I have not mischaracterized the DEIR's mitigation measures. I stated that the mitigation measures are mostly preconstruction surveys, which is true. As for the establishment of buffers around nest sites during construction, the language of Mitigation Measures 4.4-9(a) and 4.4-9(b) allows a single individual to make subjective decisions, outside the public's view, to determine the buffer area for any given species. This measure lacks objective criteria, and is unenforceable.

The response fails to address my comments concerning the site's loss of productive capacity for wildlife, and how the prescribed measures would do nothing to avoid this loss. It also fails to address my comment that the DEIR's claim of meaningful provisions for special-status species beyond the preconstruction surveys is empty.

Response 22-56b: Furthermore, contrary to the claim of the commenter, page 4.4-78 of Chapter 4.4, Biological Resources, of the Draft EIR explicitly states the following regarding cumulative impacts:

As defined in Section 15355 of the CEQA Guidelines, "cumulative impacts" refers to two or more individual effects which, when considered together, are considerable, compound, or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of

separate projects. The cumulative impact from several projects is the change in the environment that results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

In addition, as stated on page 4.4-82:

As further discussed in Chapter 6 of this EIR, CEQA Guidelines Section 15064, Subdivision (h)(5) states, “[...]the mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project’s incremental effects are cumulatively considerable.” Therefore, even where cumulative impacts are significant, any level of incremental contribution is not necessarily deemed cumulatively considerable (see also CEQA Guidelines Section 15130). In addition, the courts have explicitly rejected the notion that a finding of significance is required simply because a proposed project would result in a net loss of habitat. “[M]itigation need not account for every square foot of impacted habitat to be adequate. What matters is that the unmitigated impact is no longer significant,” (Save Panoche Valley v. San Benito County [2013] 217 Cal.App.4th 503, 528, quoting Banning Ranch Conservancy v. City of Newport Beach [2012] 211 Cal.App.4th 1209, 1233).

The above discussion provides substantial evidence that, while the combined effects on the habitats of special-status species resulting from approved/planned development throughout the cumulative setting may be considered significant, the proposed project’s incremental contribution to the potentially significant cumulative effect would be reduced with implementation of the project-specific mitigation measures required in this EIR.

The Draft EIR does not say that mitigation would negate the cumulative impacts of the proposed project, but would rather reduce the significance of such impacts to a less than cumulatively considerable level.

Reply: The response repeats the quotations of CEQA Guidelines that appear in the DEIR, but they do not in themselves provide substantial evidence that the mitigation measures would reduce cumulative impacts to less than significant levels. The project would destroy hundreds of additional acres of giant gartersnake habitat – habitat of a species that is facing an imminent threat of extirpation from the Natomas Basin. The project would destroy hundreds of acres of Swainson’s hawk foraging grounds, which my analysis shows is a limiting factor for the species. Neither the DEIR nor the response has made the case that the prescribed mitigation would reduce the project’s contribution to cumulative impacts to these or any other species to less than significant levels.

Response 22-57: Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards (CEQA Guidelines Section 15126.4.) In the case Center for Biological Diversity v. California Department of

Conservation, etc. (2019), the court explains that “[g]enerally, it is improper to defer the formulation of mitigation measures...However, an exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.” (36 Cal.App.5th 210, 239.) The court determined both conditions were met and upheld the deferred mitigation measures. Similarly, the mitigation measures presented in the Draft EIR require compliance with specific performance standards and regulatory requirements, and also require implementation prior to project activities begin. Therefore, the proposed mitigation is considered adequate.

Reply: I have seen no evidence that the CDFW or the USFWS have committed to performance criteria for evaluating the efficacy of any measures that might or might not be required with the issuances of regulatory permits. A statement of intent to comply with statutes is not in itself a legitimate mitigation strategy, as it only suggests that the permitting agencies intend to issue the permits, and that appropriate mitigation measures would be formulated as conditions of the permits.

Response 22-58: The commenter’s argument draws conclusions and speculation about the project site from studies that have no relation to the project site. The commentor’s opinion on future impacts, which is based on inapplicable surveys, is highly speculative and inappropriate. Such speculation is a misrepresentation of the site and is typically not part of an effective project impact analysis under CEQA.

Reply: Again, the City misconstrues scientific inference as speculation. In this case, the City characterizes as speculation the results of a before-after, control-impact (BACI) experiment to test the effects of developments of buildings on what was once open space. Most of the projects in our experiment were industrial warehouses similar to the proposed project, and some were located near the project site; one of the sites was <2 miles away. The response does not explain how the surveys were “inapplicable” or the experimental results “highly speculative.” The paper we prepared from the study was peer reviewed and published, and it has since turned out to be one of more popular papers at the journal where it was published. The paper was selected by the then President-elect (and current President) of the Western Section of The Wildlife Society as one of the eight “Scientific Papers You Should Read Now” in preparation for the 2025 Annual Meeting. In fact, the paper is highly relevant to the proposed project, as the experiment was designed and conducted to test the effects on wildlife caused by this very type of development.

I note that the City criticizes our study, but cites no evidence of its own in support of the DEIR’s conclusions that the prescribed mitigation measures would reduce cumulative impacts to less than significant levels. If the City has attempted to measure the impacts to wildlife from any of its approved development projects, then the findings ought to be disclosed in the EIR.

Response 22-59: See Responses to Comments 22-56 and 22-57.

Reply: The responses to comments 22-56 and 22-57 do not address my comment that the City labels as 22-59. In fact, Responses 22-56 and 22-57 repeat the shortfall I address in my comment labeled 22-59. according to CEQA Guidelines §15064(h)(3), “a project’s incremental contribution to a cumulative impact can be found not cumulatively considerable if the project would comply with an approved plan or mitigation program that provides specific requirements that would avoid or substantially lessen the cumulative problem within the geographic area of the project.” And “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.” The DEIR, and now the responses to comments, refers to larger regional plans, policies and statewide statutes as evidence that project impacts to wildlife would somehow be reduced to less than significant levels, but without explaining how this would happen. If all these types of plans, policies and statutes were effective, Smallwood and Smallwood (2023) would not have measured declines in every group of wildlife species we addressed throughout California. We would not have measured an average decline of 90% of vertebrate animal abundance which can be directly linked to the same types of development projects as the proposed project. We even measured declines in wildlife in areas adjacent to the development projects in our study, meaning we measured some portion of the cumulative impacts as well. The City has not committed to a mitigation strategy that would adequately avoid or minimize impacts to wildlife, and it cannot hide this shortfall by pointing to general plans, specific plans or regulatory statutes without explaining how any of these other plans or statutes would specifically benefit wildlife.

Response 22-60: See Response to Comment 22-56. Contrary to the claim of the commenter, the Draft EIR includes mitigation that requires the direct and indirect preservation of off-site habitat to mitigate for the project. For example, Mitigation Measure 4.4-5(b), as amended under Response to Comment 25, requires either the preservation of Swainson’s hawk foraging habitat at a 1:1 ratio, which would be direct preservation, or the payment of Natomas Basin HCP fees for the preservation of off-site Swainson’s hawk foraging habitat, which would be considered indirect preservation.

Reply: Response 22-56 merely repeats the argument of the DEIR. As for Response 2-5, the NBHCP disallows the transfer of coverage of the NBHCP permit to property located outside the NBHCP’s Permit Area (NBHCP IA, § 3.1.1), and the City lacks sole authority to make use of so-called “surplus acreage” to mitigate project impacts to giant gartersnake and Swainson’s hawk. Surplus acreage is characterized in Response 13-30 as 338 acres that comprise the difference between the City’s allowable development of 8,050 acres under the NBHCP and the total acreage thus far developed or permitted for development, including acreage revealed as an accounting discrepancy between the Conservancy’s and the City’s records. The City asserts that it can use these 338 acres to mitigate impacts to giant gartersnake and Swainson’s hawk caused by the proposed project. However, the so-called surplus acreage exists within the NBHCP permit area, whereas most of the proposed project does not. According to the 2003 NBHCP Implementation Agreement, a project such as the proposed project triggers the need to reevaluate the original NBHCP’s Plan and Permits, and the need for a separate conservation strategy.

Response 2-5, to which Response 22-60 also refers, speculates that the NBHCP's original mitigation ratio of 0.5:1 effectively conserved habitat of greater value than otherwise occurs in the Natomas Basin, thereby frontloading greater habitat value in the NBHCP reserve system, and potentially freeing up more land that ought to be considered for development. The Response further speculates that the project provides only marginal habitat to giant gartersnakes. Somehow, these speculated conclusions are used to support the notion that surplus acreage is available for the purpose of mitigating project impacts to giant gartersnake and Swainson's hawk, but none of this speculation or train of logic is backed up by any analysis of the performance of the NBHCP conservation strategy for these species.

Response 22-61a: See Responses to Comments 2-5, 22-46, 22-56, and 22-57. With respect to mitigation for potential impacts to burrowing owl, the proposed project includes Mitigation Measure 4.4-6, which requires implementation of the applicable Natomas Basin HCP Take Avoidance, Minimization, and Mitigation Measure, which is the most current and relevant mitigation available. Therefore, reliance on the Natomas Basin HCP is considered adequate mitigation for the impact.

Reply: Considering the overwhelming evidence that the burrowing owl has rapidly declined across California in recent years despite all the general plans and project-specific mitigation strategies intended to conserve the species (Miller 2024), the CDFW (2024) staff endorsed Miller's (2024) petition to list the burrowing owl as threatened or endangered. The California Fish and Game Commission adopted the petition on 10 October 2024. This is important because (1) consultation with CDFW is now needed to obtain an incidental take permit, (2) all impacts to foraging habitat are going to need to be mitigated, and (3) adherence to the CDFW's (2012) survey guidelines is going to be necessary.

Response 22-61b: With respect to mitigation for giant gartersnake and northwestern pond turtle, the commenter neglects to mention that Mitigation Measure 4.4-3 requires construction activities to halt upon the discovery of such species until they leave the area, as stated on page 4.4-48 of Chapter 4.4, Biological Resources, of the Draft EIR. In addition, Mitigation Measure 4.4-3 requires the determination of escape routes for giant gartersnake in advance of construction and snakes should always be allowed to leave on their own.

Reply: It is irrelevant that I neglect to mention that construction must halt upon the discovery of giant gartersnake or northwestern pond turtle. As I commented, and which the response fails to address, is that preconstruction surveys do not carry the same detection likelihoods as protocol-level detection surveys. The DEIR discusses preconstruction surveys as if they are the same as detection surveys, which is false and misleading. Without completing detection surveys, it will be unknown how many giant gartersnakes and northwestern pond turtles were missed during preconstruction surveys, and therefore unknown to what magnitude members of these species were destroyed by construction.

Response 22-61b: Potential impacts to monarch butterfly are addressed under Impact 4.4-2 and potential impacts to Aleutian cackling goose, white-faced ibis, and tricolored blackbird are discussed under Impact 4.4-7 in Chapter 4.4, Biological Resources, of the Draft EIR. As discussed therein, the project site contains low or unsuitable habitat for the foregoing species and, thus, the species are unlikely to occur on-site. Therefore, mitigation for the foregoing species is not required.

Reply: The mitigation under Impact 4.4-2 is described as “None required.” As I commented, “The DEIR prescribes no mitigation to potential impacts to Monarch, Aleutian cackling goose, white-faced ibis, and tricolored blackbird. Impacts to these species, which would be significant, would be unmitigated.”

The response claims that habitat is unsuitable for Monarch, Aleutian cackling goose, white-faced ibis, and tricolored blackbird. First, by definition, there is no such thing as unsuitable habitat, because, by definition, habitat is suitable to the species. Second, our survey of the project site proved the response wrong in the case of tricolored blackbird, and nearby occurrence records refute the City’s determination regarding the other species at issue. Habitat exists onsite for all these species.

Response 22-62: The comment is a conclusion statement and does not address the adequacy of the Draft EIR.

Reply: The response identifies a comment where none exists.

Thank you for your attention,



Shawn Smallwood, Ph.D.

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EXHIBIT 2



March 31, 2025

Patrick M. Soluri
Soluri Meserve, A Law Corporation
510 8th Street,
Sacramento, CA 95814-1206

Subject: Airport South Industrial Project FEIR (SCH # 2022030181)

P24003

Dear Mr. Soluri:

Per your request, I reviewed the Final Environmental Impact Report (the "FEIR") for the Airport South Industrial Project (the "Project") in the City of and the County of Sacramento (respectively the "City" and the "County"). My review is with respect to transportation and circulation considerations. I previously reviewed and commented on the Draft Environmental Impact Report ("DEIR") for this Project in a letter dated July 15, 2025

My qualifications to perform this review are fully documented in the letter of July 15, 2025.

The FEIR Replies To the Responders Own Summarization of Our Comments On the DEIR, Not To the Actual Comments. This Copybook Tactic Enables the Replies To Appear Responsive While Avoiding Response to Points in the Actual Comments That Would Be Uncomfortable To Forthrightly Respond To.

In subsequent sections we point out where this response-evasion technique is employed.

Comment and Response 22-25¹

¹ We reference here and subsequently the FEIR's enumeration of its segmentation of its response.

The FEIR summarizes this comment as “ the comment summarizes the analysis of the Draft EIR and does not specifically address the adequacy of the Draft EIR.” This summarization is a mischaracterization as described in the prior comment.

The actual comment points out that the DEIR is inadequate in that it defers mitigation of significant VMT impacts transportation impacts the DEIR does disclose past EIR Certification to the time of actual application for building permits, thereby depriving the Public of the opportunity to comment on the adequacy of mitigation under CEQA process and instead transferring it to a private negotiation between the Applicants advocates and City/County staff. This is an example of how the FEIR’s response to self generated summaries of comment instead of the actual comment evades the central issue of the comment. Also, the FEIR preparers apparently wish to avoid reminding public policy decision-makers and the Public that the Project, without mitigation, would have significant VMT impact.

Comment and Response 22-26

Comment 22-26 continued the discussion of deferral of mitigation of the Projects significant VMT impacts.

The essence of the FEIR response is admission that there is potentially significant VMT impact, that there is deferral of mitigation and that the Project ‘s CEQA Project Definition statement is so uncertain and inadequate that it cannot be determined now what mitigation measures might be necessary. However, the FEIR response asserts that the situation meets the circumstances under which CEQA Guidelines allow for a deferral of mitigation when there are practical reasons why such deferral is necessary and that the Lead Agency meets three conditions:

1. The Lead Agency commits to the mitigation,
2. The Lead Agency adopts specific performance standards the mitigation will achieve, and
3. Identifies the types of potential actions that can feasibly achieve that performance.

However, our comments on the DEIR, now labeled 22-27 in the FEIR establish doubt that Condition 3 can be feasibly met and have not been fully responded to in the FEIR. (See discussion of Comment and Response 22-27 below.)

Comment and Response 22-27

The initial section of Comment 22-27 concerned the fact that to all appearances, the only analysis of the VMT mitigation program had been prepared by the applicant’s advocacy counsel. Although that document relied on the current

(2021) edition of the authoritative CAPCOA Handbook,² there was no evidence presented that this person was qualified to perform the assessment and the assessment naively assumed the highest effectiveness from the range of effectiveness presented for each measure and that the full workforce would be able to participate in each measure.

Response 22-27 asserts that the Public Works Department did perform its own analysis of the measures proposed by the applicant's attorney but that this memorandum by City engineering staff was inadvertently left out of Appendix Q to the DEIR. The FEIR now includes as its Appendix B a 3-page "Draft Memorandum" dated September 5, 2023 prepared by an Assistant Engineer for the City.

Although to its credit the now released memorandum, considering the nature of the use (industrial) and because transit services in the site vicinity are sparse with no new services planned, it limits consideration to 10 measures within the Trip Reduction Programs category. However, like the applicant attorney's memo, it lacks recognition of the performance-limiting nuances that CAPCOA points out.

The CAPCOA Handbook is a nuanced document. Although in the basic computational advice for estimating the effectiveness of measures, CAPCOA suggests assuming 100 percent of the workforce as potentially participating, separately it warns that workers on night shifts are unlikely to participate in ridesharing (carpooling or vanpooling).³

As we noted in our comments on the DEIR, per DEIR Appendix O, Table 1, at least 78.7 percent of the industrial use in the Project would be warehousing. Some portion of the currently unspecified industrial use in the Project would likely also be warehousing. So the Industrial use in the Project could easily be comprised of 90 percent warehousing use or more. Modern warehousing, especially that related to e-commerce, tends to operate round-the-clock with three shifts. So does warehousing related to air cargo which, considering proximity to Sacramento International Airport, could be significant. So roughly two-thirds of the workforce at these employers would be non-participants in these programs. The whole of the estimated mitigation reduction would have to be achieved solely from the day shift third of the workforce, a highly unlikely proposition.

The logic of this nuanced CAPCOA warning is inescapable. For workers whose shift begins or ends in the deep night hours, who would want to be picked up or dropped off at a darkened park-n-ride/park-n-pool lot or roadside meeting point?

² *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity*, California Air Pollution Control Officers' Association, 2021

³ See *Op. Cit.*, page 93.

By logical extension, the same limitation exists measures that encourage active transportation (bike, walk, scooter or skateboard). Who is going to use those modes if ones shift begins or ends in the deep-night hours? These are day-shift only measures.

Even others are affected by scheduling. Timing issues also affect the driving workforce at warehouse distribution hubs. Modern practice is to stagger the arrival times (departure to the route) so a smaller workforce can sequentially load departing vehicles. And drivers return times are not per a schedule but uncertain based on the difficulties of traffic and the day's particular load. So these employees are not practical participants in carpooling and vanpooling strategies.

CAPCOA also warns that location can have impact on the effectiveness of particular strategies. For example, it indicates that ridesharing (carpooling and vanpooling) tends to have a maximum participation of 8 percent in dense urban areas, 4 percent in suburban areas and about 0 percent in rural areas.⁴ The Project site is clearly at the urban/suburban fringe, suggesting that ridesharing and logically other strategies would have less than half the maximum effectiveness indicated in the CAPCOA ranges.

All of the foregoing was asserted in the comments but not responded to in the FEIR.

In summary, the analysis of VMT mitigation fails to qualify for the conditional CEQA approval for deferred mitigation since it fails to demonstrate that a feasible mitigation program is possible.

Comment and Response 22-28

This comment related to the hazardous condition posed by queues extending into the freeway mainline at the off-ramp at the interchange of I-5 northbound and Del Paso Road and indicates that additional analysis and potential contribution to fair share mitigation improvements.

The FEIR response, citing a December 18, 2020 Caltrans document that this commenter also relied upon, claims that because queues in the cumulative condition without the Project would already exceed capacity causing safety defects in the AM peak hour, the Project could not be said to have significant safety impact requiring contribution to fair share mitigation in the PM peak hour, even though it is only when Project traffic is added to other cumulative traffic that an adverse safety situation occurs in that peak. This is a nonsensical response since, by that logic, every project in the cumulative condition would be exempt from findings of significant safety impact and fair share mitigation. And as we

⁴ Op. Cit., Appendix C, Table T-8.1.

pointed out in our comments in the DEIR, the language of Traffic Safety Bulletin 20-02-R1 indicates that only when *existing traffic queues* exceed exit storage capacity and spills back past the gore point is the Project exempt from the further safety analysis required in the referenced Caltrans Traffic Safety Bulletin. Caltrans July 2, 2024 comment letter on the DEIR, now labeled comment Letter 3 in the FEIR, which claims the Project should pay fair share fees toward mitigation of this safety issue is indicative that this commenter's interpreting of the language of Traffic Safety Bulletin 20-02-R1 is the correct one.

For the FEIR to be certified, this additional safety analysis described in Traffic Safety Bulletin 20-02-R1 must be carried out and if necessary, findings of significance and mitigation must be incorporated.

Comment and Response 22-29

This comment described the logical operational effects of the queues predicted in the DEIR, given the lane configuration on northbound I-5 approaching the Del Paso off ramps and the other non-exiting traffic movements taking place in this area. The logical conclusion is that the extreme exiting queues would result in very much shortened weaving and merging sections seriously affecting other traffic and leading to extensive weaving maneuvers, abrupt lane changes, shock waves extending upstream and a tremendous amount of braking within a short segment of freeway.

The response is to complain that the comment did not provide any weaving and merging computations. It is ridiculous for the responders to attempt to place responsibility on the commenter for calculations they should have made themselves. It is also ridiculous for the responders to attempt to brush aside the comment by claiming the DEIR's own calculations are "unstable". The FEIR response is inadequate.

Comment and Response 22-30

This comment questioned apparent inconsistent statements about heavy truck considerations in the VMT analysis. The response supplies clarifications.

Comment and Response 22-31

This comment raised question whether the why there were significant differences in trip generation totals in various appended tables of same and whether the differences implied that the traffic analysis did not include trip generation for the "nonparticipating parcels. The response asserts that the transportation impact analysis reflects traffic from both the participating and non-participating parcels.

Comment and Response 22-32

This comment concerned the insufficiency in the DEIR of traffic information relating to neighborhoods east and southeast of the Project site and in one case, the inconsistency of information that was provided. The inconsistency is the indication the Project would cause cumulative traffic on El Centro to **decrease** from 20,750 vehicles per day to 18,810. The insufficiency is the lack of traffic data and projections on Del Paso east of El Centro and those on El Centro south of Del Paso.

The response indicates that the reduction in traffic on El Centro from the Cumulative-No-Project to the Cumulative-With-Project condition is the result of traffic shifts due to a new planned connection across I-5 between El Centro and East Commerce Way and the improved I-5 interchange connection between El Centro and Metro Air Parkway. However, this explanation does not make sense because the improved connections should affect traffic in *both* the Cumulative-No-Project and Cumulative-With-Project conditions.

The response explains that existing traffic counts were not taken on the requested segments of Del Paso east of El Centro and those on El Centro south of Del Paso. This makes comparisons of future scenarios to the existing conditions impossible but the response opines that the project with the planned future connection improvements described above would result in “only a very minor change in total daily traffic on the requested segments” This response is inadequate. The City or its consultants should have responded by going out and making current traffic counts on the requested segments and compared them to the Travel Demand Model results for the future scenarios. It should do so now before the FEIR can be certified.

Comment and Response 22-33

This comment conveyed the concerns of residents to the South and East about what improvements on El Centro this Project and cumulative development may necessitate. It suggests that the EIR should condition the Project to guarantee concerned neighbors a role when the Project Phasing and Improvements Funding Plan is developed.

The response, claiming the comment does not address the adequacy of the DEIR, just blows off the comment. To be adequate, the FEIR should adopt a condition assuring the neighbors have a role in framing said Project Phasing and Improvements Funding Plan.

Conclusion

Mr. Patrick Soluri
Soluri Meserve
March 31, 2025
Page 7

This concludes my current comments on the Airport South Industrial Project FEIR. The foregoing identifies deficiencies that must be remedied before the FEIR can Be certified.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

EXHIBIT 3

April 2, 2025

Patrick Soluri
Soluri Meserve, A Law Corporation
510 8th Street
Sacramento, CA 95814

RE: Comments on the Airport South Industrial Project and Its
Final Environmental Impact Report

Mr. Soluri:

We understand that your office provided comments regarding the Airport South Project Draft EIR's ("DEIR") treatment of ultra-fine particulate ("UFP") emissions. We further understand that the Final EIR provided the following response to those comments:

Response to Comment 22-16

As discussed on page 4.3-50 of the Draft EIR, an HRA was prepared to assess the increase in DPM emissions associated with heavy-duty diesel trucks travelling to and from the project site. DPM is considered a subset of PM2.5 emissions. As such, the estimated concentration of PM2.5 was used as a proxy to represent emissions of DPM. In addition, a total of 80 to 95 percent of DPM is made up of UFPs, and, as discussed on page 4.3-5 of the Draft EIR, UFP mass is a small portion of PM2.5. Thus, health risks associated with UFPs generated by heavy-duty diesel trucks travelling to and from the project site have been inherently considered within the HRA prepared for the proposed project. As shown in Table 4.3-11 of the Draft EIR, operation of heavy-duty diesel-powered trucks on roadways and within the project site would result in cancer risk and hazard index at the maximally exposed receptor below the applicable SMAQMD thresholds of significance. Consequently, health risks associated with UFPs are also considered to be below the applicable SMAQMD thresholds of significance and further analysis is not warranted.


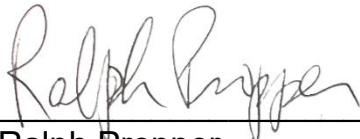
This response is inadequate for several reasons:

1. The FEIR states that PM10 and PM2.5 can be used as a proxy for UFP emissions. Scientific studies do not support this. First, concentrations of PM10 do not vary with those of UFPs to any significant degree, and the relationship of PM2.5 to UFPs is very

tenuous. Second, because UFPs are so much smaller, they produce different health impacts than PM10 and PM2.5. Indeed, several studies show that UFP is much worse than PM2.5 for our health. Thus, simply analyzing PM10 and PM2.5 is inadequate as a surrogate for an analysis of UFP emissions.

2. The FEIR appears to assume that all UFPs come from DPM. This is not correct. The primary sources of UFPs in on-road traffic are primarily gasoline vehicle exhaust, diesel vehicle exhaust, natural gas vehicle exhaust, and brake and tire wear. Because of the contributions of gasoline and natural gas vehicles, the relationship between DPM and UFP from on-road traffic is not linear.
3. The Response to Comment 22-16 is limited to “cancer risk and hazard index” health risks from DPM and does not address health impacts resulting from exposure to UFP emissions. The health impacts of UFP are not included in analyses of cancer and hazard indices. Thus, the DEIR fails to address the health risks from UFP exposure.

Sincerely,

 _____ Earl Withycombe	 _____ Ralph Propper
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Attachments:
Résumés of Earl Withycombe and Ralph Propper

Résumé

Earl Withycombe

Education

1970, B.S., Aeronautical Engineering, Massachusetts Institute of Technology, Cambridge, Massachusetts

1989, Certificate in the Management of Hazardous Materials, University of California, Davis, California

Professional Experience

8/06 to 12/22 Air Resources Engineer
California Air Resources Board

Served as the planning liaison to the South Coast Air Quality Management District, facilitating coordination between ARB and the District in the development of the 2007 8-hour ozone and PM_{2.5} State Implementation Plan for the South Coast Air Basin. Served as the planning liaison to the Sacramento Metropolitan region, the Mountain Counties Air Basin, and Eastern Kern County. Provided technical oversight to windblown dust issues at Owens Lake, Mono Lake, and the Salton Sea. Served as a member of the Oceano Dunes State Vehicle Recreation Area Scientific Advisory Group, and as a member of the Salton Sea Task Force's Science and Air Quality Committees.

5/93 to 6/06 Partner
Sierra Research

4/88 to 5/93 Senior Engineer
Sierra Research

Worked as a partner and project manager in a consulting firm specializing in air quality analysis and management. Experience included management of regulatory development and project evaluation services for governmental clients; management of process, control, and instrumentation design; emission and impact evaluation; and compliance strategy services for private clients. Technical contributions included air quality modeling, combustion modeling, control equipment design and analysis, ambient air quality analysis, ambient and stack sampling project design, screening risk assessment, permit development, and particulate matter and fugitive dust emission factor development services for a variety of projects, including those related to power production, cogeneration, industrial boilers, geothermal activities, mineral extraction and processing, lumber production, toxic waste treatment, fugitive dust, and Superfund remediation.

7/75 to 4/88

Air Basin Engineer
Mountain Counties Air Basin,
Lake Tahoe Air Basin

Established and managed a consulting practice providing exclusive and comprehensive technical services to an association of nine county air pollution control districts in the Sierra Nevada region of California. Drafted numerous amendments to the air basin plan in implementing federal and state mandates and responding to new local problems. Developed annual budgets for a number of districts. Developed ozone nonattainment plans for El Dorado and Mariposa Counties. Drafted and implemented the first local Prevention of Significant Deterioration program in rural California. Analyzed compliance with emission limits and ambient air quality standards for all major and many minor new and modified source applications within the nine county region. Developed comprehensive stationary and area source emission inventories for the Mountain Counties Air Basin (1977) and for the Lake Tahoe Ozone Nonattainment Plan (1981). Certified all test plans and oversaw all stationary source testing in the Air Basin.

Served as the Co-Chairman of the CAPCOA-ARB New Source Review Rule Committee that developed the 1982 CAPCOA NSR rule which served for many years as a model regulation for the permitting of new sources by districts. Drafted and successfully lobbied several legislative bills amending the relationship between districts and the California Air Resources Board and authorizing experimental programs seeking innovative solutions to air quality problems. Drafted language and lobbied for passage of AB 3374 (1986), the second Calderon landfill testing bill, which refocused priorities on active landfills and adopted more cost effective monitoring protocols for small rural landfills.

8/73 to 1/75

Air Pollution Control Officer
County of Sierra

Served as the program manager of a rural county air pollution control district. Developed and implemented compliance plans for two timber processing facilities. Managed the accounting, budget, reporting, permit review, and air quality monitoring functions of the agency. Developed the technical justification for formation of the Mountain Counties Air Basin to supplant the mountain portions of the Sacramento and San Joaquin Valley Air Basins. Drafted major portions of the first Air Basin Plan and related regulations.

Credentials, Memberships, and Awards

Qualified Environmental Professional, Air Pollution; Institute of Professional
Environmental Practice

Registered Civil Engineer, California

Member, Air and Waste Management Association

Outstanding Individual, 1994 Summer Smog Season Campaign, Partners for Clean Air,
Sacramento, California

Clean Air Award, American Lung Association of Sacramento-Emigrant Trails, 1996

Environmentalist of the Year Award, Environmental Council of Sacramento, 1997

Pottenger Award for Volunteer Service, American Lung Association of California, 2002

Résumé of
RALPH PROPPER

BA Chemistry, Brandeis University
PhD Chemistry (all but dissertation), University of Chicago
MPH Environmental Health, Boston University Medical School

Toxicology research assistant:
MIT, Stanford University, UC Berkeley, UC San Francisco

Air Pollution Research Specialist, CA Air Resources Board 1984-2015
Focus: Diesel Exhaust regulation, air toxics control

Chemistry Professor, UC Davis and Sacramento City College 2015-2018

Current Board Member, and past board president of both:
* Breathe California Sacramento Region, and
* Environmental Council of Sacramento