



**Community & Economic Development Department**

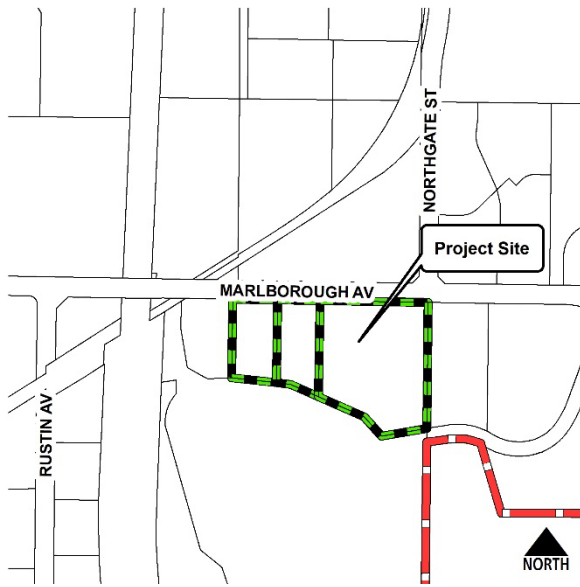
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**Planning Division**

**MINOR CONDITIONAL USE PERMIT, DESIGN REVIEW,  
VARIANCE, AND GRADING EXCEPTION**

**Development Review Committee Date: February 24, 2021**

**Approval Date: September 21, 2022**

Case Number	PR-2021-000932 (Minor Conditional Use Permit, Design Review, Variance, and Grading Exception)	
Request	To consider the following entitlements: 1. Minor Conditional Use Permit to permit two non-refrigerated warehouse buildings totaling 99,950 square feet; 2. Design Review of project plans; 3. Variance to allow a reduced front yard setback; and 4. Grading Exception to allow retaining walls higher than allowed by the Grading Code.	
Applicant	David Stapley and Deanna Magnon of Turn 9, LLC	
Project Location	900, 960, 980 Marlborough Avenue, situated on the south side of Marlborough Avenue, between Northgate Street and Rustin Avenue	
APNs	249-130-026, 249-130-024, and 249-130-023	
Project area	5.58-acres	
Ward	1	
Neighborhood	Hunter Industrial Park	
Specific Plan Designation	Hunter Business Park – Industrial Park District	
General Plan Designation	B/OP – Business/Office Park	
Zoning Designation	BMP- SP – Business and Manufacturing Park and Specific Plan (Hunter Business Park) Overlay Zones	
Staff Planner	Alyssa Berlino, Associate Planner 951-826-5628 <a href="mailto:aberlino@riversideca.gov">aberlino@riversideca.gov</a>	

## BACKGROUND/PROJECT DESCRIPTION

The vacant 5.58-acre project site consists of three contiguous parcels, with an average existing slope of 9.3 percent, and is located on the south side of Marlborough Avenue, between Northgate Street and Rustin Avenue. Surrounding land uses include industrial to the north (across Marlborough Avenue), east, and west, the Gage Canal Multi-Purpose Trail and mostly vacant land with a water tank to the south, and the Box Springs Mountain Reserve to the southeast.

The applicant is requesting approval of the following entitlements: 1) Minor Conditional Use Permit to permit two non-refrigerated warehouse buildings totaling 99,950 square feet; 2) Design Review of site design and building elevations; 3) Variance to allow a reduced front yard setback; and 4) Grading Exception to allow retaining walls higher than permitted by the Grading Code.

The two proposed warehouse buildings will be constructed on individual parcels, which will be created via a lot line adjustment of the three existing parcels.

Warehouse A is proposed to be a 39,000 square foot building, consisting of 38,000 square feet of warehousing and 1,000 square feet of office space, with 4 docks for loading and unloading operations, located on a 2.41-acre parcel.

Warehouse B is proposed to be a 60,950 square foot building, consisting of 56,950 square feet of warehousing, 3,000 square feet of manufacturing, and 1,000 square feet of office space with 6 docks for loading and unloading activities, located on a 3.16-acre parcel. As a matter of information, approximately 200 square feet of the Warehouse B site will be dedicated to the City for improvements of the Gage Canal Multi-Purpose Trail.

Both sites will have access from a two-way driveway located along Marlborough Avenue.

A tenant has not yet been identified, however; the business was analyzed to operate 7 days a week, 24 hours a day. All loading and unloading activities will take place in a secure and screened area. No outdoor storage is proposed with this request.

## PROJECT ANALYSIS

### *Authorization and Compliance Summary*

	Consistent	Inconsistent
<b>General Plan 2025</b>  The proposed project is consistent with the underlying General Plan 2025 land use designation of B/OP – Business/Office Park. The proposed land use designation provides for the development of single or mixed light industrial uses that do not create nuisances due to odor, dust, noise or heavy truck traffic.  The proposed project is also consistent with General Plan 2025 Land Use and Urban Design Element Objectives, Goals and Policies of the Hunter Industrial Park Neighborhood and will further the intent of the General Plan 2025 through consistency with the following objective: <ul style="list-style-type: none"><li>• <u>Objective LU-55:</u> Make Hunter Industrial Park into a major employment center by creating a quality business park environment that will attract high private sector investment and encourage partnerships with regional educational institutions.</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Consistent	Inconsistent
<p><b>Hunter Business Park Specific Plan</b></p> <p>The proposed project is located within the Industrial Park District of the Hunter Business Park Specific Plan and is consistent as the Industrial Park District is intended for light industrial uses, research and development facilities (including laboratories), administration facilities, limited types of warehousing, and wholesale operations.</p> <p>The proposed project was analyzed for compliance with the applicable development standards and was found to be generally consistent with the standards established in the Specific Plan, except for the required front yard setback established by the Specific Plan.</p> <p>The Specific Plan allows for consideration of a Variance to deviate from the development standards. The applicant is requesting a Variance to facilitate implementation of the proposed project.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Zoning Code Land Use Consistency (Title 19)</b></p> <p>The proposed warehouse facilities are permitted in the BMP – Business and Manufacturing Park Zone, subject to the approval of a Minor Conditional Use Permit and subject to the Site Location, Operation, and Development Standards provided in Chapter 19.435 - Warehousing and Distribution Facilities of the Riverside Municipal Code.</p> <p>The project was analyzed for consistency with all applicable Site Location, Operation, and Development Standards which codifies the City's 2020 Good Neighbor Guideline Policy. The project was found to be consistent with all applicable standards.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Grading Code Consistency (Title 17)</b></p> <p>The proposed warehouse is generally consistent with the grading standards and general requirements established in the Grading Code except for retaining walls higher than permitted by Code.</p> <p>The Grading Code allows for consideration of Grading Exceptions to deviate from the development standards. The applicant is requesting a Grading Exception to facilitate implementation of the proposed project.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Compliance with Citywide Design &amp; Sign Guidelines</b></p> <p>The proposed project substantially meets the objectives of the Citywide Design Guidelines for new development related to building siting and orientation, massing, articulation and architectural treatment, parking layout, landscaping, and lighting.</p> <p>The proposed project consists of a concrete tilt up building designed to incorporate an earth tone color scheme with decorative accents, storefront windows, metal canopies, and panel reveals. As proposed and conditioned, the proposed project is consistent with the Citywide Design Guidelines.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Consistent	Inconsistent
<b>Riverside County Airport Land Use Compatibility Plan</b> <p>The proposed project is located in Zone E – Other Airport Environs of the March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan. This zone is identified as having a low safety risk level and a low noise impact level and contains no restrictions on development. The proposed project was analyzed for consistency with Zone E and staff concluded that the proposed project is consistent.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## COMPLIANCE WITH APPLICABLE DEVELOPMENT STANDARDS

Warehouse A					
Chapter 3 – Hunter Business Park Specific Plan – Industrial Park District					
Development Standards					
Standard			Proposed	Consistent	Inconsistent
Minimum Lot Width	300 feet		352 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Minimum Building Setbacks	Front Yard (Marlborough Avenue)	Average 50 feet; Minimum 40 feet	20 feet	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Minimum Parking Setback	20 feet		20 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Height of Screen Walls and Fences	12 feet		12 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chapter 19.130 – Business and Manufacturing Park (BMP) Development Standards					
Maximum Floor-Area-Ratio	1.50		0.37	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lot Depth	100 feet		271 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Building Height	45 feet		43 feet, 3 inches	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Building Size	Greater than 800 feet from a Residential Zone or Use	Per FAR (157,731 square feet)	39,000 square feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Minimum Building Setbacks	Interior Side	0 feet	152 feet (West) 20 feet (East)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Rear Yard	0 feet	48 feet, 6 inches	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Minimum Landscape Setback	Front Yard	15 feet	20 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Warehouse B					
Chapter 3 – Hunter Business Park Specific Plan – Industrial Park District Development Standards					
Standard			Proposed	Consistent	Inconsistent
Minimum Lot Width	300 feet		325 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Minimum Building Setbacks	Front Yard (Marlborough Avenue)	Average 50 feet; Minimum 40 feet	20 feet	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Minimum Parking Setback	20 feet		20 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Height of Screen Walls and Fences	12 feet		12 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chapter 19.130 – Business and Manufacturing Park (BMP) Development Standards					
Maximum Floor-Area-Ratio	1.50		0.44	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lot Depth	100 feet		353 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Building Height	45 feet		43 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maximum Building Size	Greater than 800 feet from a Residential Zone or Use	Per FAR (206,800 square feet)	60,950 square feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Minimum Building Setbacks	Interior Side	0 feet	75 feet, 6 inches (West)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			20 feet (East)		
		Rear Yard	0 feet	48 feet, 6 inches	<input checked="" type="checkbox"/>
Minimum Landscape Setback	Front Yard	15 feet	20 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Warehouses A and B Chapter 19.435 – Warehousing and Distribution Facilities Site Location, Operation, and Development Standards				
Standard		Proposed	Consistent	Inconsistent
<b>Location of Operations and Activities</b>	Driveways, loading areas, docks, truck wells and internal circulation routes to be oriented away from residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places to the maximum extent feasible.	All driveways, loading areas, docks, truck wells and internal circulation routes are oriented away from public spaces and Gage Canal Multi-Purpose Trail and Box Springs Mountain Reserve to the maximum extent feasible. There are no residential neighborhoods, schools, playgrounds, day care centers, nursing homes, or hospitals near the project site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Screening</b>	Loading areas, docks, truck wells and outdoor storage areas shall be fully screened from view of residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places and from public rights-of-way with buildings, freestanding walls and fences, landscaping or other means.	All driveways, loading areas, docks, truck wells and internal circulation routes are screened from public view from the Gage Canal Multi-Purpose Trail and Box Springs Mountain Reserve by means of retaining walls and mature landscaping. There are no residential neighborhoods, schools, playgrounds, day care centers, nursing homes, or hospitals near the project site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Noise</b>	Operations, including loading, unloading, staging and storage of trucks and trailers, shall comply with Title 7 (Noise).	The project will comply with Title 7 (Noise).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Truck Queueing</b>	Idling of trucks queued or operated on site shall not exceed five minutes.	Trucks are conditioned to limit idling for no more than five minutes.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Electrical Hook-Ups</b>	Where transport by temperature-controlled trucks or trailers is proposed, on-site electrical hookups shall be provided at loading docks. Idling or use of auxiliary truck engine power to power climate-control equipment shall be prohibited.	The warehouses will not contain refrigerated storage.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Chapter 19.580 - Parking and Loading Development Standards</b>				
<b>Standard</b>			<b>Parking Required</b>	<b>Parking Provided</b>
<b>Minimum Parking - Warehouse A</b>	Warehouse (38,000 square feet)	1 space/1,000 square feet	38 spaces	<b>42 spaces</b>
	Office (1,000 square feet)	1 space/250 square feet	4 spaces	
	<b>Total Parking</b>		<b>42 spaces</b>	
<b>Minimum Parking - Warehouse B</b>	Warehouse (56,950 square feet)	1 space/1,000 square feet	57 spaces	<b>71 spaces</b>
	Manufacturing (3,000 square feet)	1 space/350 square feet	9 spaces	
	Office (1,000 square feet)	1 space/250 square feet	4 spaces	
	<b>Total Parking</b>		<b>70 spaces</b>	

## FINDINGS

### **Minor Conditional Use Permit Findings Pursuant to Chapter 19.730.040**

The proposed project will provide adequate parking and circulation, screening, and landscaping. All loading and unloading activities will be oriented away from public view and fully screened by a combination of walls, opaque fencing, and mature landscaping. Overall, the proposed project complies with the development standards for the BMP - Business and Manufacturing Park Zone, Warehousing and Distribution uses, and the Hunter Business Park Specific Plan.

The Zoning Code requires the following findings to be made in order for a Minor Conditional Use Permit to be approved:

- a. The proposed use is substantially compatible with other uses in the area, including factors relating to the nature of its location, operation, building design, site design, traffic characteristics and environmental impacts.**

The project complies with this finding. The proposed project is substantially compatible with other uses in the area. The proposed project is located within the Industrial Park District of the Hunter Business Park Specific Plan, which is intended for light industrial uses, research and development facilities (including laboratories), administration facilities, limited types of warehousing, and wholesale operations. The proposed project is immediately adjacent to existing warehouse uses to the north (across Marlborough Avenue), east, and west, and the Gage Canal Multi-Purpose Trail and mostly vacant land with a water tank to the south, and the Box Springs Mountain Reserve to the southeast.

The site has been designed with sensitivity to the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve. The design of the proposed warehouse is consistent with the Hunter Business Park Specific Plan and the Citywide Design and Sign Guidelines.

The proposed structures are also architecturally consistent with other warehouses within the City. The Project site will be landscaped with fire-resistant landscape, drought-tolerant and climate appropriate trees, shrubs, and ground cover that will meet or exceed the City's requirements. The landscape plan is designed to provide visual appeal and screen the views of the loading areas of the proposed warehouses from the adjacent Gage Canal Multi-Purpose Trail and Box Springs Mountain Reserve. All building and parking lot lighting will conform to the Hunter Business Park Specific Plan guidelines and the City Municipal Code.

The proposed use is substantially compatible with other uses in the area.



- b. The proposed use will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area.**

The project complies with this finding. The proposed warehouse development is consistent with the purpose and intent of the Hunter Business Park Specific Plan, a Planned Industrial Park consisting of approximately 1,300 acres of Industrial and related uses, as well as the Zoning Code. The site is surrounded by existing industrial and warehouses uses to the north (across Marlborough Avenue), east, and west. The project has been analyzed against the development standards of the Specific Plan and the Site Location, Operation, and Development Standards for warehouse uses in the Zoning Code, to ensure that the proposed use is compatible with existing development.

The proposed project will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area.

- c. The proposed use will be consistent with the purposes of the Zoning Code and is in conformance with specific site location, development and operation standards as may be established in the Zoning Code for the particular use.**

The project complies with this finding. The proposed use will be consistent with the purposes of the Zoning Code. The proposed use is consistent with the intent of the B/OP General Plan land use designation, the Industrial Park District of the Hunter Business Park Specific Plan, and the underlying BMP Zone, which anticipate and permit the site to be developed with industrial uses. Specifically, the purpose of the BMP Zone is to provide a district for low-intensity and low-impact industrial, office, and related uses. (RMC § 19.130.010.)

The proposed Project fits within the Zoning Code's stated purpose.

- d. The proposed use is in conformance with specific site location, development and operation standards as may be established in the Zoning Code for the particular use.**

The project complies with this finding. The proposed use is in conformance with specific site location, development, and operation standards as established in the Zoning Code for the proposed use. Except for the required front yard setback, the proposed use meets or exceeds the specific development and operation standards established in the Hunter Business Park Specific Plan and Zoning Code.

The proposed Project conforms to specific site location, development and operation standards as it qualifies for a variance related to the front yard setback, as set forth in the Findings below.

#### ***Variance - Justifications Findings Pursuant to Chapter 19.720.040***

Variance Request: To allow a reduced front yard setback of 20 feet where the Hunter Business Park Specific Plan requires an average front yard setback of 50 feet, but no less than 40 feet.

- 1. The strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Zoning Code.**

The proposal complies with this finding. The strict application of the Zoning Code would compromise the layout of the building, loading area, and parking lot due to the unique shape and topography of the project site. The project site has an approximately 271-foot-deep west side property line and an approximately 438-foot-deep east side property line. Additionally, the topography of the site presents unique challenges as there is an estimated 35-foot vertical fall between the rear property line and Marlborough Avenue.



Strict application of the setback requirement would require such improvements to be setback a minimum of 40 feet, with an average of 50 feet from the property line. Such a significant setback would impact the slope at the rear of the property, requiring additional grading and locating the warehouse activities closer to the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve, located south of the project site.

The strict application of the Zoning Code would result in practical difficulties and unnecessary hardship in developing the property, inconsistent with the intent of the Zoning Code.

**2. There are exceptional circumstances or conditions applicable to this property or to the intended use or development of this property which do not apply generally to other property in the same zone or neighborhood.**

The proposal complies with this finding. The project site is uniquely shaped, consists of challenging topography, and has unique boundary conditions. The project site has an approximately 271-foot-deep west side property line and an approximately 438-foot-deep east side property line. Additionally, the topography of the site presents unique challenges as there is an estimated 35-foot vertical fall between the rear property line and Marlborough Avenue. Furthermore, the site is immediately adjacent to the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve.

The proposed layout of the building maximizes the amount of usable space for the warehouse, manufacturing, and office use by utilizing a reduced setback along the front property line. The reduced front yard setback allows for the development of the project site, while maintaining a balance between site conditions and allows for greater separation between the building and the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve.

The shape of the site, the topography, and boundary conditions constitute an exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.

**3. Granting this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.**

The proposed project complies with this finding. Granting the Variance will allow typical development of the property in accordance with the Objectives and Policies of the General Plan 2025, the Hunter Business Park Specific Plan, and the Zoning Code. The reduced front yard setback allows for greater separation between the building and the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve.

Granting this request will not prove materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located.

**4. Granting the request will not be contrary to the objectives of the General Plan.**

The proposed project complies with this finding. Based on the scope of the requested Variance for the front yard setback, granting the Variance will not be contrary to the objectives of the General Plan 2025.

***Grading Exception Findings Pursuant to Chapter 17.32***

Grading Exception Request: To allow retaining walls up to 9.7-feet in height, where the Grading Code allows a maximum height of 6 feet, when not visible from the public right-of-way.

**1. That the strict application of the provisions of this title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Grading Code.**

The proposed project complies with this finding. The project site is uniquely shaped and is restricted due to topography and boundary conditions. The project site has an approximately 271-foot-deep west side property line and an approximately 438-foot-deep east side property line. Additionally, the topography of the site presents unique challenges as there is an estimated 35-foot vertical fall between the rear property line and Marlborough Avenue. Furthermore, the site is immediately adjacent to the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve.

Due to the challenging topographical conditions the site will maintain a 2:1 slope along the rear of the project site and will restrict utilization of retaining walls above 6 feet in height to only the steepest portions of the project site.

The Warehouse A site proposes a retaining wall up to 9.7 feet in height, located at the southwest corner of the project site. The remainder of the retaining wall will vary between 2.2 feet to 5.5 feet in height.

The Warehouse B site proposes a retaining wall up to 9.1 feet in height, located near the southeast portion of the project site, along the east property line. The remainder of the retaining wall will vary between 1.5 feet to 6.7 feet in height.

Significant grading efforts would be required in order to bring the proposed retaining walls into compliance with the allowable height of 6 feet. The strict application of the provisions of this title would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Grading Code.

**2. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.**

The proposed project complies with this finding. The project site is immediately adjacent to the Gage Canal Multi-Purpose Trail, located on the south boundary of the project site. The project site has an average natural slope of 9.3 percent. Due to the elevation difference in the existing property line grades along the northerly property line and the grades along the southerly property line, adjacent to the Gage Canal Multi-Purpose Trail, there is an approximate 35-foot elevation difference.

The significant elevation difference requires retaining walls ranging from 1.5-feet to 9.7-feet in height. The proposed retaining walls assist in creating a natural transition from the project site to the surrounding properties, including the Gage Canal Multi-Purpose Trail.

There are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.

**3. That the granting of a waiver will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located.**

The proposed project complies with this finding. The proposed over height retaining walls are used sparingly on the project site and are contained primarily to the southwest and southeast corners of the site, where the steepest grades are located.

The proposed 9.7-foot-high retaining wall for the Warehouse A site will be located over 200 feet from Marlborough Avenue. The retaining wall will not be visible to Gage Canal Multi-Purpose Trail users, as the top of the retaining wall is approximately 26.5 feet below the grade of the trail. Additionally, between the trail and the retaining wall, there trees are proposed to be planted in a staggered manner to assist with overall screening of the site, and there will be a fire screen wall will be constructed, as required by the Fire Protection Plan.

The Warehouse B site will include two sections of over height retaining walls. The proposed 9.1-foot-high retaining wall will be located at the southeast corner of the site, over 350 feet from Marlborough Avenue. There is also proposed to be a 24-foot-wide section of 6.7-foot-high retaining wall, located at southwest corner of the parking lot. The over height retaining walls will be screened from view from Marlborough Avenue by the warehouse building and a 6-foot-high tubular steel fence with metal mesh and a mix of shrubs and trees. Similar to the Warehouse A site, the proposed retaining wall will not be visible to trail users due to the significant grade difference of the project site and the trail.

Granting the proposed grading exception will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located.

## ENVIRONMENTAL DETERMINATION

A Mitigated Negative Declaration (MND) and Mitigation and Monitoring Reporting Program (MMRP) have been prepared for this project in accordance with Section 15074 and 21081.6 of the California Environmental Quality Act (CEQA) Guidelines. Mitigation measures related to Aesthetics, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Transportation are recommended to reduce impacts to less than significant thresholds.

Pursuant to CEQA, a 20-day review and comment period was provided from August 26, 2022 to September 14, 2022. The Notice of Intent to Adopt was mailed to various Federal, State, regional, and local government agencies, as well as interested parties. Staff received a total of four comment letters (Exhibit 2), from the following interested parties and/or agencies:

1. Richard Block for Friends of Riverside's Hills - dated September 12, 2022 – concerned with proximity of the Gage Canal Multi-Purpose Trail; impacts to trail uses related to air pollution, noise, and aesthetics; and compliance with the development standards in Chapter 19.435 of the Zoning Code.
2. Richard Block for Friends of Riverside's Hills - dated September 14, 2022 – concerned with proximity of the Gage Canal Multi-Purpose Trail; impacts to trail uses related to air pollution, noise, and aesthetics;
3. Lozeau Drury, LLP on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") - dated September 14, 2022 – This comment letter was withdrawn by Lozeau Drury on September 20, 2022.
4. California Department of Fish and Wildlife - dated September 15, 2022 – suggested changes to MM BIO-1, pertaining to nesting bird surveys.

The applicant has prepared a response to comments, to the CEQA related concerns provided in the letters received from Richard Block for Friends of Riverside's Hills and California Department of Fish and Wildlife (Exhibit 3).

Additional concerns related to the project, identified by the Friends of Riverside's Hills, are as follows:

1. Concern: Compliance with the Site Location, Operation, and Development Standards provided in Chapter 19.435 of the Zoning Code, specifically regarding provisions for screening of loading and unloading areas to public places (i.e., the Gage Canal Multi-Purpose Trail).

Response: The project design was analyzed for compliance with the standards for new warehousing and distribution facilities larger than 10,000 square feet but less than 100,000 square feet, which require driveways, loading areas, docks, truck wells, and internal circulation routes be oriented away from residential neighborhoods, schools, parks,

playgrounds, day care centers, nursing homes, hospitals or other public places to the maximum extent feasible. Additionally, loading areas, docks, truck wells and outdoor storage areas need to be fully screened from view of residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places and from public rights-of-way with buildings, freestanding walls and fences, landscaping or other means to the satisfaction of the Approving Authority.

All loading and unloading activities will be oriented away from public view and will be fully screened by a combination of walls, opaque fencing, and mature landscaping. The loading docks are located in the middle of the project site, approximately 50 to 65-feet north of the trail. The proposed location of the docks allows for optimum screening from both Marlborough Avenue and the Gage Canal Multi-Purpose Trail.

2. Concern: Access to the appendices incorporated by reference in the Initial Study and the Findings and Justifications for the Minor Conditional Use Permit, Variance, and Grading Exception.

Response: The appendices and project plans are made available, upon request. The staff report, which includes the required findings and justifications, will be made available following the final action of the Development Review Committee.

3. Concern: Clarification of who will be developing the project site.

Response: The applicant of the project site is David Stapley and Deanna Magnon of Turn 9, LLC, consistent with the property owner listed on the Grant Deed. The applicant has provided an updated general application and email request to clarify that Turn 9, LLC will be developing the project site.

4. Concern: Incorporating solar on the warehouse buildings.

Response: The applicable Title 24 - Building Energy Efficiency Standards will be identified and implemented during the plan check process through Building and Safety.

## PUBLIC NOTICE AND COMMENTS

Public comment notices were mailed to property owners located within 300 feet of the project site. As of the writing of this report, staff has not received any additional comments, aside from the CEQA comment letters listed above.

## APPEAL INFORMATION

Actions by the Development Review Committee, including any environmental finding, may be appealed to the Planning Commission within ten calendar days after the decision. Appeal filing and processing information may be obtained from the Planning Division Public Information Section, 3rd Floor, City Hall.

## DEVELOPMENT REVIEW COMMITTEE DETERMINATION

The Development Review Committee Staff concur that the project is approved subject to the conditions of approval from each Department/Division.

## EXHIBITS LIST

1. Staff Recommended Conditions of Approval
2. Public Comment Letters
3. Response to Comments



*EXHIBIT 1 – CONDITIONS OF APPROVAL*

**PLANNING CASE:** **PR-2021-000932** (Minor Conditional Use Permit, Design Review, Variance, and Grading Exception)

**Planning**

1. All mitigation measures, as outlined in the Mitigation, Monitoring, and Reporting Plan in the Mitigated Negative Declaration, shall be completed in accordance with the designated schedule.
2. The subject site is permitted to be operated for non-refrigerated warehouse uses only.
3. A copy of the Minor Conditional Use Permit and the Conditions of Approval shall be made available at the site and presented to City staff, including the Riverside Police Department and Code Enforcement, upon request. Failure to have the approved conditions available upon request will be grounds for revocation of the Minor Conditional Use Permit.
4. This permit is issued based upon the business operations plan and information submitted by the applicant which has been used as the basis for evaluation of the proposed use in this staff report and for the conditions of approval herein. The applicant shall notify City Planning Department of any change in operations and such change may require a revision to this permit. Failure to notify the city of any change in operations is material grounds for revocation of this conditional use permit.
5. **Advisory:** Signs shall be permitted in accordance with Chapter 19.620 of the Zoning Code. Any new signs shall be subject to separate review and assessment. A separate sign application, including fees and additional sets of plans, will be necessary prior to sign permit issuance.

*Prior to Grading Permit Issuance:*

6. **MM BIO-1:** Prior to the issuance of any grading permit that would impact potentially suitable nesting habitat for avian species, the project applicant shall retain a qualified biologist and adhere to the following:
  - a. Vegetation removal activities shall be scheduled outside the nesting season to the extent feasible to avoid potential impacts to nesting birds and/or ground nesters. Therefore, vegetation removal shall be scheduled from September 1 to February 14 for songbirds and from September 1 to January 14 for raptors; and
  - b. Any construction activities that occur during typical nesting season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors) will require that all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), be thoroughly surveyed for the presence of nesting birds by a qualified biologist before commencement ground disturbances. If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for non-raptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The onsite biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a

qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

7. **MM-CUL-1:** Prior to grading permit issuance, if there are any changes to project site design and/or proposed grades, the Applicant and the City shall contact consulting tribes to provide an electronic copy of the revised plans for review. Additional consultation shall occur between the City, developer/applicant, and consulting tribes to discuss any proposed changes and review any new impacts and/or potential avoidance/preservation of the cultural resources on the project site. The City and the developer/applicant shall make all attempts to avoid and/or preserve in place as many cultural and paleontological resources as possible that are located on the project site if the site design and/or proposed grades should be revised. In the event of inadvertent discoveries of archaeological resources, work shall temporarily halt until agreements are executed with consulting tribe, to provide tribal monitoring for ground disturbing activities.
8. **MM-CUL-2:** Archaeological and Paleontological Monitoring: At least 30 days prior to application for a grading permit and before any grading, excavation and/or ground disturbing activities take place, the developer/applicant shall retain a Secretary of Interior Standards qualified archaeological monitor to monitor all ground disturbing activities in an effort to identify any unknown archaeological resources.
  - a. The project archaeologist, in consultation with consulting tribes, the Developer, and the City, shall develop an Archaeological Monitoring Plan to address the details, timing, and responsibility of all archaeological and cultural activities that will occur on the project site. Details in the plan shall include:
  - b. Project grading and development scheduling;
  - c. The development of a rotating or simultaneous schedule in coordination with the developer/applicant and the project archaeologist for designated Native American Tribal Monitors from the consulting tribes during grading, excavation, and ground-disturbing activities on the site, including the scheduling, safety requirements, duties, scope of work, and Native American Tribal Monitors' authority to stop and redirect grading activities in coordination with all project archaeologists;
  - d. The protocols and stipulations that the Applicant, tribes, and project archaeologist/paleontologist will follow in the event of inadvertent cultural resources discoveries, including any newly discovered cultural resource deposits, or nonrenewable paleontological resources that shall be subject to a cultural resources evaluation;
  - e. Treatment and final disposition of any cultural and paleontological resources, sacred sites, and human remains if discovered on the project site; and
  - f. The scheduling and timing of the Cultural Sensitivity Training noted in mitigation measure MM-CUL-4.
9. A 40-scale precise grading plan shall be submitted to the Planning Division and include the following:
  - a. Hours of construction and grading activity are limited to between 7:00 a.m. and 7:00 p.m. weekdays and 8:00 a.m. and 5:00 p.m. Saturdays. No construction noise is permitted on Sundays or Federal Holidays;
  - b. Compliance with City adopted interim erosion control measures;

- c. Compliance with any applicable recommendations of qualified soils engineer to minimize potential soil stability problems;
- d. Include a note requiring the developer to contact Underground Service Alert at least 48 hours prior to any type of work within pipeline easement; and
- e. Identification of location, exposed height, material, and finish of any proposed retaining walls.

*Prior to any Grading and/or Ground Disturbance:*

- 10. **MM-CUL-4: Cultural Sensitivity Training:** The Secretary of Interior Standards County certified archaeologist and Native American monitors shall attend the pre-grading meeting with the developer/permit holder's contractors to provide Cultural Sensitivity Training for all construction personnel. This shall include the procedures to be followed during ground disturbance in sensitive areas and protocols that apply in the event that unanticipated resources are discovered. Only construction personnel who have received this training can conduct construction and disturbance activities in sensitive areas. A sign-in sheet for attendees of this training shall be included in the Phase IV Monitoring Report.

*During Grading and Construction Activities:*

- 11. **MM-CUL-3: Treatment and Disposition of Cultural Resources:** In the event that Native American cultural resources are inadvertently discovered during the course of grading for this project, the following procedures will be carried out for treatment and disposition of the discoveries:
  - a. **Consulting Tribes Notified:** within 24 hours of discovery, the consulting tribe(s) shall be notified via email and phone. The developer shall provide the city evidence of notification to consulting tribes. Consulting tribe(s) will be allowed access to the discovery, in order to assist with the significance evaluation.
  - b. **Temporary Curation and Storage:** During the course of construction, all discovered resources shall be temporarily curated in a secure location on site or at the offices of the project archaeologist. The removal of any artifacts from the project site will need to be thoroughly inventoried with tribal monitor oversight of the process; and
  - c. **Treatment and Final Disposition:** The landowner(s) shall relinquish ownership of all cultural resources, including sacred items, burial goods, and all archaeological artifacts and non-human remains as part of the required mitigation for impacts to cultural resources. The Applicant shall relinquish the artifacts through one or more of the following methods and provide the City of Riverside Community and Economic Development Department with evidence of same:
    - i. Accommodate the process for on-site reburial of the discovered items with the consulting Native American tribes or bands. This shall include measures and provisions to protect the future reburial area from any future impacts. Reburial shall not occur until all cataloguing and basic recordation have been completed;
    - ii. A curation agreement with an appropriate qualified repository within Riverside County that meets federal standards per 36 CFR Part 79 and therefore will be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within Riverside County, to be accompanied by payment of the fees necessary for permanent curation;



- iii. If more than one Native American tribe or band is involved with the project and cannot come to a consensus as to the disposition of cultural materials, they shall be curated at the Western Science Center or Museum of Riverside by default; and
  - iv. At the completion of grading, excavation, and ground disturbing activities on the site, a Phase IV Monitoring Report shall be submitted to the City documenting monitoring activities conducted by the project archaeologist and Native Tribal Monitors within 60 days of completion of grading. This report shall document the impacts to the known resources on the property; describe how each mitigation measure was fulfilled; document the type of cultural resources recovered and the disposition of such resources; provide evidence of the required cultural sensitivity training for the construction staff held during the required pre-grade meeting; and, in a confidential appendix, include the daily/weekly monitoring notes from the archaeologist. All reports produced will be submitted to the City of Riverside, Eastern Information Center, and consulting tribes.
12. Construction and operation activities on the property shall be subject to the City's Noise Code (Title 7), as well as the County of Riverside's Noise Code (Title 9) which limits construction noise to 7:00 a.m. to 6:00 p.m. weekdays, and 8:00 a.m. to 5:00 p.m. Saturdays. No construction noise is permitted on Sundays or federal holidays.
  13. The project shall comply with all existing State Water Quality Control Board and City storm water regulations, including compliance with NPDES requirements related to construction and operation measures to prevent erosion, siltation, transport of urban pollutants, and flooding.
  14. The Construction Contractor shall place all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site.
  15. The Construction Contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.
  16. To reduce construction related particulate matter air quality impacts of projects the following measures shall be required:
    - a. The generation of dust and fugitive dust shall be controlled as required by SCAQMD Rule 403;
    - b. Grading activities shall cease during period of high winds (greater than 25mph);
    - c. Trucks hauling soil, dirt or other emissive materials shall have their loads covered with a tarp or other protective cover as determined by the City Engineer;
    - d. Contractor shall prepare and maintain a traffic control plan, prepared, stamped and signed by either a licensed Traffic Engineer or a Civil Engineer. The preparation of the plan shall be in accordance with Chapter 5 of the latest edition of the Caltrans Traffic Manual and the State Standard Specifications. The plan shall be submitted to Public Works Department for review and approval. The Traffic Plan shall include, but is not limited to, rerouting construction related traffic off congested streets, consolidating truck deliveries, and providing temporary dedicated turn lanes for movement of construction traffic to and from site. Work shall not commence without an approval traffic control plan from the Public Works Department;
    - e. Streets shall be swept at the end of the day if visible soil material is carried onto adjacent paved public roads;

- f. Trucks and other equipment shall be washed when leaving the site;
  - g. Ground cover in disturbed areas shall be replaced immediately after construction;
  - h. Disturbed/loose soil shall be kept moist at all times; and
  - i. A 15 mile per hour speed limit shall be enforced on unpaved portions of the construction site.
17. The applicant shall be responsible for erosion and dust control during both the grading and construction phases of the project.
  18. To reduce diesel emissions associated with construction, construction contractors shall provide temporary electricity to eliminate the need for diesel powered generators or provide evidence that electrical hook ups at construction sites are not cost effective or feasible.
  19. The project contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers consistent with manufacturers' standards.
  20. Noise reducing design features shall be utilized consistent with standards in Title 24 California Code of Regulations and Title 7 of the Municipal Code.

*Prior to Building Permit Issuance:*

21. **MM AES-1:** Prior to the issuance of building permits a photometric (lighting) plan shall be approved by the Community & Economic Development Department, Planning Division, to prevent light spillage from the parking areas in the south portion of the site onto the adjacent Box Springs Mountain Reserve Park. The approved light design requirements shall be included on the final building plan sheets. The lighting plan shall incorporate the following requirements:
  - a. The project shall be designed in such a manner as to prevent light spillage from the project to the adjacent and nearby open space areas;
  - b. Project lighting shall not exceed an intensity of one foot-candle;
  - c. Shielding shall be employed, where feasible;
  - d. Any night lighting shall be directed away from natural open space areas and directed downward and towards the center of the development;
  - e. No project lights shall blink, flash, oscillate, or be of unusually high intensity or brightness;
  - f. Energy-efficient LPS or HPS lamps shall be used exclusively throughout the project site to dampen glare; and
  - g. Exterior lights shall be only "warm" LED lights (<3000K color temperature).
22. **MM HAZ-1: Building Fire Resistance and Construction Type:** All buildings shall be constructed to meet the classification of Type IIIB, which includes two 2-hour fire rated exterior walls and will comply with provisions of Section 703.2 of the 2019 CBC.
23. **MM HAZ-2: Structural Hardening:** The Project site and associated buildings shall be designed to satisfy CBC Chapter 7A requirements for materials and construction methods for exterior wildfire exposure. Prescriptive requirements from Chapter 7A and Chapter 15 are summarized below:
  - a. Roofing (Section 705A)
    - i. Spaces between roof decking and covering shall be blocked to prevent embers from catching;

- ii. Eaves and soffits shall be protected with ignition-resistant or non-combustible materials; and
  - iii. Rain gutters shall be screened or enclosed to prevent accumulation of plant debris. Metal gutters shall be provided.
- b. Roofing (Section 1505.1)
  - i. The roof shall be composed of Class A materials, such as asphalt composition shingles, tile or metal/steel.
- c. Vents (Section 706A)
  - i. All vent openings shall be covered with 1/16" to 1/8" metal mesh as a minimum. Vents with wire mesh AND baffles are best, as well as, vents marketed specifically as ember resistant and approved by the CA State Fire Marshal. Fiberglass or plastic mesh shall not be used;
  - ii. Vents in eaves or cornices shall be protected with baffles to block embers; and
  - iii. Chimney and stovepipe outlets shall be covered with a noncombustible screen. This could include metal screen material with openings no smaller than 3/8 inch and no larger than 1/2 inch to prevent embers from escaping and igniting a fire.
- d. Exterior Covering (Section 707A)
  - i. Exterior walls shall be of ignition resistant building materials, such as stucco, fiber cement, wall siding, fire retardant treated wood, or other approved materials; and
  - ii. Exterior wall materials shall be extended from the foundation to the roof.
- e. Exterior Windows, Skylights, and Doors (Section 708A)
  - i. Dual-paned windows with one pane of tempered glass shall be installed to reduce the chance of breakage in a fire;
  - ii. Operable skylights shall be installed with a noncombustible mesh screen (dimensions of the openings will not exceed 1/8 inch);
  - iii. Weather stripping shall be provided around and under the garage door to prevent embers from blowing in;
  - iv. All combustible and flammable liquids in the garage shall be stored away from ignition sources; and
  - v. Exterior door surface shall be noncombustible or of ignition resistant material.
- f. Decking (Section 709A)
  - i. All surfaces within 10 feet of the building shall be built with ignition-resistant, non-combustible, or other approved materials; and
  - ii. Spaces below the decking shall be minimized to reduce the likelihood of combustible collecting underneath the deck.
- g. Accessory structures (Section 710A)
  - i. Surfaces for accessory structures shall be made from noncombustible "hardscape" materials such as stone, tile, concrete, or decomposed granite;
  - ii. Exterior furniture shall be made from metal like iron or cast aluminum instead of wood, teak, wicker, or other combustible materials; and

- iii. Ignition resistant or non-combustible materials shall be used where fences are constructed on the property, particularly when attached to the building and/or within the 0-5' zone of the building.
- h. Address Numbers
  - i. The address shall be 4" minimum on contrasting background and clearly visible from the road; and
  - ii. White, stainless steel, or reflective numbers shall be used.
- 24. **MM HAZ-3: Defensible Space:** Section 701A.5 of the 2019 California Building Code (CBC) and Chapter 49 of the 2019 California Fire Code (CFC) requires compliance with relevant local and state vegetation requirements for defensible space and fuel management (e.g., California Fire Code Section 4906, California Public Resources Code 4291, California Government Code 51182) to mitigate the threat of wildfire to life-safety and property protection. An AMMR (Alternate Material and Method Request) and Fire Protection Plan (FPP) were submitted, reviewed and approved by the Riverside Fire Department. The AMMR will remain part of the Project and the FPP will stay with the Project whenever it was sold. As approved, the Project will have a defensible space from 50 feet to less than 100 feet at portions of the southern border.
- 25. **MM HAZ-4: Block Wall:** A 6ft tall non-combustible wall will be provided along the portions of the southern boundary, constructed into two extensions, where 100 feet of defensible space cannot be satisfied. See Figure 2: Project Site Plan for detailed locations.
- 26. **MM HAZ-5: Fuel Modification Plan:** As described below, this is a conservative vegetation guideline within the property, including a 5-foot ember resistant zone. The FMP and Landscape plan shall be submitted to the City for review and approval prior to planting.
  - a. **Fuel Modification Strategy:** In accordance with California Government Code Section 51182 along with the landscaping guidelines from Information Bulletin #08-05 and AB 3074, the following fuel modification guidelines by zone as presented in the FPP, Figure 18: Schematic for defensible space at 900 Marlborough, shall be provided around the buildings as follows:
    - i. Zone 1A ("Ember Resistant Zone"): A minimum of 5foot landscape that is ember-resistant from the face of the building outward on all sides shall be maintained. In this area there shall be no possible fuels (i.e. firewood, vegetation, landscape mulch or wood chips). Clear soil, rocks, gravel or concrete shall be used.
    - ii. Zone 1B ("Green Zone"): From 5 to 30 feet from the buildings, vegetation in this zone shall be low growing, well irrigated, fire-resistant, drought-resistant and consist of approved plant list.
    - iii. Zone 2: From 30 to 100 feet from the buildings, vegetation in this zone shall be low growing, well irrigated and less flammable.
  - b. **Irrigation:** The vegetation along the interface zone between the hillside and the buildings will be irrigated using high efficiency overhead rotors. This continuous irrigation will provide a healthy moisture content in the vegetation, reducing any dry or dead vegetation during the wildfire season. The overhead rotors will be controlled by a smart irrigation controller that uses real time weather data to adjust run times depending on local conditions, ensuring efficient use of water. Available manual overrides of the irrigation will allow additional water to be added to the vegetation should a fire encroach on the property.

- c. **Required Maintenance:** To properly mitigate wildfire propensity and spread, the fuel modification zones shall be maintained year-round by the individual property owner within their property boundary (lot lines). Vegetation management shall be completed annually by May 1 of each year and more often as needed for fire safety, as determined by the Riverside Fire Department. The Project Owner shall be responsible for all vegetation management on the site, in compliance with the FPP. The "Approved Maintenance Entity" shall be responsible for and shall have the authority to ensure long term funding, ongoing compliance with all provisions of the FPP, including vegetation planting, fuel modification, vegetation management, and maintenance requirements on all private lots, under their control (if not considered biological open space). The Approved Maintenance Entity shall obtain an inspection and report from City Inspector, in May of each year, certifying that vegetation management activities throughout the Project Site have been performed pursuant to the FPP and RFD standards.

d. **Vegetation Zone Management Guidelines**

i. Zone 1A/ B

- All dead vegetation (Grass, plants, trees, leaves/needles, etc.) shall be removed.
- Trees shall be trimmed to a minimum of 10 feet from other trees.
- Branches hanging over roofs and dead branches within 10 feet of chimneys or exhaust outlets shall be cleared.
- Gutters and roofs shall be regularly cleared of all plant material.
- Flammable plants or shrubs near windows shall be removed or pruned.
- Vegetation and items that could catch fire under decks shall be removed.
- Plants and trees shall be separated from items that could catch fire, such as patio furniture.
- Wood piles shall be moved to Zone 2.

ii. Zone 2

- Annual grass shall be cut or mowed to a maximum of 4 inches.
- Horizontal and vertical clearance shall be maintained between grass, shrubs, and trees.
- Fallen plant material (leaves, cones, bark, twigs, branches, etc.) shall be removed.

27. **MM HAZ-6: Fire Protection Systems**

- a. **Automatic Sprinkler System:** As stated in the Section 16.08.145 of Title 16 City of Riverside Building and Construction Code: "An automatic sprinkler system shall be installed and maintained in operable condition in all new buildings. All systems shall conform to the National Fire Protection Association Standards 13 and 13D and the Riverside Fire Department Standards and Policies." An automatic sprinkler system, per NFPA 13 shall be provided throughout the two buildings. The system shall be installed as an early suppression, fast response ceiling (ESFR) sprinkler system. The sprinkler provisions for the main building structures shall help not only reduce any structure fires due to typical interior ignitions sources (e.g. electrical), but shall also help reduce other ignitions sources that may be introduced due to wildfire threats (e.g. embers entering the interior via breaches in the building envelope).

September 21, 2022  
PR-2021-000932

- b. **Water Supplies:** Two additional hydrants shall be provided to satisfy hydrant space per the CFC as amended by Riverside. The two additional hydrants are to help offset the reduced defensible space along the southern border of the building facades, and may be installed anywhere along the south side of Buildings A and B within the parking lots. This additional access to water supplies shall enhance the fire-fighting response to a wildfire along the south side where the threat is most prevalent.
    - i. A 3-foot (914 mm) clear space shall be maintained around the circumference of fire hydrants;
    - ii. Private fire hydrants shall be periodically inspected, tested and maintained in accordance with California Code of Regulations, Title 19, Division 1, Chapter 5; and
    - iii. The required flow rate of each private hydrant shall be determined based on the Riverside Fire Department's applicable standards and policies during the next design stage.
- 28. **MM HAZ-7: Fire Department Access:** Site access, including fire lane, driveway, and entrance road widths, primary and secondary access, gates, turnarounds, dead end lengths, signage, aerial fire apparatus access, surface, and other requirements shall comply with the requirements of the 2019 California Fire Code and City of Riverside Standards. Hydrant locations shall be identified by the installation of approved blue reflective markers, as required by the City's fire code official.
- 29. **MM TRN-2: Implement Site Improvements Supporting Alternative Transportation Program:** Prior to building permit issuance, the Project site plan, floor plans, and lighting plan shall include the following:
  - a. The site plan shall show 14 total designated car share spaces located near building entrances;
  - b. The site plan shall include 26 total bike parking spaces, in excess of the City Code requirement of seven (7);
  - c. The site and floor plan shall include 16 secure employee bike parking spaces and two (2) showers; and
  - d. The lighting plan shall include safe and well-lit access to transit.
- 30. **Landscaping and Irrigation Plans** shall be submitted to the Planning Division for review. Design modifications may be required as deemed necessary. Separate applications and filing fees are required.
  - a. The proposed landscaping needs to comply with the requirements of the Hunter Business Specific Plan (Section 4.0- Landscape Design Criteria);
  - b. A minimum 36-inch box tree shall be planted in a staggered manner on the hillside between the rear property line and the warehouses for screening purposes, to the satisfaction of staff; and
  - c. The landscape and irrigation plans shall be in conformance with the Multi Species Habitat Conservation Plan (MSHCP) Table 6-2. No invasive plant species listed on Table 6-2 of the MSHCP shall be proposed on the landscape and irrigation plans.
- 31. **Fence and Wall Plan:** Revise the wall and fence plan such that the plan provided for building permit plan check incorporates the following changes:
  - a. All freestanding walls shall be constructed of, or finished in, a decorative material;
  - b. All walls shall be finished with a decorative cap;

- c. All fences and gates shall incorporate perforated metal screening; and
  - d. Specify the color and materials of all proposed walls and fences.
32. **Staff Required Plot Plan Conditions:** Revise the submitted plot plan such that the plan provided for building permit plan check incorporates the following changes:
- a. Verify that all internal drive aisles have a minimum width of 24 feet and all parking stalls are a minimum 9 feet in width by 18 feet in depth;
  - b. A minimum 12-inch concrete walkway, including curb width, shall be provided along the sides of landscape planters whenever the side of a parking stall is adjacent to it; and
  - c. Provision for handicap accessible parking as deemed necessary by Building and Safety Division.
33. **Staff Required Building Elevations Conditions:** Revise the submitted building elevations such that the plans provided for building permit plan check incorporate the following changes:
- a. The building elevations submitted for building permits shall clearly specify all building materials and colors to match the materials and colors as approved by the City Planning Commission as applicable; and
  - b. Roof-mounted mechanical equipment shall not protrude above the height of the building parapet wall.
34. **Photometric/Lighting Plan:** A photometric study and manufacturer's cut sheets of all exterior lighting on the building, in the landscaped areas, parking lots and pedestrian paths shall be submitted.
- a. All on-site lighting shall provide a minimum intensity of one foot-candle and a maximum of ten foot-candles at ground level throughout the areas serving the public and used for parking, with a ratio of average light to minimum light of four to one (4:1);
  - b. The light sources shall be hooded and shielded to minimize off-site glare, shall not direct light skyward and shall be directed away from adjacent properties and public rights-of-ways;
  - c. If lights are proposed to be mounted on buildings, down-lights shall be utilized;
  - d. Light poles shall not exceed 25 feet in height, including the height of any concrete or other base material; and
  - e. For safety, all pedestrian paths shall be adequately lighted throughout the project.
35. **Trash Enclosure:** Submit trash enclosure elevations such that the plan provided for building permit plan check incorporates the following changes:
- a. Trash enclosures shall be constructed with a decorative overhead trellis and decorative metal gates.
36. Plans submitted for Landscape and Irrigation Design Review staff review should specify the location, design and color of all domestic water meters, backflow preventers and utility cabinets subject to Planning and Public Utilities review and approval. The visibility of such facilities shall be minimized to Planning Department review and approval through means including but not limited to relocation, berming, landscaping, and/or installation of a screen wall.
37. Submit three sets of plans depicting the preferred location for above ground utility transformers of capacity to accommodate the planned or speculative uses within the



building(s). These plans shall be reviewed and approved by the Planning Division and Public Utilities Department - Electric Division prior to the issuance of a building permit. The proposed location of the transformer shall be level, within 100 feet of the customer's service point, accessible to service trucks and in a location where the transformer can be adequately screened from public view, either by buildings or landscape screening. If landscape screening is the preferred screening method, no landscaping except ground cover shall be allowed within 10 feet of the transformer. The applicant is advised to consult with the City of Riverside Public Utilities, Electrical Engineering Division, at (951)826-5489 prior to preparing these plans.

38. Roof and building mounted equipment shall be fully screened from the public right-of-way. Screening material shall be at least as high as the proposed roof mounted equipment and shall be architecturally integrated with the proposed structure.

39. Ground mounted equipment shall be fully screened from the public right-of-way.

*Prior to Release of Utilities and/or Occupancy:*

40. **MM TRN-1: Provide Pedestrian Network Improvements - Install Crosswalk across Marlborough Avenue at Rustin Avenue:** Prior to issuance of the first occupancy permit, the Project Applicant shall construct a crosswalk across Marlborough Avenue on the east side of Rustin Avenue. Prior to construction of the crosswalk, the Project Applicant shall submit and receive approval of the crosswalk signage and striping plan and curb ramp improvements.

41. Install the landscape and irrigation per the approved plans and submit the completed "Certificate of Substantial Completion" (Appendix C of the water Efficient Landscaping and Irrigation Ordinance Summary and Design Manual) signed by the Designer/auditor responsible for the project. Contact the Case Planner, at (951) 826-5371 to schedule the final inspection at least one week prior to needing the release of utilities. Additional plant material may be required upon final inspection if better coverage is needed.

*Site Operation Standards:*

42. All operations shall be in compliance with Title 7 (Noise Control) of the Riverside Municipal Code.

43. Idling of trucks queued or operated on site shall not exceed five minutes.

44. The ramp closest to the Box Springs Mountain Reserve on both sites may only be used for minor business operation related deliveries such as those from Amazon, UPS, and FedEx. No trailer deliveries associated with the warehousing operations are permitted, except as needed for interior tenant improvements and periodic offloading using forklifts.

**Standard Conditions**

45. There is a one-year time limit on this approval in which to commence the project beginning the day following approval by the Development Review Committee unless a public hearing is held by Planning Commission or City Council; in that event the time limit begins the day following Planning Commission or City Council approval.

46. The Minor Conditional Use Permit and Design Review may be granted time extensions by the Community & Economic Development Director, or their designee, up to a total of two years beyond the original approval expiration date prior to issuance of any building permits. Once a building permit has been issued, the development will be considered vested and time extensions are no longer needed.

47. Prior to **SEPTEMBER 21, 2023**, if building permits have not been obtained, a time extension request shall be submitted to the Planning Division. The request shall include a letter stating

the reasons for the extension of time and associated fee shall be submitted to the Planning Division.

**PLEASE BE ADVISED THAT THE APPLICANT WILL NOT BE NOTIFIED BY THE PLANNING DIVISION ABOUT THE PENDING EXPIRATION OF THE SUBJECT ENTITLEMENT**

48. The granting of this request shall in no way exclude or excuse compliance with all other applicable rules and regulations in effect at the time this Variance is exercised.
49. Within 30 days of approval of this case by the City, the developer shall execute an agreement approved by the City Attorney's Office to defend, indemnify, including reimbursement, and hold harmless the City of Riverside, its agents, officers and employees from any claim, action, or proceeding against the City of Riverside, its agents, officers, or employees to attack, set aside, void, or annul, an approval by the City's advisory agency, appeal board, or legislative body concerning this approval, which action is brought within the time period provided for in Section 66499.37 of the Government Code. The City will promptly notify the developer of any such claim, action or proceeding and the City will cooperate in the defense of the proceeding.
50. The subject property shall be developed substantially as shown on the plot plan on file with this case.
51. This project shall fully and continually comply with all applicable conditions of approval, State, Federal and local laws in effect at the time the permit is approved and exercised and which may become effective and applicable thereafter, and in accordance with the terms contained within the staff report and all testimony regarding this case. Failure to do so will be grounds for Code Enforcement action, revocation or further legal action.

**Fire Department**

*Prior to Building Permit Issuance:*

52. This project shall fully comply with the approved Fire Protection Plan and Alternative Means and Methods application, on file with the Fire Prevention Division.
53. An automatic fire sprinkler system is required by City Ordinance 16.32.335. Under separate cover, submit plans for the automatic fire sprinkler system(s) and obtain approval from the Fire Department prior to installation. Systems exceeding 20 sprinkler heads shall be provided with supervisory service and shall be monitored by a UL Central Station (UUFX) and shall be UL, FM or ETL certificated for the life of the system. Post Indicator valves, Detector Check control valves and water flow switches are required to be supervised by an UL listed central station.  
  
Have a UL, FM or ETL listed and licensed C10 fire alarm contractor submit plans and obtain approvals prior to installation. Alarm contractor shall provide a copy of a maintenance contract complying with N.F.P.A. 72.  
  
Contact the Riverside Public Utilities Department at (951) 826-5285 for the requirements for the dedicated fire service and backflow requirements.
54. The Riverside Municipal Code, Section 16.36.010 to 16.36.090 requires a Public-Safety Radio Amplification System in:
  - a. New buildings greater than fifty thousand (50,000) square feet.
  - b. In existing buildings greater than fifty thousand (50,000) square feet when modifications or repairs exceed fifty percent (50%) of the value of the existing building(s) and are made within any twelve (12) month period or the usable floor area is expanded or enlarged by more than fifty percent (50%).

September 21, 2022  
PR-2021-000932

- c. All basements where the occupant load is greater than fifty (50), regardless of the occupancy, or sub-level parking structures over ten thousand (10,000) square feet.

Plans shall be submitted to the Riverside Police Communication Analyst (951) 353-7270, for review and approval. The Riverside Police Communication Analyst will conduct an acceptance test of the system and a copy of the report shall be forwarded to the Fire Department.

- 55. Requirements for construction shall follow the currently adopted California Building Code and California Fire Code with City of Riverside amendments.
- 56. Construction plans shall be submitted and permitted prior to construction.
- 57. Provide for fire department access to the facility. "Knox" key devices are available for use in the city. Contact the Fire Department for applications and details
- 58. Fire Department access shall be maintained during all phases of construction.
- 59. Provide for fire department access to the gate. "Knox" key devices are available for use in the city. Contact the Fire Department for applications and details.
- 60. Fire sprinkler, fire alarm, fixed extinguishing system, emergency radio systems, standpipes or any other type of fire protection systems that are required by the California Fire Code, California Building Code or City Ordinance, shall be submitted by a California Licensed contractor, under separate permit to Riverside Fire Department for approval and permit issuance prior to any work on such systems.

#### **Public Works – Land Development**

*Prior to Occupancy Unless Otherwise Noted:*

- 61. Storm Drain construction will be contingent on engineer's drainage study.
- 62. Installation of sewer lateral to serve this project to Public Works specifications.
- 63. Size, number and location of driveways to Public Works specifications.
- 64. On site plan, provide linear footage labels along all parcel lines.
- 65. Add the following notes to the landscape plans and email PDF for review and approval to Tree Inspector (gtanaka@riversideca.gov):
  - a. PROTECT IN PLACE existing Koelreuteria bipinnata. If existing Street Trees are found by Tree Inspector to be missing, dead, damaged or in poor condition, they will be required to be removed and replaced with 24" box size trees to match existing. PLANT 24" box size Koelreuteria bipinnata in PUBLIC RIGHT-OF-WAY along both MARLBOROUGH AVE. Typical spacing 25' O.C. Prior to planting, Tree Inspector to determine precise locations and quantities at time of site inspection after fine grading and hardscape installation is complete. Planting, staking, irrigation, root barriers to Landscape & Forestry specifications.
- 66. Double trash enclosures required per Public Works specifications. Tandem enclosures are acceptable if recycled and solid waste bins are in their own enclosures.
- 67. Prior to final inspection for the development project, the applicant shall pay the Transportation Uniform Mitigation Fee (TUMF) in accordance with the fee schedule in effect at the time of payment. If the project improvements include qualifying right-of-way dedications and/or street improvements to a TUMF regional arterial roadway as identified on the Regional System of Highways and Arterials, the developer may have the option to enter into a Credit/ Reimbursement Agreement with the City and Western Riverside

Council of Governments (WRCOG) to recover costs for such work based on unit costs as determined by WRCOG.

The terms of the agreement shall be in accordance with the RMC Chapter 16.68 and the TUMF Administrative Plan requirements. Credit/reimbursement agreements must be fully executed prior to receiving any credit/reimbursement. An appraisal is required for credit/reimbursement of right of way dedications and credit/reimbursement of qualifying improvements requires the public bidding and payment of prevailing wages in accordance with State Law. For further assistance, please contact the Public Works Department.

68. Prior to issuance of a building or grading permit, the applicant shall submit to the City for review and approval, a project specific WQMP that:
  - a. Addresses Site Design BMP's such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas and conserving natural areas;
  - b. Incorporates the applicable Source Control BMP's as described in the Santa Ana River Region WQMP and provides a detailed description of their implementation;
  - c. Incorporates Treatment Control BMP's as described in the Santa Ana River Region WQMP and provides information regarding design considerations;
  - d. Describes the long-term operation and maintenance requirements for BMP's requiring long-term maintenance; and
  - e. Describes the mechanism for funding the long-term operation and maintenance of the BMP's requiring long-term maintenance.
69. Prior to issuance of any building or grading permits, the property owner shall record a "Covenant and Agreement" with the County-Clerk Recorder or other instrument acceptable to the City Attorney to inform future property owners of the requirement to implement the approved project specific WQMP. Other alternative instruments for requiring implementation of the approved project specific WQMP include: requiring the implementation of the project specific WQMP in the Homeowners Association or Property Owners Association Conditions, Covenants and Restrictions (C,C&R's); formation of Landscape, Lighting and Maintenance Districts, Assessment Districts or Community Service Areas responsible for implementing the project specific WQMP; or equivalent may also be considered. Alternative instruments must be approved by the City prior to the issuance of any building or grading permits.
70. If the project will cause land disturbance of one acre or more, it must comply with the statewide General Permit for Storm Water Discharges Associated with Construction Activity. The project applicant shall cause the approved final project specific WQMP to be incorporated by reference or attached to the project's Storm Water Pollution Prevention Plan as the Post-Construction Management Plan.
71. Prior to building or grading permit closeout or the issuance of a certificate of occupancy or certificate of use, the applicant shall:
  - a. Demonstrate that all structural BMP's described in the project specific WQMP have been constructed and installed in conformance with approved plans and specifications;
  - b. Demonstrate that applicant is prepared to implement all non-structural BMP's described in the approved project specific WQMP; and

- c. Demonstrate that an adequate number of copies of the approved project specific WQMP are available for the future owners/ occupants.
72. Prior to Building Permit Issuance, the Developer shall complete a lot line adjustment to consolidate the project site parcels to the satisfaction of the Planning Division and Public Works Department.

**Public Works – Traffic**

*Prior to Occupancy Unless Otherwise Noted:*

73. That the applicant shall provide an empirical vehicular queuing evaluation study six months after the issuance of the Certificate of Occupancy. The queuing analysis evaluation study report shall include, but is not limited to, the intersection of Marlborough Avenue (NS) and Rusting Avenue (EW):
- a. That the pedestrian crosswalk queuing evaluation study shall utilize the “900 Marlborough Avenue Light Industrial Development Pedestrian Crosswalk Queuing Analysis Report” (which was submitted on 05/23/2022) as the baseline conditions. If a queuing analysis deficiency is determined with the comparison of current conditions versus the baseline conditions (existing 2022), then it is the sole responsibility of the applicant to implement any and all improvements necessary as determined and approved by the Director of Public Works. The following criteria determine a project deficiency:
    - i. Queue from left turning traffic exceeds the available storage length of the lane and obstructs the adjacent through lane movement during any of the peak hours (AM and PM).
    - ii. Failed Intersection Level-of-Service Operations during any of the peak hours (LOS “E” or “F”).
74. Prior to the issuance of a Grading Permit, the applicant shall submit street improvements plans for the intersections of Marlborough Avenue and Rustin Avenue to include the enhanced crosswalk on the east leg.
75. Prior to the issuance of a Certificate of Occupancy, the applicant shall construct the proposed pedestrian crosswalk improvements on the east leg of the intersection of Marlborough Avenue and Rustin Avenue. All signing and striping shall conform to the most current Manual of Uniform Traffic Control Devices (MUTCD) Standards. The contractor shall complete the construction work with an approved Public Works Permit. The installation of the crosswalk shall be constructed to the satisfaction of the Director of Public Works, California Public Utilities Commission and Riverside County Transportation Commission.
76. Prior to the issuance of a Certificate of Occupancy, the applicant shall furnish and install four (4) Rectangular Rapid-Flashing Beacon (RRFB) pedestrian crosswalk signs (W11-2) at the intersection of Marlborough Avenue and Rustin Avenue. The applicant shall hire a contractor to install the signs to its intended operating conditions. The contractor shall complete the construction work with an approved Public Works Permit. The installation of the RRFBs equipment shall be completed to the satisfaction of the Director of Public Works.
77. Prior to the issuance of a Certificate of Occupancy, the applicant shall reconstruct the existing curb ramp located on the northeast corner to align with the proposed crosswalk on the east leg of the intersection of Marlborough Avenue and Rustin Avenue. All the street improvements shall conform to the most current City of Riverside Standards and Americans with Disabilities Act (ADA) requirements. The construction of the street improvements shall be completed to the satisfaction of the Director of Public Works, Director of Public Works.

78. Prior to the issuance of a Certificate of Occupancy, the applicant shall reconstruct the existing marked crosswalk located on the east leg of the intersection of Marlborough Avenue and Rustin Avenue into a high visibility continental crosswalk per Figure 7 of the Pedestrian Crosswalk Queuing Analysis Dated May 20, 2022. All the street improvements shall conform to the most current City of Riverside Standards and Americans with Disabilities Act (ADA) requirements. The construction of the street improvements shall be completed to the satisfaction of the Director of Public Works, Director of Public Works.

### **Parks and Recreation**

#### *Prior to Grading Permit Issuance:*

79. Per the City General Plan, a multi-purpose recreational trail segment is designated within the Gage Canal corridor adjacent to the south side of this project. Implementation of the improved trail requires a small portion of the southernmost corner of the project site to be dedicated for public trail use. Dedicate Multi-purpose Recreational Trail Easements/rights-of-way, designated for non-motorized use as required to implement the City's Multi-purpose Recreational Trails System Master Plan, or provide an alternative City-approved solution (i.e., lot line adjustment) to provide authorized public trail use of the southernmost corner of the project site. Provide a digital copy of the Grading Plans to PRCSD for review and approval.

#### *Prior to Building Permit Issuance:*

80. Provide a digital copy of the Site Improvement and Landscape Plans to PRCSD for review and approval.
81. Developer shall make payment of all applicable Park Development Impact Fees (local, aquatic, regional/reserve and trail fees) for privately developed areas.

### **Public Utilities - Electric**

#### *Prior to Building Permit Issuance:*

82. Developer is responsible for all trenching, installation of conduit and sub-structures required to provide power to the site. In addition to installing spare conduits, streetlights, also stub & cap along property frontage.
- 83.
84. Potential power source at northwest corner of property from PJC13243. RPU will need to have structure open. If this point of contact is not available customer will be responsible to install Vault, PSE, PJC's, and (2) SB-4 (8' X 10'). Second point of connect at northeast corner from V79.
85. Plans shall show proposed location of structures mentioned above.

**From:** [Richard Block](#)  
**To:** [Berlino, Alyssa](#)  
**Cc:** [Kopaskie-Brown, Mary](#); [Leonard Nunney](#)  
**Subject:** [External] RE: NOTICE OF INTENT TO ADOPT A MITGATED NEGATIVE DECLARATION - 900, 960,980  
MARLBOROUGH AVENUE  
**Date:** Monday, September 12, 2022 11:15:57 PM

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Alyssa,

Riverside City Planning may be short of staff, but more needs to be done on this case, in particular on a crucial issue that is being totally ignored.

A major concern is that the project is adjacent, as shown on the Initial Study ("IS") Figure 2 map, to the Gage Canal Multi-Purpose Trail. That trail, long existing as an informal trail, is the subject of a State of California \$3.7 million improvement grant awarded to the City in 2020 for the trail segment between Palmyrita and Blaine, with the present warehouse project by the mid-part of that segment. But except for the IS Figure 2 map, the IS makes no mention of such a trail, and its only mention of Gage Canal is in such statements as "The blue line drainage mapped on the topographic map is known as the Gage Canal. No canal was observed.", utterly irrelevant to negative impacts on public users of the Gage Canal Multi-Purpose Trail.

Such impacts include impacts on trail users related to air pollution, noise, and aesthetics, all of which impacts need to be analyzed, which the IS fails to do.

The City's zoning code has restrictions pertaining to warehouse development, section 19.435.030 - Site location, operation and development standards:

B.1. Driveways, loading areas, docks, truck wells and internal circulation routes shall be oriented away from residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places to the maximum extent feasible.

2. Loading areas, docks, truck wells and outdoor storage areas shall be fully screened from view of residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places and from public rights-of-way with buildings, freestanding walls and fences, landscaping or other means to the satisfaction of the Approving Authority.

The Gage Canal Multipurpose Trail comes under the heading of both "parks" and "public places", but there is no discussion in the IS of any potential impacts on the Trail, and how it relates to the above Code section.

The communication from you copied below makes available the IS. But the IS says that it incorporates by reference Appendices A through K, but those have not been made available to the public over the internet. How can one make comprehensive comments without access to those Appendices? And the same holds regarding any justifications for the Minor Conditional Use Permit,



Design Review, Variance, and Grading Exception.

**The City needs to withdraw its current Intent to Adopt a Mitigated Negative Declaration,, issues concerning the Gage Canal Multi-Purpose Trail need to be addressed, and any appropriate revisions made in the processing of approvals.**

Please inform us as to what is being done.

Thanks,

Richard

Richard Block for Friends of Riverside's Hills

Sent from [Mail](#) for Windows

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**From:** [Berlino, Alyssa](#)

**Sent:** Friday, August 26, 2022 11:12 AM

**To:** [Richard Block](#)

**Subject:** NOTICE OF INTENT TO ADOPT A MITGATED NEGATIVE DECLARATION - 900, 960,980  
MARLBOROUGH AVENUE

**NOTICE OF INTENT TO ADOPT  
MITIGATED NEGATIVE DECLARATION  
FOR THE CITY OF RIVERSIDE, CALIFORNIA**

**PROJECT DESCRIPTION:** Planning Case PR-2021-000932 (MCUP, DR, VR, GE): Proposal by David Stapley and Deanna Magnon of the Magnon Companies to consider the following entitlements: 1) Minor Conditional Use Permit to permit two non-refrigerated warehouse buildings totaling 99,950 square feet; 2) Design Review of project plans; 3) Variance to allow for a reduced front yard setback; and 4) Grading Exception to allow retaining walls higher than allowed by the Grading Code.

**NOTES:** *It should be noted that Tribal Consultations have been concluded pursuant to Assembly Bill 52.*

**PROJECT LOCATION:** The 5.58 acre vacant parcel is located at 900, 960, and 980 Marlborough Avenue, situated on the south side of Marlborough Avenue, between Northgate Street and Rustin Avenue, in the BMP-SP – Business and Manufacturing Park and Specific Plan (Hunter Business Park) Overlay Zones, in Ward 1.

**HAZARDOUS WASTE SITES:** Pursuant to Section 15087(c)(6) of the Guidelines for California Environmental Quality Act the City acknowledges the non-existence of hazardous waste sites within the project area reviewed by this Mitigated Negative Declaration.

**PROJECT CONTACT:** Alyssa Berlino, Associate Planner **PHONE:** (951) 826-5628  
**E-MAIL:** [aberlino@riversideca.gov](mailto:aberlino@riversideca.gov)

**PUBLIC REVIEW AND WRITTEN COMMENTS:** The review period for submitting written comments on the Mitigated Negative Declaration pursuant to State CEQA Guidelines Section 15105 commences on August 26, 2022 and will close on September 14, 2022 at 5:00 p.m. If you have any questions regarding the project or Mitigated Negative Declaration, please contact by e-mail or phone as indicated above.

Comments should be addressed to: Alyssa Berlino, Associate Planner  
City of Riverside, Planning Division  
3900 Main Street, 3<sup>rd</sup> Floor  
Riverside, CA 92522

**DOCUMENT AVAILABILITY:** The Mitigated Negative Declaration is available at the City Planning Division, located at the address above, and may also be viewed on the City's website at <https://riversideca.gov/cedd/planning/development-projects-and-ceqa-documents>, as well as the Office of Planning & Research's website at [www.ceqanet.opr.ca.gov](http://www.ceqanet.opr.ca.gov)

**DETERMINATION:** The Development Review Committee Staff determination becomes final on September 21, 2022 unless appealed to the Planning Commission no later than October 3, 2022. Appeal procedures are available from the Planning Division.

If you challenge the above proposed action in court, you may be limited to raising only those issues you or someone else raised in written comments delivered to the Planning Division of the City of Riverside during the comment period specified above.

Thank you,

*Alyssa Wiedeman (Berlino)*

Associate Planner  
City of Riverside | Planning Division  
3900 Main Street | Third Floor | Riverside, CA 92522  
tel: 951.826.5628 | fax: 951.826.5981

**NOTE: I am currently telecommuting, with limited access to voicemail. Email is the best way to reach me.** With the COVID-19 situation evolving, the City team is working to meet the needs of our applicants and appreciate your patience and understanding.

Keep Riverside healthy: Maintain healthy diet and exercise, wash your hands, and get vaccinated. [RiversideCA.gov/COVID-19](https://RiversideCA.gov/COVID-19)

**From:** [Richard Block](#)  
**To:** [Berlino, Alyssa](#)  
**Cc:** [Cervantes, Clarissa](#); [Edwards, Erin](#); [Kopaskie-Brown, Mary](#); [Leonard Nunney](#); [Gurumantra](#); [Arlee Montalvo](#); [Galera, Pamela](#)  
**Subject:** [External] RE: NOTICE OF INTENT TO ADOPT A MITGATED NEGATIVEDECLARATION - 900, 960,980 MARLBOROUGH AVENUE  
**Date:** Wednesday, September 14, 2022 4:51:51 PM  
**Attachments:** [Gage Canal Phase 1 - Final Application 1.2019.cleaned.pdf](#)

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Here on comments on this project, submitted within the public comment period for the proposed MND.

Responding to City residents' upset about impacts of warehouse facilities being built so close to residential areas, schools, parks, etc., the City Council passed Good Neighbor zoning provisions a couple of years ago, these being obviously provisions enacted for environmental purposes, and thus relevant to CEQA. Those provisions include, for warehouse developments between 10,000 and 100,000 sq. ft. the following City zoning code provisions:

Section 19.435.030 – "Site location, operation and development standards:

B.1. Driveways, loading areas, docks, truck wells and internal circulation routes shall be oriented away from residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places to the maximum extent feasible.

2. Loading areas, docks, truck wells and outdoor storage areas shall be fully screened from view of residential neighborhoods, schools, parks, playgrounds, day care centers, nursing homes, hospitals or other public places and from public rights-of-way with buildings, freestanding walls and fences, landscaping or other means to the satisfaction of the Approving Authority."

Note the mandated protections apply in particular to parks, other public places, and public rights-of-way.

A major concern about the present warehouse project is that the project is adjacent, as shown on the Initial Study ("IS") Figure 2 map, to the Gage Canal Multi-Purpose Trail ("Trail"), with the project's green area on that map even intruding a bit at one point into the Trail.

Relevant information on the Trail is contained in the grant application a copy of which is attached to this email. The City's Parks, Recreation, and Community Services Department ("Parks") staff successfully applied in 2019 for that \$3.7 million state grant to improve the long-existing informal Gage Canal trail along a 2-mile long segment between Palmyrita Ave. and Blaine St. in the City's first and second wards. The portion of the Trail that goes by the present warehouse project is in the mid-part of that 2 -mile segment. As the grant application to the State says, "This proposed project will create a Class I paved asphalt trail with a parallel decomposed granite trail, providing a route for both recreational users and commuters using active transportation modes such as bicycles, skates, and scooters." And Parks "is in the business of public park and trail construction".

Per City Council Memorandum of 12/01/2020, "On April 1, 2020, the City of Riverside entered into an agreement with the State of California Natural Resources Agency for the Gage Canal Multi-Purpose Recreational Trail Phase I in the amount of \$3,708,509." And "Gage Canal Trail is an existing informal and unpaved path that follows the Gage Canal and is located within a City owned easement."

So the trail certainly qualifies as among parks and among other public places and among public rights-of-way, thus triggering the requirements of the zoning code section quoted above.

One of the essential criteria for obtaining the \$3.7 million grant from the State was that the project be located within a disadvantaged or low-income community, and as the grant application shows, the community surrounding

the project site meets both those criteria. Thus impacts of the warehouse project on the trail users is an environmental justice issue that the CEQA analysis needs to address.

The 12/14/2021 City Council minutes state: “MEMORANDUM OF UNDERSTANDING - GAGE CANAL MULTI-PURPOSE TRAIL - PUBLIC TRAIL IMPLEMENTATION

The City Council (1) approved the execution of an interdepartmental Memorandum of Understanding between the City of Riverside Public Utilities Department - Water Division, and the Parks, Recreation and Community Services Department, for a two-mile section of the Gage Canal Multi-purpose trail; (2) accepted a 184 square feet Grant Deed of undeveloped land from Assessor’s Parcel Number 249-130-026 to be used for public trail implementation;”, and the Report to the Council on that item stated “Grant Deed Turn 9, LLC., headquartered at 1328 Spruce Street #100, Riverside, CA 92507, is currently developing their property at 900 Marlborough Avenue, and has proposed to provide a 184 square feet Grant Deed of undeveloped land from Assessor’s Parcel Number 249-130-026 to RPU. The 184 square feet of undeveloped land will be incorporated into RPU’s adjacent Gage Canal property, Assessor’s Parcel Number 249-130-016, and will be used for City implementation of a public trail.”

So the 184 square feet is the bit of the trail segment mentioned above, and the City staff, including Planning, knew or should have known of the adjacency of the project site to the Trail, and failed to consider it in their environmental review and consideration of conformity to the Zoning Code. Also, the quote from the said City Council memo states that as of 12/14/2021, “Turn 9, LLC ... is currently developing their property at 900 Marlborough Avenue”, a name we didn’t see on any planning document – so who is the actual developer?

In February, March and April of 2021 there were numerous communications between us and the case contact planner; we pointed out the adjacency of the Trail, and potential impacts on its users from the truck bays and ramps being at the south end of the proposed buildings, the closest end to the Trail, instead of farther north. The site plan sent to us at that time appears to be essentially the

same as the current site plan in the IS. How is it that there has been no significant change in the site plan, apparently no consideration of conflict with the zoning code restrictions quoted above, and no consideration of potential impacts on Trail users?

Indeed, except for label on the IS Figure 2 map, the IS makes NO mention of such a trail, and its only mention of Gage Canal is in such statements as “The blue line drainage mapped on the topographic map is known as the Gage Canal. No canal was observed.”, utterly irrelevant to negative impacts of the project on public users of the Gage Canal Multi-Purpose Trail. Such impacts include impacts on trail users related to air pollution, noise, lighting, and aesthetics, all of which impacts need to be analyzed, which the IS fails to do.

While warehouses at that site may be appropriate, it appears that the truck bays and loading ramps in the two buildings could and should have been placed much closer to Marlborough Ave (as the zoning code provisions quoted above appear to require), which would have lessened impacts on Trail users.

There is a current UCR research project showing substantially reduced air pollution impacts on pedestrians when there is a wall between them and traffic. We note

“MM HAZ-4: Block Wall: A 6ft tall non-combustible wall will be provided along the portions of the southern boundary, constructed into two extensions, where 100 feet of defensible space cannot be satisfied. See Figure 2: Project Site Plan for detailed locations.”

Such a wall might help protect Trail users from some of the project’s air pollution and noise, although it should be downslope a ways so as to not impinge so much on Trail users. But as shown on the site plan, there is a gap in its middle, in a segment denoted number 17, “New 6’ high tubular steel security fence with mesh screening to meet City requirements”. That is completely inadequate as protection for Trail users from air pollution, noise, etc.

“MM HAZ-5: Fuel Modification Plan” provides specifics on vegetation on the

part of the site near the Trail. That part of the Trail also goes through Box Springs Mountain Reserve land that is protected under MSHCP. But neither in that MM nor apparently anywhere else in the IS does it say anything about using appropriate native vegetation and avoiding invasive species. The MM and even calls for “continuous irrigation” there, ‘using high efficiency overhead rotors”. There need to be provisions on providing native vegetation and the kind of irrigation that is actually appropriate for such vegetation.

And it is important that the vegetation should be planned and maintained with a primary aim of helping to screen the loading area, docks etc. from the Trail, as is required by the zoning code provisions quoted above.

In addition to the Notice of Intent to Adopt an MND and access to the IS, we and the public should have been provided with more information, including proposed justifications for required findings for any related approvals such as for variance and grading exception needed by the project. For example, what is the average natural slope of the site? And what is the proposed height of the buildings – the IS mentions 44 feet 6 inches – if that is the building height, that is objectionable as obstructing views from the Trail, an aesthetic issue that needs to be analyzed.

One more thing: it is appropriate that all new warehouse and industrial buildings provide solar on their rooftops, with battery backup. That should be required for this project.

It is disappointing that Planning has let this project go this far without adequate consideration of impacts on Trail users. But thank you for your consideration of the present letter.

Friends of Riverside’s Hills by Richard Block





T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
Adam@lozeaudrury.com

September 14, 2022

*Via E-mail*

Alyssa Berlino, Associate Planner  
City of Riverside, Planning Division  
3900 Main Street, 3rd Floor  
Riverside, CA 92522  
aberlino@riversideca.gov

**Re: Marlborough Northgate Light Industrial/Warehouse Buildings (Planning Case PR-2021-000932; APN Nos.: 249-130-023, 249-130-024 and 249-130-026)**

Dear Ms. Berlino:

I am writing on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) regarding the Initial Study and Mitigated Negative Declaration (“IS/MND” or “MND”) prepared for the Marlborough Northgate Light Industrial/Warehouse Buildings (“Project”) (Planning Case PR-2021-000932), for Applicant The Magnon Companies (“Applicant”), including all actions related or referring to the proposed construction and operation of two non-refrigerated warehouse buildings totaling approximately 99,950 square feet, to be located on approximately 5.58 acres at 900, 960, and 980 Marlborough Avenue, in the City of Riverside, California (APN Nos.: 249-130-023, 249-130-024 and 249-130-026).

SAFER is concerned that the IS/MND prepared for the Project is legally inadequate. SAFER’s review of the Project has been assisted by wildlife biologist Dr. Shawn Smallwood, Ph.D. The expert comments of Dr. Smallwood are attached as Exhibit A.

After reviewing the IS/MND, it is evident that it is inadequate and fails as an informational document. Also, there is a “fair argument” that the Project may have unmitigated adverse environmental impacts. Therefore, CEQA requires that the City of Riverside (“City”) prepare an environmental impact report (“EIR”) for the Project, pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq. SAFER respectfully requests that you do not adopt the IS/MND and instead undertake the necessary efforts to prepare an EIR, as required under CEQA.

## **I. PROJECT DESCRIPTION**

The applicant proposes to construct two warehouse buildings totaling approximately 99,950 square feet (“sf”), located on approximately 5.58 acres at 900, 960, and 980 Marlborough

Avenue. The MND refers to the two proposed industrial buildings as “Building A” and “Building B.” Building A would consist of 39,000 sf, including 5,000 sf of ancillary office/manufacturing space, four truck-loading docks, and 50 passenger vehicle parking spaces. Building B would consist of 60,950 sf, including 11,500 sf of ancillary office/manufacturing space, six truck-loading docks, and 85 passenger vehicle parking spaces. In total, therefore, the Project would include 10 truck-loading docks and 135 passenger vehicle parking spaces.

## II. LEGAL STANDARD

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

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

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

where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

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

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

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (PRC §§ 21064.5, 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland’s etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

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

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

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

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

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

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

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

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

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

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

### III. ANALYSIS

#### A. The Project Will Result in Significant Impacts to Biological Resources.

Expert wildlife biologist Dr. Shawn Smallwood, Ph.D., reviewed the IS/MND and the associated biological resources assessment prepared by Carlson Strategic Land Solutions to inform his comments (hereinafter, “Biological Resources report”). Dr. Smallwood’s comments are attached as Exhibit A.

Dr. Smallwood’s associate, Noriko Smallwood, a wildlife biologist, surveyed the Project site and took photos of wildlife there on September 1, 2022. (Ex. A., p. 1.) During her site visit, Ms. Smallwood “detected 19 species of vertebrate wildlife at the site (Table 1), 2 of which were special-status species.” (*Id.*, p. 3.) Among the species Ms. Smallwood identified on the Project site are “harvester ants (Photo 4), which are significant ecological keystone species for their roles in soil bioturbation and as prey to Blainville’s horned lizards and other special-status species;” as well as “red-tailed hawk (Photos 6 and 7), [and] Southern California rufous-crowned sparrow (Photos 8 and 9),” both of which are classified as special-status species. (*Id.*) Based on these observations, and his independent review of the IS/MND, Dr. Smallwood concluded that the Project would likely result in significant impacts to existing biological resources. CEQA requires the preparation of an EIR to fully assess and more extensively mitigate these impacts.

Dr. Smallwood identified numerous areas of concern, including deep methodological flaws underlying the conclusions of the Biological Resources report and likely impacts to biological resources which the IS/MND failed to consider or appropriately mitigate. Alarming, Dr. Smallwood also found that if developed as currently proposed, the Project—which is located within the Western Riverside Multiple Species Habitat Conservation Plan (“MSHCP”) area, a plan specifically designed to protect special-status species living in and around the neighboring Box Springs Mountain Reserve—would conflict with previously adopted provisions of the MSHCP. (*Id.*, pp. 24-25; *See also*, Biological Resources report, pp. 10-11.)

Where a local or regional policy of general applicability, such as the MSHCP, is adopted to avoid or mitigate environmental effects, a conflict with that policy constitutes a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable local or regional plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A project’s inconsistencies with local plans prepared outside of the CEQA process may similarly constitute

significant impacts and require the preparation of an EIR. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4.) More recently, the court's decision in *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 364 echoed this framework to hold that a "planning or zoning finding conducted outside the requirements of CEQA does not provide a substitute for CEQA review." In either scenario, the fair argument standard applies to the courts' evaluation of a project's potential inconsistencies with a previously adopted local plan or policy.

Dr. Smallwood identified additional likely impacts to wildlife, including habitat loss, interference with movement, traffic impacts, and cumulative impacts. (*Id.*, pp. 21-27). Finally, Dr. Smallwood proposed a comprehensive series of wildlife mitigation measures to minimize the Project's likely impacts on biological resources (*Id.*, pp. 27-28). Dr. Smallwood's findings constitute substantial evidence of a fair argument that the Project may have adverse, unmitigated environmental impacts to biological resources.

### **1. The IS/MND Inappropriately Relied on a Deeply Flawed Biological Resources Assessment.**

Dr. Smallwood identified numerous methodological flaws underlying the conclusions of the Biological Resources report. First, Dr. Smallwood notes that the report detected only "16% of the vertebrate wildlife species that [Ms. Smallwood] detected" during her site visit, resulting in a "rate of species detections per hour was <10% of the rate achieved by [Ms. Smallwood]." (*Id.*, p. 13.) Such a drastic "difference in survey outcome should not be acceptable." (*Id.*) Dr. Smallwood observed that "[o]ne possible explanation for the large difference in survey outcomes was the number of survey objectives pursued by Carlson Strategic Land Solutions (2022), all to be achieved in one day." (*Id.*) But, he adds, "[b]iologists in pursuit of so many objectives on one day's survey are unlikely to achieve any of [their stated] objectives." (*Id.*)

Next, the Biological Resources report failed *entirely* to identify the presence of burrowing owls along the Project site's southern perimeter, which Ms. Smallwood documented and included photographs of in her site visit report. (*Id.*; *see also*, Photo 5, p. 4.) This is especially disconcerting because the biologists who authored the report purported to have adopted "the MSHCP survey guidelines for [detection of] burrowing owls (County of Riverside 2006)." (*Id.*, p. 14.) Nevertheless, it remains unclear whether these guidelines were adhered to because "[n]o information is provided in support of the standard that the survey be conducted by biologists knowledgeable in burrowing owl habitat, ecology, and field identification of the species and sign." (*Id.*) Even so, Dr. Smallwood writes, the more appropriate detection protocol here would have been the CDFW (2012) guidelines, which "are far superior to the MSHCP protocol, as they are up to date and their standards more explicitly described." (*Id.*)

Importantly, Dr. Smallwood observes, "For a reasonable chance to detect special-status species of wildlife, one has to commit a reasonable survey effort." (*Id.*) But the Biological Resources report "did not commit" to undertaking the necessary efforts required for successful detection of special-status wildlife species. (*Id.*) Therefore, a "fair argument can be made for

the need to prepare an EIR that is better informed by biological resources surveys and by appropriate interpretation of survey outcomes for the purpose of characterizing the wildlife community as part of the current environmental setting.” (*Id.*, p. 9.)

## **2. The IS/MND Failed to Properly Analyze Scientific Database Records and Mischaracterized the Project’s Current Environmental Setting.**

The Biological Resources report “inappropriately uses California Natural Diversity Data Base (CNDDB) to determine which species have potential to occur in the project area.” (*Id.*, p. 14.) This database was “not designed to support absence determinations or to screen out species from characterization of a site’s wildlife community.” (*Id.*) As a result of its imprecise interpretation of CNDDB records, the “IS/MND neglects to analyze the occurrence potentials of 93 (81%) of the special-status species” reported to be living on or near the Project site. (*Id.*, p. 21.) Among those special-status species the report failed to identify, “2 were confirmed on site, and databases include occurrence records of 43 within 1.5 miles[,] and 14 within 1.5 and 4 miles of the site.” (*Id.*)

Dr. Smallwood concludes that the report’s assumptions regarding the site’s environmental baseline conditions are unsupported by scientific evidence. Therefore, a “fair argument can be made for the need to prepare an EIR to appropriately characterize existing conditions so that impacts analysis can proceed from a sound footing.” (*Id.*)

“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts. ‘If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.’” (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544.). Since the City has failed to sufficiently account for the presence of special-status species on the Project site and surrounding areas, a fair argument can be made that broader deficiencies underlie the IS/MND’s assessment of the Project’s likely impacts to biological resources.

## **3. The Project Would Severely Impact Special-Status Species and Wildlife Habitat on the Neighboring Box Springs Mountain Reserve**

Dr. Smallwood rejects the IS/MND’s unsupported assertion that the Project would not conflict with previously adopted provisions of the MSHCP. The Project site is located immediately adjacent to the Box Springs Mountain Reserve and is *included* within the MSHCP – a habitat conservation plan specifically enacted to protect special-status species living within the area. (*See*, Biological Resources report, p. 11.) However, Dr. Smallwood notes, “the project would remove habitat contiguous to the Box Springs Mountain Reserve” and “would also fundamentally change the Urban/Wildland Interface by replacing existing opportunities for breeding, forage, refugia, stopover and staging with an impervious surface and its associated car

and truck traffic, noise, and artificial lighting.” (*Id.*, p. 24.) The IS/MND similarly fails to consider significant noise impacts that that Project would impose upon special-status wildlife living in and around the Box Springs Mountain Reserve. (*Id.*, p. 25.)

Therefore, “a fair argument can be made for the need to prepare an EIR to address the impacts of project noise to wildlife.” (*Id.*) Any future environmental analysis should identify habitat areas that will be impacted by the Project’s excess noise levels as habitat losses and must include compensatory mitigation measures for all impacted special-status wildlife species.

### **B. The Project’s Energy Analysis Is Insufficient and Improperly Relies on Legally Unenforceable Mitigation Measures.**

CEQA provides that all Projects must include “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.” (PRC § 21100(b)(3).) Energy conservation under CEQA is defined as the “wise and efficient use of energy.” (CEQA Guidelines, app. F, § I.) The “wise and efficient use of energy” is achieved by “(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources.” (*Id.*) The IS/MND’s analysis of the Project’s energy impacts is conclusory and fails to provide the necessary analysis.

A failure to undertake “an investigation into renewable energy options that might be available or appropriate for a project” violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213 (“*Clean Energy*.”) Additionally, compliance with the California Building Energy Efficiency Standards (Cal. Code Regs., tit. 24, part 6 (“Title 24”)) does not, in and of itself, constitute an adequate energy analysis under CEQA. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65.) For instance, in *Clean Energy*, the court held unlawful an energy analysis which relied solely on a project’s compliance with Title 24, but which failed to assess the project’s transportation energy impacts and lacked any discussion regarding possible uses of renewable energy. (225 Cal.App.4th at pp. 209, 213.) Therefore, the IS/MND’s reliance on Title 24 compliance does not satisfy CEQA’s requirement to provide a detailed assessment of the Project’s likely energy impacts. (IS/MND, pp. 31, 37.)

The IS/MND provides *no details whatsoever* regarding the Project’s planned renewable energy use—if any—as required under *Clean Energy*. Instead, it refers to planned compliance with the 2016 Riverside Restorative Growthprint-Climate Action Plan (“RRG-CAP”), while conceding that “the RRG-CAP does not include a process for confirming a project’s consistency with the plan.” (*Id.*, p. 36.) Even so, the RRG-CAP merely states a commitment to “Promote energy efficiency and renewable energy for municipal operations and the community.” (*Id.*) This vague commitment falls far short of the robust energy analysis which CEQA requires.

The IS/MND’s references to compliance with the RRG-CAP are additionally improper because CEQA requires that mitigation measures be fully enforceable through permit conditions,



agreements, or other legally binding instruments. 14 CCR § 15126.4(a)(2). (*See also, Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730 [project proponent's agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement].) Similarly, a CEQA lead agency may not rely on mitigation measures to reduce a project's impacts if the measures are not enforceable. (*Id.*) Because the proposed RRG-CAP strategies are not formally adopted by the IS/MND as mitigation measures, there is no guarantee that they "would be implemented, monitored, and enforced" at the Project site.

An EIR is therefore required to evaluate the Project's likely energy impacts, including by providing a more detailed quantitative analysis of the Project's planned use of renewable and/or fossil-fuel-derived energy resources. Legally enforceable mitigation measures must also be properly adopted to reduce the Project's likely energy impacts.

#### IV. CONCLUSION

For the foregoing reasons, the IS/MND for the proposed Project fails to comply with CEQA. Substantial evidence supports a fair argument that the Project may have significant impacts on biological resources and energy. Moreover, the IS/MND failed to adequately investigate baseline conditions or mitigate the Project's likely impacts. SAFER therefore respectfully requests that you decline to adopt the IS/MND and instead undertake the necessary efforts to prepare an EIR for the proposed Project. Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Frankel".

Adam Frankel  
LOZEAU | DRURY LLP

# EXHIBIT A

Shawn Smallwood, PhD  
3108 Finch Street  
Davis, CA 95616

Attn: Alyssa Berlino  
City of Riverside  
Community & Economic Development Department  
Planning Division  
3900 Main Street, 3rd Floor  
Riverside, California 92522

6 September 2022

RE: Marlborough-Northgate Warehouse Project

Dear Ms. Berlino,

I write to comment on the Initial Study and Mitigated Negative Declaration (IS/MND) prepared for the proposed Marlborough-Northgate Warehouse Park Project, which I understand would add 2 warehouse buildings totaling 99,950 sf of floor space onto 5.63 acres at 900 Marlborough Avenue. I also reviewed the biological resources report prepared for the project (Carlson Strategic Land Solutions 2022). I write to comment that the existing environmental setting is mischaracterized and the analyses of impacts are grossly incomplete and inaccurate.

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

### **SITE VISIT**

On my behalf, Noriko Smallwood, a wildlife biologist with a Master's Degree from California State University Los Angeles, visited the site of the proposed project for 2.75 hours from 06:15 to 09:00 hours on 1 September 2022. She walked the site's perimeter where she was able, stopping to scan for wildlife with use of binoculars. Conditions were partly cloudy, 80-89° F, and no wind. Most of the site was covered by non-native grassland with ornamental trees, but the southern aspect was covered by coastal sage scrub composed of California buckwheat, California sagebrush and brittlebush (Photos 1-3).



**Photos 1, 2, and 3.** Views of the site from the northern edge looking S (top and middle), and looking SE (bottom), 1 September 2022.



Noriko detected 19 species of vertebrate wildlife at the site (Table 1), 2 of which were special-status species. She saw harvester ants (Photo 4), which are significant ecological keystone species for their roles in soil bioturbation and as prey to Blainville's horned lizards and other special-status species. She also saw burrows of multiple fossorial mammal species, including of California ground squirrel, which is not only another ecological keystone species, but a very good indicator of burrowing owl habitat. Noriko also saw red-tailed hawk (Photos 6 and 7), Southern California rufous-crowned sparrow (Photos 8 and 9), granite spiny lizard and western side-blotched lizard (Photos 10 and 11), and white-throated swifts and mourning doves (Photos 12 and 13), among other species.

**Table 1.** Species of wildlife Noriko Smallwood observed during 2.75 hours of survey at the project site on 1 September 2022.

Common name	Species name	Status <sup>1</sup>	Notes
Harvester ant	<i>Pogonomermys californicus</i>		
Western side-blotched lizard	<i>Uta stansburiana elegans</i>		Many young lizards
Granite spiny lizard	<i>Sceloporus orcutti</i>		
Mourning dove	<i>Zenaida macroura</i>		Foraging in flock
White-throated swift	<i>Aeronautes saxatalis</i>		Foraging over site
Anna's hummingbird	<i>Calypte anna</i>		
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP	
Black phoebe	<i>Sayornis nigricans</i>		Off site
Common raven	<i>Corvus corax</i>		
Bushtit	<i>Psaltiriparus minimus</i>		Foraging
European starling	<i>Sturnus vulgaris</i>	Non-native	
House finch	<i>Haemorphous mexicanus</i>		Foraging
Lesser goldfinch	<i>Spinus psaltria</i>		
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	BCC, TWL	Adults, juvenile foraging; likely nested on site in sage scrub
California towhee	<i>Pipilo crissalis</i>		
Desert cottontail	<i>Sylvilagus audubonii</i>		Under sage scrub shrubs
Kangaroo rat spp.	<i>Dipodomys</i>		Burrows
California vole	<i>Microtus californicus</i>		Burrows
Botta's pocket gopher	<i>Thomomys bottae</i>		Burrows
California ground squirrel	<i>Otospermophilus beecheyi</i>		Burrows along south edge

<sup>1</sup> Listed as BCC = U.S. Fish and Wildlife Service Bird of Conservation Concern, TWL = Taxa to Watch List (Shuford and Gardali 2008), and BOP = Birds of Prey (California Fish and Game Code 3503.5).

**Photo 4.**  
*Harvester ants  
at their nest  
burrow on site,  
1 September  
2022.*



**Photo 5.**  
*Ground squirrel  
burrow on the  
service road  
abutting the  
south edge of the  
project site, 1  
September  
2022.*





**Photos 6 and 7.** *Red-tailed hawk at the project site, 1 September 2022.*



**Photos 8 and 9.** *Rufous-crowned sparrow on the project site, 1 September 2022.*

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

Noriko Smallwood  
Noriko Smallwood



**Photo 10 and 11.** Granite spiny lizard, left, and western side-blotched lizard ready to escape into mammal burrow, right, on the project site, 1 September 2022.



**Photo 12 and 13.** White-throated swift, left, and mourning dove, right, on the project site, 1 September 2022.

Note that the wildlife depicted in Noriko's photos are not easily missed. The red-tailed hawk is large and flashy. Mammal burrows are numerous and contrast starkly with unbroken soil. When white-throated swifts appear, they appear in flocks of loudly twittering, inter-weaving birds (Photo 14). Lizards were numerous and visible. It is



therefore a wonder that Carlson Strategic Land Solutions (2022) reportedly detected only 3 species of vertebrate wildlife during their survey of the site (see below).

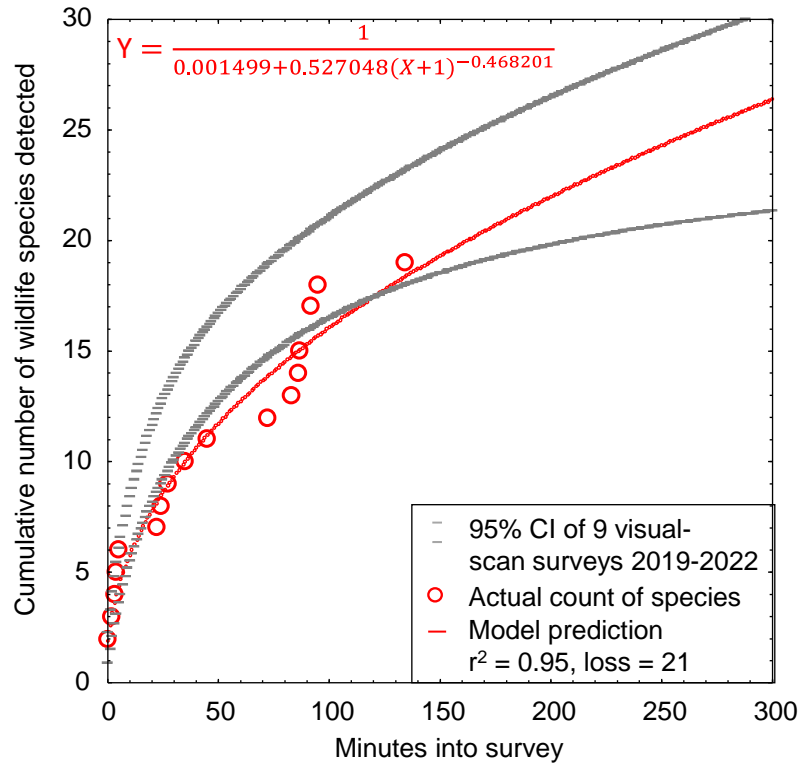
**Photo 14.** *Five of the white-throated swifts on the project site, 1 September 2022.*



Reconnaissance-level surveys can be useful for confirming presence of species that were detected, but they can also be useful for estimating the number of species that were not detected. One can model the pattern in species detections during a survey as a means to estimate the number of species that used the site but were undetected during the survey. To support such a modeling effort, the observer needs to record the times into the survey when each species was first detected. The cumulative number of species' detections increases with increasing survey time, but eventually with diminishing returns (Figure 1). In the case of Noriko's survey, the pattern in the data (Figure 1) predicts that had she spent more time on site, or had she help from additional biologists, she would have detected 26 species of vertebrate wildlife after 5 person-hours and more species yet after more survey time. The pattern in the data indicates that the site's richness of wildlife species remained within the 95% confidence interval estimated from other project sites she and I have surveyed. The site is as rich in wildlife species as other sites we have visited, and it is amply used by wildlife (Figure 1).

The site supports wildlife, including more species than Noriko could detect during a brief reconnaissance-level survey. However, although this modeling approach is useful for more realistically representing the species richness of the site at the time of a survey, it cannot represent the species richness throughout the year or across multiple years because many species are seasonal or even multi-annual in their movement patterns and in their occupancy of habitat.

**Figure 1.** Actual (red circles) and predicted (red line) relationships between the number of vertebrate wildlife species detected and the elapsed survey time based on Noriko Smallwood's visual-scan survey on 1 September 2022, and compared to the mean and 95% CI of surveys at 9 sites she and I performed at many proposed project sites in the Inland Empire region. Note that the relationship would differ if the survey was based on another method or during another season.



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

I projected the predictions of each model to thousands of hours to find predicted asymptotes of wildlife species richness. The mean model-predicted asymptote of species richness was 57 after 11,857 hours of visual-scan surveys among the 46 stations. I also averaged model predictions of species richness at each incremental increase of number of surveys, i.e., number of hours (Figure 2). On average I detected 12 species over the first 2.75 hours of surveys in the Altamont Pass (2.75 hours to match the number of

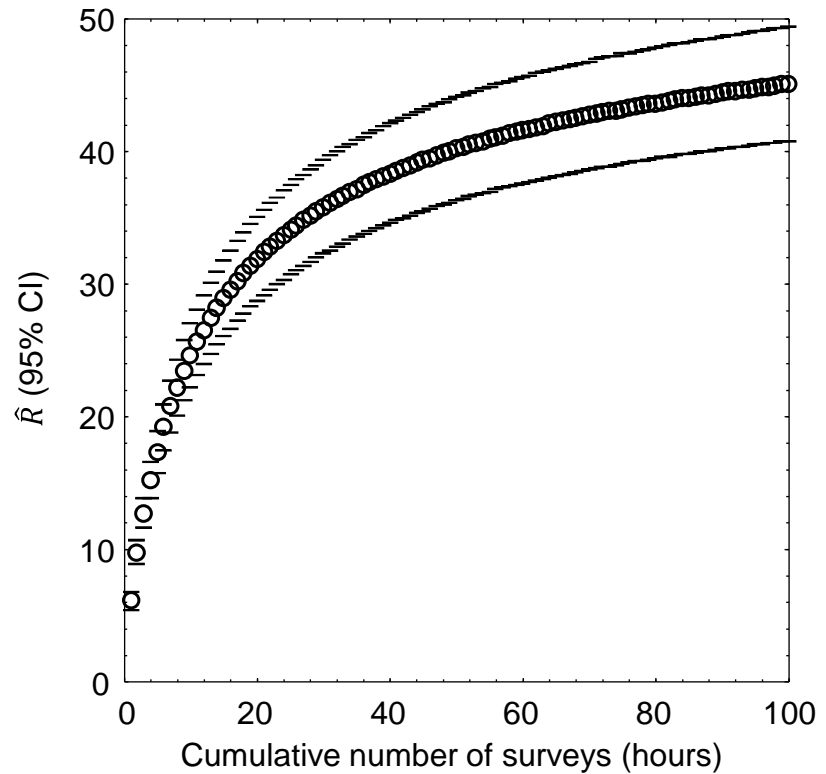
hours I surveyed at the project site), which composed 21.05% of the predicted total number of species I would detect with a much larger survey effort at the research site. Given the example illustrated in Figure 2, the 19 species Noriko detected after her 2.75 hours of survey at the project site likely represented 20.05% of the species to be detected after many more visual-scan surveys over another year or longer. With many more repeat surveys through the year, she would likely detect  $19/0.2005 = 95$  species of vertebrate wildlife at the site. Assuming her ratio of special-status to non-special-status species was to hold with through the detections of all 95 predicted species, then continued surveys would eventually detect 10 special-status species of wildlife.

Again, however, my prediction of 95 species of vertebrate wildlife, including 10 special-status species of wildlife, is derived from a visual-scan survey during the daytime, and would not detect nocturnal mammals. The true number of species composing the wildlife community of the site must be larger. A reconnaissance-level survey should serve only as a starting point toward characterization of a site's wildlife community, but it certainly cannot alone inform of the inventory of species that use the site.

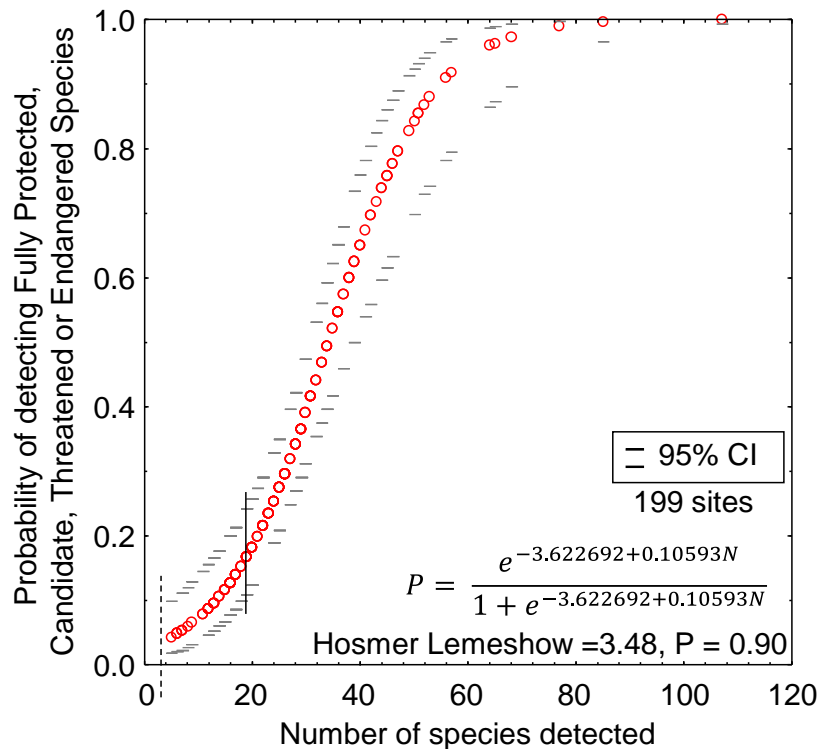
Additionally, the likelihood of detecting special-status species is typically lower than that of more common species. This difference can be explained by the fact that special-status species tend to be rarer and thus less detectable than common species. Special-status species also tend to be more cryptic,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

As demonstrated in Figures 1 and 2, the number of species detected is largely a function of survey effort. Greater survey effort also increases the likelihood that listed species will be detected (which is the first tenet of detection surveys for special-status species). Based on the outcomes of surveys earlier completed at 199 project sites, Noriko's survey effort at the project site carried an 17% chance of detecting a listed species, whereas the survey effort of Carlson Strategic Land Solutions (2022) carried a 4% chance. Listed species of vertebrate wildlife likely use the site, but conclusively documenting their use would take more survey effort to achieve a reasonable likelihood of detection. No reconnaissance-level survey is capable of detecting enough of the wildlife species that occur at a site to realistically characterize the site's wildlife community, including the site's special-status species. A fair argument can be made for the need to prepare an EIR that is better informed by biological resources surveys and by appropriate interpretation of survey outcomes for the purpose of characterizing the wildlife community as part of the current environmental setting.

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



**Figure 3.** Probability of detecting  $\geq 1$  Candidate, Threatened or Endangered Species of wildlife listed under California or federal Endangered Species Acts, based on survey outcomes logit-regressed on the number of wildlife species  $I$  detected during surveys at 199 project sites in California, 1999–2022. The solid vertical line represents the number of species Noriko Smallwood detected, and the dashed vertical line represents the number of species detected by Carlson Strategic Land Solutions (2022).



## **EXISTING ENVIRONMENTAL SETTING**

The first step in analysis of potential project impacts to biological resources is to accurately characterize the existing environmental setting, including the biological species that use the site, their relative abundances, how they use the site, key ecological relationships, and known and ongoing threats to those species with special status. A reasonably accurate characterization of the environmental setting can provide the basis for determining whether the site holds habitat value to wildlife, as well as a baseline against which to analyze potential project impacts. For these reasons, characterization of the environmental setting, including the project's site's regional setting, is one of CEQA's essential analytical steps (§15125). Methods to achieve this first step typically include (1) surveys of the site for biological resources, and (2) reviews of literature, databases and local experts for documented occurrences of special-status species. In the case of this project, these essential steps remain incomplete and misleading.

### **Environmental Setting informed by Field Surveys**

Ideally, the purpose of a field survey in support of environmental review is to identify which species use a project site, how they use it, and in what numbers. Identifying the presence of certain species – special-status species – is more important than the presence of others. Analysts need this information to identify the environmental baseline, and as a basis for opining on (predicting) potential project impacts to biological resources. In reality, a biological survey to inventory species is costly in time and effort, and its product uncertain. Some species are large or loud, and can be seen during diurnal surveys, whereas others are tiny and quiet and are detectable only by night, by trapping or by remote-sensing technology. Membership on an inventory can also carry different meanings based on how each species occurs at the site. Whereas some species are resident year-round, others can be seasonal or ephemeral in their occurrences at a site. Should a species be included on an inventory depends on the investigator's standard of what counts as presence. Does a single 5-minute occurrence over a decade qualify a species as present? And if such a record was made, who can know whether many other brief occurrences truly occurred without having been documented?

The dilemma is that environmental review really needs species inventory, but biologists are imperfect observers of wildlife at any given site. Obtaining a true species inventory is unlikely, given the brief windows of time and budget that project applicants and their permitting authorities allow for biologists to surveil the site. The wildlife species that are detected by reconnaissance-level survey represent only a sampling of the species that truly use the site. This is because biologists vary in their skill at detecting wildlife species, and because species of wildlife vary in their detection probabilities during a typical reconnaissance-level survey, ranging from near 0% among rare or nocturnal species to 100% among species that consulting biologists often refer to as “common.” In truth, “common” species can number fewer than the “rare” or cryptic species that are more difficult to detect. Rare or cryptic species often require specialized survey methods, begging the question of whether reconnaissance-level surveys can reveal any reliable information to readers of the environmental review.

Reconnaissance-level surveys occasionally reveal the presence of special-status species, sometimes due to the skill of the observer but often due to luck of survey timing. What these surveys cannot reveal is the absences of any species whose geographic ranges overlap the site and whose habitat associations at all resemble conditions of the site. And it is habitat associations that consulting biologists often rely upon to determine likelihoods of occurrence of special-status species. Unfortunately, habitat associations often poorly comport with the habitat concept, which is that habitat is that part of the environment that is used by a species (Hall et al. 1997), and which is described by scientists through measurement (Smallwood 2002). Habitat associations defined by consulting biologists typically lack foundation in actual measurements of habitat use, and are therefore speculative and prone to error. One source of error is to map vegetation complexes as habitat types, to which consulting biologists assign species by association without concern for the unrealistically hard boundaries that divide the mapped habitat types. Another source of error is to pigeon-hole species into unrealistically narrow portions of the environment, which can then be said not to exist on the project site. A third source of error is to assign functions to habitat for the purpose of dividing habitat into unrealistic functional parts, such as between breeding habitat versus foraging habitat. Primacy is assigned to breeding habitat, which often can be said not to exist on the project site. In reality, all parts of an animal's habitat are essential to breeding success, regardless of where breeding opportunities occur.<sup>1</sup>

Given the true cost of species inventory, the temptation to shortcut the analysis of occurrence likelihoods is understandable. In the spirit and intent of CEQA, a reasonably feasible species inventory should be the first objective of reconnaissance-level surveys. But a reasonably feasible inventory is only a sampling of the inventory and not a true inventory. What, then, is the appropriate approach for informing a CEQA review with a reconnaissance-level biological survey? One is to commit to a survey effort that results in the detection of a sufficient number of species to accurately estimate the number of species yet to be detected. Another is to honestly report the uncertainties of the characterizations of the species inventory and of the likelihoods of occurrence of special-status species. The analyst can also assume species are present until suitable evidence is acquired in support of an absence determination. This last approach would be consistent with the precautionary principle of risk analysis directed toward rare and precious resources (National Research Council 1986).

### ***How did the IS/MND address the wildlife species inventory and special-status species occurrence likelihoods at the project site?***

The IS/MND indicates that a wildlife survey was completed on 2 December 2020. The IS/MND identifies the survey objectives and who completed the survey. However, the IS/MND neglects to report what time the survey started (the burrowing owl survey

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<sup>1</sup> Animals unable to find sufficient forage, refugia, or travel opportunities are just as unable to reproduce as those unable to find sufficient nest-site opportunities. Per the precautionary principle of risk analysis and consistent with the habitat concept, CEQA review should be based on the broadest of available habitat characterizations, which should be interpreted on the whole rather than contrived functional parts. Any detections of a species on or over a site, regardless of time of year, should be interpreted as that species' use of habitat, any part of which is critical to breeding success.

reported began at 08:00) and how long it lasted. These missing methodological details are fundamental to the readers' interpretation of the survey outcome.

Despite having set out to record "All wildlife species observed on the Project site, as well as any diagnostic sign (call, tracks, nests, scat, remains, or other sign)" (Carlson Strategic Land Solutions 2022:16), the two biologists observed only house finch, mourning dove and American crow. They detected 16% of the vertebrate wildlife species that Noriko detected, and considering only the time on site reported for the burrowing owl survey, their rate of species detections per hour was <10% of the rate achieved by Noriko. Though young in her career, Noriko is skilled at detecting wildlife. Nonetheless, her skill should not be so much greater than those performing a wildlife survey for the purpose of informing an IS/MND. The difference in survey outcome should not be acceptable.

One possible explanation for the large difference in survey outcomes was the number of survey objectives pursued by Carlson Strategic Land Solutions (2022), all to be achieved in one day. I identified at least nine survey objectives. These were to assess existing habitat, identify and map plant communities, inventory plants, inventory wildlife, evaluate for the presence/absence of Western Riverside County Multiple-Species Habitat Conservation Plan (MSHCP) riparian/riverine areas and vernal pools, and complete focused biological surveys to document presence/absence of wildlife, assess habitat of burrowing owl, and complete jurisdictional wetlands delineation. Biologists in pursuit of so many objectives on one day's survey are unlikely to achieve any of the objectives. Carlson Strategic Land Solutions (2022) fell far short of producing a wildlife inventory at the site. Given this gross shortfall, there is reason to suspect that neither did Carlson Strategic Land Solutions (2022) inventory plant species, adequately assess the site for burrowing owl habitat, accurately map plant communities, achieve any of the other of their stated objectives.

### **Protocol-level Detection Surveys**

Carlson Strategic Land Solutions (2022) reportedly completed a focused survey for burrowing owls on the project site. On page 30, they report "No BUOWs [burrowing owls] or evidence of BUOWs were observed on site within the Project site or surrounding 500-feet during the Habitat Assessment. The Project site lacked necessary sized burrows and vegetation cover to provide suitable nesting habitat for BUOW." Carlson Strategic Land Solutions (2022) adds, "No California ground squirrels (*Spermophilus beecheyi*) or burrows were observed on the Project site. Therefore, based on the lack of suitable BUOW burrows, maintenance that occurs on the Project Site, and surrounding built environment, it is determined that the Project site does not contain suitable BUOW Habitat and is not occupied by BUOW." Nonetheless, the biologists who performed the focused survey somehow missed the ground squirrels that Noriko saw along the southern periphery of the project site, including the rather large burrow with a large excavated soil pile shown in Photo 5. The site of the proposed project obviously includes environmental conditions suitable to burrowing owls.

Carlson Strategic Land Solutions (2022) reportedly followed the MSHCP survey guidelines for burrowing owls (County of Riverside 2006). However, it is unclear whether two of the standards of the guidelines were met. No information is provided in support of the standard that the survey be conducted by biologists knowledgeable in burrowing owl habitat, ecology, and field identification of the species and sign. Nor is there information provided that a final report of the survey was submitted to Riverside County Environmental Programs Department and RCA Monitoring Program Administrator.

It is unclear why Carlson Strategic Land Solutions (2022) implemented the MSHCP survey protocol; after all, the project is not participating with the MSHCP. Furthermore, to have been consistent with CEQA's primary objective that the environmental review be informative of the current environmental setting and potential project impacts, the most up-to-date and effective survey protocol should have been applied to burrowing owls, and that survey protocol was CDFW (2012). The CDFW (2012) guidelines are far superior to the MSHCP protocol, as they are up to date and their standards more explicitly described. The surveys should have been performed to meet the standards of CDFW (2012).

Without having completed protocol-level detection surveys for special-status species of wildlife, and without having committed more survey effort than that needed to detect only three bird species, the IS/MND is misleading where on page 23 it says, "No special status species [of wildlife] or sensitive plant species were identified to occur onsite, nor were they observed onsite." For a reasonable chance to detect special-status species of wildlife, one has to commit a reasonable survey effort. Carlson Strategic Land Solutions (2022) did not commit to the effort to detect special-status species of wildlife.

### **Environmental Setting informed by Desktop Review**

The purpose of literature and database review, and of consulting with local experts, is to inform the reconnaissance-level survey, to augment it, and to help determine which protocol-level detection surveys should be implemented. Analysts need this information to identify which species are known to have occurred at or near the project site, and to identify which other special-status species could conceivably occur at the site due to geographic range overlap and site conditions. This step is important because the reconnaissance-level survey is not going to detect all of the species of wildlife that make use of the site. This step can identify those species yet to be detected at the site but which have been documented to occur nearby or whose available habitat associations are consistent with site conditions. Some special-status species can be ruled out of further analysis, but only if compelling evidence is available in support of such determinations (see below).

The IS/MND is inadequately informed by a literature and data base review. The IS/MND inappropriately uses California Natural Diversity Data Base (CNDDB) to determine which species have potential to occur in the project area. By including only species whose documented occurrences within the nearest CNDDB quadrangles, the IS/MND screens out many special-status species from further consideration in its



characterization of the wildlife community as a component of the baseline biological setting. CNDDDB was not designed to support absence determinations or to screen out species from characterization of a site's wildlife community. As noted by CNDDDB, *"The CNDDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present."* The IS/MND misuses CNDDDB.

CNDDDB relies entirely on volunteer reporting from biologists who were allowed access to whatever real properties they report from. Many properties have never been surveyed by biologists. Many properties have been surveyed, but the survey outcomes never reported to CNDDDB. Many properties have been surveyed multiple times, but not all survey outcomes reported to CNDDDB. Furthermore, CNDDDB is interested only in the findings of special-status species, which means that species more recently assigned special status will have been reported many fewer times to CNDDDB than were species assigned special status since the inception of CNDDDB. Because Bullock's oriole and multiple other species were not assigned special status until 2021, these species would have lacked records in CNDDDB when City of Sacramento prepared the analysis. This lack of CNDDDB records had nothing to do with true geographic distributions. And because negative findings are not reported to CNDDDB, CNDDDB cannot provide the basis for estimating occurrence likelihoods, either.

In my assessment based on database reviews and our site visits, 115 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, 2 were confirmed on site by Noriko's survey visit, and database occurrences include 54 (47%) within 1.5 miles of the site, 17 (15%) within 1.5 and 4 miles ('Nearby'), and 35 (30%) within 4 to 30 miles ('In region'). Nearly two-thirds (63%) of the potentially-occurring species in Table 2 have been recorded within 4 miles of the site, and many, including California gnatcatcher, California thrasher, California horned lark, Lawrence's goldfinch, peregrine falcon, and northern harrier were recorded within only 550 m of the project site. With so many species known to occur so close to the project site, it is easy to conclude that the site carries a lot of potential for supporting special-status species of wildlife. On any given day, one or more of these species likely make use of the project site, but multiple surveys are needed to document that use (see Figures 1 through 3). None were detected on the day when Carlson Strategic Land Solutions (2022) surveyed, but two were detected on the day when Noriko surveyed. If biologists were to survey on another day, one to several additional special-status species might be detected. Sufficient survey effort should be directed to the site to either confirm these species use the site or to support absence determinations. But a single survey cannot support an absence determination assigned to any of these species.

**Table 2.** Occurrence likelihoods of wildlife species at the project site, as determined by Carlson Strategic Land Solutions (2022) (IS/MND) and as indicated by eBird/iNaturalist records (<https://eBird.org>, <https://www.inaturalist.org>) and on-site survey findings. ‘Very close’ indicates sightings within about 1.5 miles of the site, ‘Nearby’ indicates sightings within 1.5 and 4 miles, ‘In region’ indicates sightings within 4 and 30 miles, and ‘in range’ means the species’ geographic range overlaps the site.

Common name	Species name	Status <sup>1</sup>	Occurrence likelihood		MSHCP cover
			IS/MND	Databases, Site visits	
Monarch	<i>Danaus plexippus</i>	FC		Very close	
Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	FE		In region	Yes
Crotch’s bumblebee	<i>Bombus crotchii</i>	CCE	None	Nearby	
Coast Range newt	<i>Taricha torosa</i>	SSC		In region	Yes
Western spadefoot	<i>Scaphiophis hammond</i>	SSC	None	Very close	Yes
Arroyo toad	<i>Anaxyrus californicus</i>	FE, SSC		In region	Yes
Blainville’s horned lizard	<i>Phrynosoma blainvillii</i>	SSC	None	Very close	Yes
Orange-throated whiptail	<i>Aspidoscelis hyperythrus</i>	WL	None	Very close	Yes
Coastal whiptail	<i>Aspidoscelis tigris stejnegeri</i>	SSC	None	Very close	Yes
Southern California legless lizard	<i>Anniella stebbinsi</i>	SSC	None	Very close	
California glossy snake	<i>Arizona elegans occidentalis</i>	SSC	None	In region	
Coast patch-nosed snake	<i>Salvadora hexalepis virgultea</i>	SSC		Nearby	
Two-striped gartersnake	<i>Thamnophis hammondi</i>	SSC		In region	
Red-diamond rattlesnake	<i>Crotalus ruber</i>	SSC	None	Very close	Yes
Western pond turtle	<i>Emys marorata</i>	SSC		In region	Yes
Brant	<i>Branta bernicla</i>	SSC <sup>2</sup>		In region	
Redhead	<i>Aythya americana</i>	SSC <sup>3</sup>		Very close	
Western grebe	<i>Aechmophorus occidentalis</i>	BCC		Nearby	
Clark’s grebe	<i>Aechmophorus clarkii</i>	BCC		Nearby	
Black swift	<i>Cypseloides niger</i>	BCC, SSC		Nearby	Yes
Vaux’s swift	<i>Chaetura vauxi</i>	SSC <sup>2</sup>		Very close	
Costa’s hummingbird	<i>Calypste costae</i>	BCC		Very close	
Rufous hummingbird	<i>Selasphorus rufus</i>	BCC		Very close	
Allen’s hummingbird	<i>Selasphorus sasin</i>	BCC		Very close	
Mountain plover	<i>Charadrius montanus</i>	SSC, BCC		In region	Yes
Snowy plover	<i>Charadrius nivosus</i>	BCC		In region	

Common name	Species name	Status <sup>1</sup>	Occurrence likelihood		MSHCP cover
			IS/MND	Databases, Site visits	
Western snowy plover	<i>Charadrius nivosus nivosus</i>	FT, SSC, BCC		In region	
Long-billed curlew	<i>Numenius americanus</i>	BCC, WL		Nearby	
Marbled godwit	<i>Limosa fedoa</i>	BCC		In region	
Short-billed dowitcher	<i>Limnodromus griseus</i>	BCC		In region	
Willet	<i>Tringa semipalmata</i>	BCC		In region	
Western gull	<i>Larus occidentalis</i>	BCC		In region	
California gull	<i>Larus californicus</i>	WL, BCC		Very close	
Caspian tern	<i>Hydropogone caspia</i>	BCC		Nearby	
Black tern	<i>Chlidonias niger</i>	SSC, BCC		In region	
Common loon	<i>Gavia immer</i>	SSC		In region	
Double-crested cormorant	<i>Phalacrocorax auritus</i>	WL		Very close	Yes
American white pelican	<i>Pelicanus erythrorhynchos</i>	SSC1		Very close	
Least bittern	<i>Ixobrychus exilis</i>	SSC, BCC		In region	
White-faced ibis	<i>Plegadis chihi</i>	WL		Very close	Yes
Turkey vulture	<i>Cathartes aura</i>	BOP		Very close	Yes
Osprey	<i>Pandion haliaetus</i>	BOP, WL		Very close	Yes
White-tailed kite	<i>Elanus leucurus</i>	CFP, BOP		Very close	Yes
Golden eagle	<i>Aquila chrysaetos</i>	BGEPA, CFP, BOP		Very close	Yes
Northern harrier	<i>Circus cyaneus</i>	SSC3, BOP		Very close	Yes
Sharp-shinned hawk	<i>Accipiter striatus</i>	WL, BOP		Very close	Yes
Cooper's hawk	<i>Accipiter cooperi</i>	WL, BOP		Very close	Yes
Bald eagle	<i>Haliaeetus leucocephalus</i>	BGEPA, BCC, CFP		Very close	Yes
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP		Very close	
Swainson's hawk	<i>Buteo swainsoni</i>	CT, BOP		Very close	Yes
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP		<b>On site</b>	
Ferruginous hawk	<i>Buteo regalis</i>	WL, BOP		Very close	Yes
Barn owl	<i>Tyto alba</i>	BOP		Very close	
Western screech-owl	<i>Megascops kennicotti</i>	BOP		Very close	
Great horned owl	<i>Bubo virginianus</i>	BOP		Very close	

Common name	Species name	Status <sup>1</sup>	Occurrence likelihood		MSHCP cover
			IS/MND	Databases, Site visits	
Burrowing owl	<i>Athene cunicularia</i>	BCC, SSC2, BOP	None	Nearby	Yes
Long-eared owl	<i>Asio otus</i>	SSC, BOP		In region	
Short-eared owl	<i>Asio flammeus</i>	BCC, SSC3, BOP		In region	
Lewis's woodpecker	<i>Melanerpes lewis</i>	BCC		Very close	
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC		Very close	
American kestrel	<i>Falco sparverius</i>	BOP		Very close	
Merlin	<i>Falco columbarius</i>	WL, BOP		Very close	Yes
Peregrine falcon	<i>Falco peregrinus</i>	BCC, CFP, BOP		Very close	Yes
Prairie falcon	<i>Falco mexicanus</i>	WL, BCC, BOP		Very close	Yes
Olive-sided flycatcher	<i>Contopus cooperi</i>	SSC2, BCC		Very close	
Willow flycatcher	<i>Empidonax traillii</i>	BCC, CE		Very close	
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE, CE		In region	Yes
Vermilion flycatcher	<i>Pyrocephalus rubinus</i>	SSC2		Very close	
Least Bell' vireo	<i>Vireo belli pusillus</i>	FE, CE	None	Very close	Yes
Loggerhead shrike	<i>Lanius ludovicianus</i>	BCC, SSC2	None	Very close	Yes
Oak titmouse	<i>Baeolophus inornatus</i>	BCC		Very close	
California horned lark	<i>Eremophila alpestris actia</i>	WL	Moderate	Very close	Yes
Bank swallow	<i>Riparia riparia</i>	CT		Nearby	
Purple martin	<i>Progne subis</i>	SSC2		Nearby	Yes
Wrentit	<i>Chamaea fasciata</i>	BCC		Very close	
California gnatcatcher	<i>Polioptila c. californica</i>	CT, SSC	None	Very close	Yes
California thrasher	<i>Toxostoma redivivum</i>	BCC		Very close	
Cassin's finch	<i>Haemorphous cassinii</i>	BCC		In region	
Lawrence's goldfinch	<i>Carduelis lawrencei</i>	BCC		Very close	
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC2		In region	Yes
Black-chinned sparrow	<i>Spizella atrogularis</i>	BCC		Nearby	
Brewer's sparrow	<i>Spizella breweri</i>	BCC		Very close	
Bell's sage sparrow	<i>Amphispiza b. belli</i>	WL, BCC		Very close	Yes
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	WL		<b>On site</b>	Yes

Common name	Species name	Status <sup>1</sup>	Occurrence likelihood		MSHCP cover
			IS/MND	Databases, Site visits	
Yellow-breasted chat	<i>Icteria virens</i>	SSC3	None	Very close	Yes
Yellow-headed blackbird	<i>X. xanthocephalus</i>	SSC3		Nearby	
Bullock's oriole	<i>Icterus bullockii</i>	BCC		Very close	
Tricolored blackbird	<i>Agelaius tricolor</i>	CT, BCC, SSC	None	Nearby	Yes
Lucy's warbler	<i>Leiothlypis luciae</i>	SSC, BCC		Nearby	
Virginia's warbler	<i>Leiothlypis virginiae</i>	Nearby	WL, BCC	Very close	
Yellow warbler	<i>Dendroica petachia</i>	BCC, SSC2		Very close	Yes
Summer tanager	<i>Piranga rubra</i>	SSC1		Nearby	
Western mastiff bat	<i>Eumops perotis californicus</i>	SSC, WBWG:H		In range	
Pocketed free-tailed bat	<i>Nyctinomops femorosaccus</i>	SSC, WBWG:M	None	In range	
Big free-tailed bat	<i>Nyctinomops macrotis</i>	SSC, WBWG:MH		In range	
Pallid bat	<i>Antrozous pallidus</i>	SSC, WBWG:H		In region	
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC, WBWG:H		In region	
Spotted bat	<i>Euderma maculatum</i>	SSC, WBWG:H		In range	
Silver-haired bat	<i>Lasionycteris noctivagans</i>	WBWG:M		In range	
Western red bat	<i>Lasiurus blossevillei</i>	SSC, WBWG:H		In region	
Hoary bat	<i>Lasiurus cinereus</i>	WBWG:M		In region	
Western yellow bat	<i>Lasiurus xanthinus</i>	SSC, WBWG:H	None	In region	
Western small-footed myotis	<i>Myotis ciliolabrum</i>	WBWG:M		In range	
Fringed myotis	<i>Myotis thysanodes</i>	WBWG:H		In region	
Miller's myotis	<i>Myotis evotis</i>	WBWG:M		In region	
Long-legged myotis	<i>Myotis volans</i>	WBWG:H		In region	
Yuma myotis	<i>Myotis yumanensis</i>	SSC, WBWG:LM		Nearby	
San Diego black-tailed jackrabbit	<i>Lepus californicus bennettii</i>	SSC	None	In region	Yes
Los Angeles pocket mouse	<i>Perognathus longimembris brevinasus</i>	SSC	None	In region	Yes
Northwestern San Diego pocket mouse	<i>Chaetodipus fallax fallax</i>	SSC	None	In region	
San Bernardino kangaroo rat	<i>Dipodomys merriami parvus</i>	FE, CCE, SSC	None	In region	Yes
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	FE, CT	None	In region	Yes

Common name	Species name	Status <sup>1</sup>	Occurrence likelihood		MSHCP cover
			IS/MND	Databases, Site visits	
San Diego desert woodrat	<i>Neotoma lepida intermedia</i>	SSC		Nearby	Yes
Southern grasshopper mouse	<i>Onychomys torridus ramona</i>	SSC		In range	
American badger	<i>Taxidea taxus</i>	SSC		Very close	

<sup>1</sup> Listed as FE = federal endangered, BCC = U.S. Fish and Wildlife Service Bird of Conservation Concern, CE = California endangered, CT = California threatened, CCE & CCT = Candidate California Endangered & Threatened, CFP = California Fully Protected (CDFG Code 3511), SSC = California species of special concern (not threatened with extinction, but rare, very restricted in range, declining throughout range, peripheral portion of species' range, associated with habitat that is declining in extent), SSC1, SSC2 and SSC3 = California Bird Species of Special Concern priorities 1, 2 and 3, respectively (Shuford and Gardali 2008), WL = Taxa to Watch List (Shuford and Gardali 2008), and BOP = California Fish and Game Code 3503.5 (Birds of Prey), and WBWG = Western Bat Working Group with priority rankings, of low, moderate, and high.

Of the 22 special-status species that the IS/MND addresses and which appear in my Table 2, 1 was given moderate likelihood of occurrence and 20 were given no likelihood of occurrence. Eleven of these 22 species have been documented within 1.5 miles of the site, 3 have been documented within 1.5 and 4 miles of the site, and 6 have been documented within 4 and 30 miles of the site. These distances are not great, putting 14 special-status species in close proximity to the site. Most of the IS/MND's occurrence likelihood determinations do not comport with the close distances of occurrence records nor with my conclusions.

The IS/MND neglects to analyze the occurrence potentials of 93 (81%) of the special-status species in Table 2. Of these, 2 were confirmed on site, and databases include occurrence records of 43 within 1.5 miles and 14 within 1.5 and 4 miles of the site. The IS/MND made insufficient use of the wildlife occurrence databases.

The project would potentially affect up to 44 special-status species of wildlife in Table 2 that are conserved by the MSHCP in the Box Springs Mountain Reserve located immediately adjacent to the project site. Of these 44 species, 1 has been confirmed on the project site, and 27 (61%) have been documented within 1.5 miles of the site – mostly on Box Springs Mountain Reserve, 5 have been documented within 1.5 and 4 miles of the site, and the remaining 11 have been documented within 4 and 30 miles of the site. The project would potentially cause impacts to these 44 species for which the MSHCP is attempting to conserve with preservation of Box Springs Mountain Reserve, yet the IS/MND offers no form of compensatory mitigation for any of them.

The environmental baseline needs to be better informed by both on-site surveys and occurrence database review. Absence determinations need to be founded on substantial evidence. Without such evidence, the precautionary principle in risk analysis calls for erring on the side of caution, which in this application means assuming presence of each potentially occurring special-status species. A fair argument can be made for the need to prepare an EIR to appropriately characterize existing conditions so that impacts analysis can proceed from a sound footing.

## **BIOLOGICAL IMPACTS ASSESSMENT**

Determination of occurrence likelihoods of special-status species is not, in and of itself, an analysis of potential project impacts. An impacts analysis should consider whether and how a proposed project would affect members of a species, larger demographic units of the species, or the whole of a species. In the following, I analyze several types of impacts likely to result from the project, one of which is unsoundly analyzed and the others not analyzed in the IS/MND.

### **HABITAT LOSS**

According to the IS/MND (page 23), “Due to the level of disturbance from human activity onsite and within the vicinity, the Project impacts would not be expected to reduce the general wildlife population below self-sustaining levels.” The IS/MND

provides no explanation of how disturbance has affected wildlife on the project site, nor does it even clarify the nature of the disturbance. Given the existing environmental setting of diminishing habitat, the opposite conclusion is warranted. The project area is undergoing severe habitat fragmentation, which is a process widely believed to pose the greatest threat to wildlife conservation (Smallwood 2015). The project would contribute further to habitat fragmentation in an environmental setting that cannot afford more such fragmentation without imparting severe effects to wildlife populations.

The IS/MND does not address potential impacts of habitat loss to breeding birds, except for Carlson Strategic Land Solutions' (2022) groundless conclusion, "The Project site supports potential foraging habitat and limited nesting habitat (ground nesters) for migratory birds." No survey was performed during the breeding season, nevertheless Carlson Strategic Land Solutions (2022) is willing to speculate that disturbance of the site limits nesting, whatever that means. Every site available to birds has been disturbed by human activities to various degrees, but birds must nest somewhere. Noriko's survey found juvenile birds being fed on the project site, so birds have found a way to nest there despite whatever disturbance Carlson Strategic Land Solutions (2022) believes would have limited them.

Habitat loss has been recognized as the most likely leading cause of a documented 29% decline in overall bird abundance across North America over the last 48 years (Rosenberg et al. 2019). Habitat loss not only results in the immediate numerical decline of wildlife, but it also results in permanent loss of productive capacity. Two study sites in grassland/wetland/woodland complexes had total bird nesting densities of 32.8 and 35.8 nests per acre (Young 1948, Yahner 1982) for an average 34.3 nests per acre. Assuming the project site supports a tenth of the total nesting density of the above-referenced study sites, and applying this adjusted density to the 5.63 acres of the project site would predict a loss of 19 bird nests.

The loss of 19 nest sites of birds would qualify as a significant project impact that has not been addressed in the IS/MND. But the impact does not end with the immediate loss of nest sites as the site is graded in preparation for impervious surfaces. The reproductive capacity of the site would be lost. The average number of fledglings per nest in Young's (1948) study was 2.9. Assuming Young's (1948) study site typifies bird productivity, the project would prevent the production of 55 fledglings per year. After 100 years and further assuming an average bird generation time of 5 years, the lost capacity of both breeders and annual fledgling production would total 6,260 birds  $\{(nests/year \times chicks/nest \times number\ of\ years) + (2\ adults/nest \times nests/year) \times (number\ of\ years \div years/generation)\}$ . The project's denial to California of 63 birds per year has not been analyzed as a potential impact in the IS/MND, nor does the IS/MND provide any compensatory mitigation for this impact. A fair argument can be made for the need to prepare an EIR to appropriately analyze the project's impacts to wildlife caused by habitat loss and habitat fragmentation.



## **WILDLIFE MOVEMENT**

The IS/MND's analysis of whether the project would interfere with wildlife movement in the region is unsound, and really it is no analysis at all. Carlson Strategic Land Solutions (2022:16) describe their analytical methods as "...based on information compiled from the literature, analysis of aerial photographs and topographic maps, direct observations made in the field during survey work, and an analysis of existing wildlife movement functions." No explanation is provided of how aerial images and maps were used, nor of what type of direct observations in the field informed of wildlife movement patterns. The meaning of "existing wildlife movement functions" is left vague, and to me makes no sense whatsoever. Later, Carlson Strategic Land Solutions (2022:27) reports that the potential impacts was analyzed through "field survey ... and knowledge of desired topography and resource requirements." What comprised this knowledge is unshared. Finally, nothing about the field survey or direct observations in the field is cited as a basis of the analysis; a survey that detected only 3 species of bird and no mammals was unlikely to inform of wildlife movement in the region.

Carlson Strategic Land Solutions (2022:27) concludes, "The site supports primarily disturbed habitat and is therefore restricted in its potential to support regional wildlife movement," and on p. 28, "Bird species may utilize the site for foraging, although this is expected to be limited due to the high level of disturbance and lack of native vegetation. In summary, the site may support foraging habitat for species on a local scale. Due to industrial and warehouse buildings surrounding the site, the site provides no function to facilitate movement for wildlife species on a regional scale." In other words, a site is useless to wildlife movement if it is "disturbed" or located next to anthropogenic structures. Carlson Strategic Land Solutions (2022) cites no scientific source in support of these assertions, because there is none. If disturbance truly prevents wildlife movement, then wildlife would have no capacity to move anymore, anywhere. All environments worldwide have been disturbed in multiple ways.

Carlson Strategic Land Solutions (2022) is inconsistent in their conclusions about whether the project would interfere with wildlife movement. At several locations in their report, they conclude, "Due to the close proximity to the Box Springs Mountain Reserve Park and its potential use as a regional wildlife corridor and supporting potential sensitive and common wildlife species, the lighting found on the southern side of the Project site shall be shielded..." Immediately adjacent to Box Springs Mountain Reserve, there is no reason to expect that the project site would differ in its support to wildlife movement in the region. The only distinction between the project site and Box Springs Mountain Reserve is a property line, which wildlife do not recognize.

The IS/MND's analysis of whether the project would interfere with wildlife movement in the region is fundamentally flawed from its premise. According to Carlson Strategic Land Solutions (2022:16), "Relative to corridor issues, the focus of this assessment was to determine if development of the Project site that would have significant impacts on the regional wildlife movement associated with the site and the immediate vicinity." And on p. 27, "The Project Site was evaluated for evidence of a wildlife movement corridor."

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

## CONFLICT WITH PROVISIONS OF ADOPTED HCP

The IS/MND claims there would be no conflict, but the project would remove habitat contiguous to the Box Springs Mountain Reserve, which is part of the MSHCP Conservation Area – a part of the core of the conservation strategy of the HCHCP. The project would also fundamentally change the Urban/Wildland Interface by replacing existing opportunities for breeding, forage, refugia, stopover and staging with an impervious surface and its associated car and truck traffic, noise, and artificial lighting. The IS/MND is also silent on whether rodenticides would be placed outside the proposed buildings, as is common practice at warehouses in California (Photo 15). Bait stations placed around the buildings would jeopardize squirrels, kangaroo rats and other small mammals that inhabit Box Springs Mountain Reserve. There is at least a fair argument for the need to prepare and EIR to analyze potential project impacts to the core conservation strategy of the MSHCP.

**Photo 15.** Bait station to deliver anti-coagulant poison to California ground squirrels on the outskirts of a distribution warehouse in California.



## NOISE

The IS/MND is misleading in its conclusion about the potential impacts of noise to wildlife in the Box Springs Mountain Reserve, which is part of the MSHCP Conservation Area. According to the IS/MND (page 28), “Consistent with MSHCP guidance, the City’s Residential Noise standard of 55 dBA  $L_{eq}$  daytime and 45 dBA  $L_{eq}$  nighttime was used for the analysis; therefore, operational noise associated with the proposed Project does not exceed the MSHCP noise standard within the Reserve.” However, the noise analysis concludes that

these standards would be exceeded at receiver locations R6 and R7, especially at night. Nighttime exceedance would be as much as 13.9 dBA  $L_{eq}$ .

At least a fair argument can be made for the need to prepare an EIR to address the impacts of project noise to wildlife inhabiting the Box Springs Mountain Reserve. Receiver locations should be added to the Reserve to determine the extent of project noise exceedance of the MSHCP standards. The area within the exceedance should be regarded as habitat loss, and compensatory mitigation formulated accordingly.

## **TRAFFIC IMPACTS TO WILDLIFE**

The IS/MND neglects to address one of the project's most obvious, substantial impacts to wildlife, and that is wildlife mortality and injuries caused by project-generated traffic. Project-generated traffic would endanger wildlife that must, for various reasons, cross roads used by the project's traffic (Photos 16–19), including along roads far from the project footprint. Vehicle collisions have accounted for the deaths of many thousands of amphibian, reptile, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level (Forman et al. 2003). Across North America traffic impacts have taken devastating tolls on wildlife (Forman et al. 2003). In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally.

The nearest study of traffic-caused wildlife mortality was performed along a 2.5-mile stretch of Vasco Road in Contra Costa County, California. Fatality searches in this study found 1,275 carcasses of 49 species of mammals, birds, amphibians and reptiles over 15 months of searches (Mendelsohn et al. 2009). This fatality number needs to be adjusted for the proportion of fatalities that were not found due to scavenger removal and searcher error. This adjustment is typically made by placing carcasses for searchers to find (or not find) during their routine periodic fatality searches. This step was not taken at Vasco Road (Mendelsohn et al. 2009), but it was taken as part of another study right next to Vasco Road (Brown et al. 2016). The Brown et al. (2016) adjustment factors were similar to those for carcass persistence of road fatalities (Santos et al. 2011). Applying searcher detection rates estimated from carcass detection trials performed at a wind energy project immediately adjacent to this same stretch of road (Brown et al. 2016), the adjusted total number of fatalities was estimated at 12,187 animals killed by traffic on the road. This fatality number translates to a rate of 3,900 wild animals per mile per year killed along 2.5 miles of road in 1.25 years. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 243,740 animals killed per 100 km of road per year, or 29 times that of Loss et al.'s (2014) upper bound estimate and 68 times the Canadian estimate. An analysis is needed of whether increased traffic generated by the project site would similarly result in local impacts on wildlife.

**Photo 16.** A Gambel's quail dashes across a road on 3 April 2021. Such road crossings are usually successful, but too often prove fatal to the animal. Photo by Noriko Smallwood.



**Photo 18.** Mourning dove killed by vehicle on a California road. Photo by Noriko Smallwood, 21 June 2020.



**Photo 17.** Great-tailed grackle walks onto a rural road in Imperial County, 4 February 2022.



**Photo 19.** Raccoon killed on Road 31 just east of Highway 505 in Solano County. Photo taken on 10 November 2018.

For wildlife vulnerable to front-end collisions and crushing under tires, road mortality can be predicted from the study of Mendelsohn et al. (2009) as a basis, although it would be helpful to have the availability of more studies like that of Mendelsohn et al. (2009) at additional locations. My analysis of the Mendelsohn et al. (2009) data resulted in an estimated 3,900 animals killed per mile along a county road in Contra Costa County. Two percent of the estimated number of fatalities were birds, and the balance was composed of 34% mammals (many mice and pocket mice, but also ground squirrels, desert cottontails, striped skunks, American badgers, raccoons, and others), 52.3% amphibians (large numbers of California tiger salamanders and California red-legged frogs, but also Sierran treefrogs, western toads, arboreal salamanders, slender salamanders and others), and 11.7% reptiles (many western fence lizards, but also skinks, alligator lizards, and snakes of various species). VMT is useful for predicting wildlife mortality because I was able to quantify miles traveled along the studied reach of Vasco Road during the time period of the Mendelsohn et al. (2009), hence enabling a rate of fatalities per VMT that can be projected to other sites, assuming similar collision fatality rates.

#### Predicting project-generated traffic impacts to wildlife

The IS/MND predicts 521 daily trips and mean 11.74 miles per trip, which would predict 2,232,537 annual vehicle miles traveled (VMT). During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road daily, so the vehicle miles that contributed to my estimate of non-volant fatalities was 19,500 cars and trucks  $\times$  2.5 miles  $\times$  365 days/year  $\times$  1.25 years = 22,242,187.5 vehicle miles per 12,187 wildlife fatalities, or 1,825 vehicle miles per fatality. This rate divided into the IS/MND's prediction of 2,232,537 annual VMT due to the project leads to a prediction of 1,223 vertebrate wildlife fatalities per year. **Operations over 50 years would accumulate 61,150 wildlife fatalities.** It remains unknown whether and to what degree vehicle tires contribute to carcass removals from the roadway, thereby contributing a negative bias to the fatality estimates I made from the Mendelsohn et al. (2009) fatality counts.

Based on my assumptions and simple calculations, the project-generated traffic would cause substantial, significant impacts to wildlife. The IS/MND does not address this potential impact, let alone propose to mitigate it. There is at least a fair argument that can be made for the need to prepare an EIR to analyze this impact. Mitigation measures to improve wildlife safety along roads are available and are feasible, and they need exploration for their suitability with the proposed project.

### **CUMULATIVE IMPACTS**

The IS/MND provides a flawed analysis. It provides no analysis of cumulative impacts specific to biological resources. According to the IS/MND, the project would contribute nothing to cumulative impacts because all project impacts were determined less than significant or less than significant with mitigation. But 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.”

The cumulative effects analysis relies on a false standard for determining whether a project’s impacts will be cumulatively considerable. The IS/MND implies that a given project impact is cumulatively considerable only when it has not been fully mitigated. Essentially, the IS/MND implies that cumulative impacts are really residual impacts left over by inadequate mitigation at the project. This notion of residual impact being the source of cumulative impact is inconsistent with CEQA’s definition of cumulative effects. Individually mitigated projects do not negate the significance of cumulative impacts. If they did, then CEQA would not require a cumulative effects analysis. Even where impacts may be individually limited, their “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (CEQA Guidelines §15064(h)(1)).

Another fundamental flaw of the cumulative effects analysis is its reliance on existing plans as some form of umbrella mitigation without explaining how the umbrella of the other plans would cover the project’s contribution to cumulative impacts. According to the IS/MND (page 63), “The Project is consistent with the General Plan 2025 and General Plan 2025 FPEIR.” according to CEQA Guidelines §15064(h)(3), “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 IS/MND provides no explanation of how implementing the particular requirements of the cited plans would minimize, avoid or offset the project’s contributions to cumulative impacts.

A fair argument can be made for the need to prepare an EIR to provide sufficient analysis of potential project contributions to cumulative impacts and whether and how such impacts can be mitigated.

## **MITIGATION MEASURES**

The IS/MND proposes only one mitigation measure for biological resources adversely affected by the project.

### **MM BIO-1 and BIO-3: Construction Timing and Pre-Construction Surveys for Nesting Birds**

I concur with timing construction to avoid the avian breeding season. I must add, however, that no matter when construction takes place, habitat would be permanently destroyed along with the reproductive capacity that habitat supports. The project offers no compensatory mitigation for this impact.

Preconstruction surveys should be performed for nesting birds and bat roosts, but not as a substitute for detection surveys. Preconstruction surveys are not designed or intended to reduce project impacts. Preconstruction surveys are only intended as last-minute, one-time salvage and rescue operations targeting readily detectable nests or individuals before they are crushed under heavy construction machinery. Because most special-status species are rare and cryptic, and because most bird species are expert at hiding their nests lest they get predated, most of their nests will not be detected by preconstruction surveys without prior support of detection surveys. Locating all of the nests on site would require more effort than is committed during preconstruction surveys.

Detection surveys are needed to inform preconstruction take-avoidance surveys by mapping out where biologists performing preconstruction surveys are most likely to find animals or their breeding sites. Detection surveys are needed to assess impacts and to inform the formulation of appropriate mitigation measures, because preconstruction surveys are not intended for these roles either.

Following detection surveys, preconstruction surveys should be performed. However, an EIR should be prepared, and it should detail how the results of preconstruction surveys would be reported. Without reporting the results, preconstruction surveys are vulnerable to serving as an empty gesture rather than a mitigation measure. For these reasons, and because the salvage of readily detectable animals or their nests would not prevent the permanent loss of habitat, the proposed mitigation measure is not sufficient to reduce the project's impacts to nesting birds to less than significant levels.

It should also be understood that preconstruction surveys would not offset the permanent loss of habitat caused by the project. Compensatory mitigation would be warranted for take of burrowing owls, the nest sites of other birds, and bat habitat.

## **RECOMMENDED MEASURES**

The IS/MND proposes only preconstruction surveys, but no compensatory mitigation for habitat loss or losses to project-generated traffic. A fair argument can be made for the need to prepare an EIR to formulate appropriate measures to mitigate project impacts to wildlife. Below are few suggestions of measures that ought to be considered in an EIR.

**Detection Surveys:** If the project goes forward, species detection surveys are needed to (1) support negative findings of species when appropriate, (2) inform preconstruction surveys to improve their efficacy, (3) estimate project impacts, and (4) inform compensatory mitigation and other forms of mitigation. Detection survey protocols and guidelines are available from resource agencies for most special-status species. Otherwise, professional standards can be learned from the scientific literature and species' experts. Survey protocols that need to be implemented include CDFW (2012) for burrowing owls. The guidelines call for multiple surveys throughout the breeding season.

**Detection Surveys for Bats:** Multiple special-status species of bats likely occur on and around the project site. A qualified bat biologist should be tasked with completing protocol-level detection surveys for bats. It needs to be learned whether bats roost in the area and whether bats forage on site.

**Preconstruction surveys:** Completion of reports of the methods and outcomes of preconstruction surveys should be required. The reports should be made available to the public.

**Construction Monitoring:** If the project goes forward, two or more qualified biologists need to serve as construction monitors. They should have the authority to stop construction when construction poses a threat to wildlife, and they should have the authority to rectify situations that pose threats to wildlife. The events associated with construction monitoring, such as efforts to avoid impacts and findings of dead and injured wildlife, need to be summarized in a report that is subsequently made available to the public.

**Habitat Loss:** If the project goes forward, compensatory mitigation would be warranted for habitat loss. An equal area of land should be protected in perpetuity as close to the project site as possible. Additional compensatory mitigation should be linked to impacts identified in construction monitoring.

**Road Mortality:** Compensatory mitigation is needed for the increased wildlife mortality that would be caused by the project-generated road traffic in the region. I suggest that this mitigation can be directed toward funding research to identify fatality patterns and effective impact reduction measures such as reduced speed limits and wildlife under-crossings or overcrossings of particularly dangerous road segments. Compensatory mitigation can also be provided in the form of donations to wildlife rehabilitation facilities (see below).

**Pest Control:** The project should commit to no use of rodenticides and avicides. It should commit to no placement of poison bait stations outside the buildings.

**Fund Wildlife Rehabilitation Facilities:** Compensatory mitigation ought also to include funding contributions to wildlife rehabilitation facilities to cover the costs of injured animals that will be delivered to these facilities for care. Many animals would likely be injured by collisions with automobiles.

Thank you for your attention,



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Shawn Smallwood, Ph.D.



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*Red-tailed hawk just south of the project site, 1 September 2022.*

# Kenneth Shawn Smallwood

## Curriculum Vitae

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Born May 3, 1963 in  
Sacramento, California.  
Married, father of two.

## Ecologist

### Expertise

- Finding solutions to controversial problems related to wildlife interactions with human industry, infrastructure, and activities;
- Wildlife monitoring and field study using GPS, thermal imaging, behavior surveys;
- Using systems analysis and experimental design principles to identify meaningful ecological patterns that inform management decisions.

### Education

Ph.D. Ecology, University of California, Davis. September 1990.  
M.S. Ecology, University of California, Davis. June 1987.  
B.S. Anthropology, University of California, Davis. June 1985.  
Corcoran High School, Corcoran, California. June 1981.

### Experience

- 762 professional reports, including:
  - 90 peer reviewed publications
  - 24 in non-reviewed proceedings
- 646 reports, declarations, posters and book reviews
- 8 in mass media outlets
- 92 public presentations of research results

Editing for scientific journals: Guest Editor, *Wildlife Society Bulletin*, 2012-2013, of invited papers representing international views on the impacts of wind energy on wildlife and how to mitigate the impacts. Associate Editor, *Journal of Wildlife Management*, March 2004 to 30 June 2007. Editorial Board Member, *Environmental Management*, 10/1999 to 8/2004. Associate Editor, *Biological Conservation*, 9/1994 to 9/1995.

Member, Alameda County Scientific Review Committee (SRC), August 2006 to April 2011. The five-member committee investigated causes of bird and bat collisions in the Altamont Pass Wind Resource Area, and recommended mitigation and monitoring measures. The SRC reviewed the science underlying the Alameda County Avian Protection Program, and advised

the County on how to reduce wildlife fatalities.

Consulting Ecologist, 2004-2007, California Energy Commission (CEC). Provided consulting services as needed to the CEC on renewable energy impacts, monitoring and research, and produced several reports. Also collaborated with Lawrence-Livermore National Lab on research to understand and reduce wind turbine impacts on wildlife.

Consulting Ecologist, 1999-2013, U.S. Navy. Performed endangered species surveys, hazardous waste site monitoring, and habitat restoration for the endangered San Joaquin kangaroo rat, California tiger salamander, California red-legged frog, California clapper rail, western burrowing owl, salt marsh harvest mouse, and other species at Naval Air Station Lemoore; Naval Weapons Station, Seal Beach, Detachment Concord; Naval Security Group Activity, Skaggs Island; National Radio Transmitter Facility, Dixon; and, Naval Outlying Landing Field Imperial Beach.

Part-time Lecturer, 1998-2005, California State University, Sacramento. Instructed Mammalogy, Behavioral Ecology, and Ornithology Lab, Contemporary Environmental Issues, Natural Resources Conservation.

Senior Ecologist, 1999-2005, BioResource Consultants. Designed and implemented research and monitoring studies related to avian fatalities at wind turbines, avian electrocutions on electric distribution poles across California, and avian fatalities at transmission lines.

Chairman, Conservation Affairs Committee, The Wildlife Society--Western Section, 1999-2001. Prepared position statements and led efforts directed toward conservation issues, including travel to Washington, D.C. to lobby Congress for more wildlife conservation funding.

Systems Ecologist, 1995-2000, Institute for Sustainable Development. Headed ISD's program on integrated resources management. Developed indicators of ecological integrity for large areas, using remotely sensed data, local community involvement and GIS.

Associate, 1997-1998, Department of Agronomy and Range Science, University of California, Davis. Worked with Shu Geng and Mingua Zhang on several studies related to wildlife interactions with agriculture and patterns of fertilizer and pesticide residues in groundwater across a large landscape.

Lead Scientist, 1996-1999, National Endangered Species Network. Informed academic scientists and environmental activists about emerging issues regarding the Endangered Species Act and other environmental laws. Testified at public hearings on endangered species issues.

Ecologist, 1997-1998, Western Foundation of Vertebrate Zoology. Conducted field research to determine the impact of past mercury mining on the status of California red-legged frogs in Santa Clara County, California.

Senior Systems Ecologist, 1994-1995, EIP Associates, Sacramento, California. Provided consulting services in environmental planning, and quantitative assessment of land units for their conservation and restoration opportunities based on ecological resource requirements of 29 special-status species. Developed ecological indicators for prioritizing areas within Yolo County

to receive mitigation funds for habitat easements and restoration.

Post-Graduate Researcher, 1990-1994, Department of Agronomy and Range Science, *U.C. Davis*. Under Dr. Shu Geng's mentorship, studied landscape and management effects on temporal and spatial patterns of abundance among pocket gophers and species of Falconiformes and Carnivora in the Sacramento Valley. Managed and analyzed a data base of energy use in California agriculture. Assisted with landscape (GIS) study of groundwater contamination across Tulare County, California.

Work experience in graduate school: Co-taught Conservation Biology with Dr. Christine Schonewald, 1991 & 1993, UC Davis Graduate Group in Ecology; Reader for Dr. Richard Coss's course on Psychobiology in 1990, UC Davis Department of Psychology; Research Assistant to Dr. Walter E. Howard, 1988-1990, UC Davis Department of Wildlife and Fisheries Biology, testing durable baits for pocket gopher management in forest clearcuts; Research Assistant to Dr. Terrell P. Salmon, 1987-1988, UC Wildlife Extension, Department of Wildlife and Fisheries Biology, developing empirical models of mammal and bird invasions in North America, and a rating system for priority research and control of exotic species based on economic, environmental and human health hazards in California. Student Assistant to Dr. E. Lee Fitzhugh, 1985-1987, UC Cooperative Extension, Department of Wildlife and Fisheries Biology, developing and implementing statewide mountain lion track count for long-term monitoring.

Fulbright Research Fellow, Indonesia, 1988. Tested use of new sampling methods for numerical monitoring of Sumatran tiger and six other species of endemic felids, and evaluated methods used by other researchers.

## Projects

Repowering wind energy projects through careful siting of new wind turbines using map-based collision hazard models to minimize impacts to volant wildlife. Funded by wind companies (principally NextEra Renewable Energy, Inc.), California Energy Commission and East Bay Regional Park District, I have collaborated with a GIS analyst and managed a crew of five field biologists performing golden eagle behavior surveys and nocturnal surveys on bats and owls. The goal is to quantify flight patterns for development of predictive models to more carefully site new wind turbines in repowering projects. Focused behavior surveys began May 2012 and continue. Collision hazard models have been prepared for seven wind projects, three of which were built. Planning for additional repowering projects is underway.

Test avian safety of new mixer-ejector wind turbine (MEWT). Designed and implemented a before-after, control-impact experimental design to test the avian safety of a new, shrouded wind turbine developed by Ogin Inc. (formerly known as FloDesign Wind Turbine Corporation). Supported by a \$718,000 grant from the California Energy Commission's Public Interest Energy Research program and a 20% match share contribution from Ogin, I managed a crew of seven field biologists who performed periodic fatality searches and behavior surveys, carcass detection trials, nocturnal behavior surveys using a thermal camera, and spatial analyses with the collaboration of a GIS analyst. Field work began 1 April 2012 and ended 30 March 2015 without Ogin installing its MEWTs, but we still achieved multiple important scientific advances.

Reduce avian mortality due to wind turbines at Altamont Pass. Studied wildlife impacts caused by 5,400 wind turbines at the world's most notorious wind resource area. Studied how impacts are perceived by monitoring and how they are affected by terrain, wind patterns, food resources, range management practices, wind turbine operations, seasonal patterns, population cycles, infrastructure management such as electric distribution, animal behavior and social interactions.

Reduce avian mortality on electric distribution poles. Directed research toward reducing bird electrocutions on electric distribution poles, 2000-2007. Oversaw 5 founts of fatality searches at 10,000 poles from Orange County to Glenn County, California, and produced two large reports.

Cook *et al.* v. Rockwell International *et al.*, No. 90-K-181 (D. Colorado). Provided expert testimony on the role of burrowing animals in affecting the fate of buried and surface-deposited radioactive and hazardous chemical wastes at the Rocky Flats Plant, Colorado. Provided expert reports based on four site visits and an extensive document review of burrowing animals. Conducted transect surveys for evidence of burrowing animals and other wildlife on and around waste facilities. Discovered substantial intrusion of waste structures by burrowing animals. I testified in federal court in November 2005, and my clients were subsequently awarded a \$553,000,000 judgment by a jury. After appeals the award was increased to two billion dollars.

Hanford Nuclear Reservation Litigation. Provided expert testimony on the role of burrowing animals in affecting the fate of buried radioactive wastes at the Hanford Nuclear Reservation, Washington. Provided three expert reports based on three site visits and extensive document review. Predicted and verified a certain population density of pocket gophers on buried waste structures, as well as incidence of radionuclide contamination in body tissue. Conducted transect surveys for evidence of burrowing animals and other wildlife on and around waste facilities. Discovered substantial intrusion of waste structures by burrowing animals.

Expert testimony and declarations on proposed residential and commercial developments, gas-fired power plants, wind, solar and geothermal projects, water transfers and water transfer delivery systems, endangered species recovery plans, Habitat Conservation Plans and Natural Communities Conservation Programs. Testified before multiple government agencies, Tribunals, Boards of Supervisors and City Councils, and participated with press conferences and depositions. Prepared expert witness reports and court declarations, which are summarized under Reports (below).

Protocol-level surveys for special-status species. Used California Department of Fish and Wildlife and US Fish and Wildlife Service protocols to search for California red-legged frog, California tiger salamander, arroyo southwestern toad, blunt-nosed leopard lizard, western pond turtle, giant kangaroo rat, San Joaquin kangaroo rat, San Joaquin kit fox, western burrowing owl, Swainson's hawk, Valley elderberry longhorn beetle and other special-status species.

Conservation of San Joaquin kangaroo rat. Performed research to identify factors responsible for the decline of this endangered species at Lemoore Naval Air Station, 2000-2013, and implemented habitat enhancements designed to reverse the trend and expand the population.

Impact of West Nile Virus on yellow-billed magpies. Funded by Sacramento-Yolo Mosquito and Vector Control District, 2005-2008, compared survey results pre- and post-West Nile Virus epidemic for multiple bird species in the Sacramento Valley, particularly on yellow-billed magpie and American crow due to susceptibility to WNV.

Workshops on HCPs. Assisted Dr. Michael Morrison with organizing and conducting a 2-day workshop on Habitat Conservation Plans, sponsored by Southern California Edison, and another 1-day workshop sponsored by PG&E. These Workshops were attended by academics, attorneys, and consultants with HCP experience. We guest-edited a Proceedings published in Environmental Management.

Mapping of biological resources along Highways 101, 46 and 41. Used GPS and GIS to delineate vegetation complexes and locations of special-status species along 26 miles of highway in San Luis Obispo County, 14 miles of highway and roadway in Monterey County, and in a large area north of Fresno, including within reclaimed gravel mining pits.

GPS mapping and monitoring at restoration sites and at Caltrans mitigation sites. Monitored the success of elderberry shrubs at one location, the success of willows at another location, and the response of wildlife to the succession of vegetation at both sites. Also used GPS to monitor the response of fossorial animals to yellow star-thistle eradication and natural grassland restoration efforts at Bear Valley in Colusa County and at the decommissioned Mather Air Force Base in Sacramento County.

Mercury effects on Red-legged Frog. Assisted Dr. Michael Morrison and US Fish and Wildlife Service in assessing the possible impacts of historical mercury mining on the federally listed California red-legged frog in Santa Clara County. Also measured habitat variables in streams.

Opposition to proposed No Surprises rule. Wrote a white paper and summary letter explaining scientific grounds for opposing the incidental take permit (ITP) rules providing ITP applicants and holders with general assurances they will be free of compliance with the Endangered Species Act once they adhere to the terms of a “properly functioning HCP.” Submitted 188 signatures of scientists and environmental professionals concerned about No Surprises rule US Fish and Wildlife Service, National Marine Fisheries Service, all US Senators.

Natomas Basin Habitat Conservation Plan alternative. Designed narrow channel marsh to increase the likelihood of survival and recovery in the wild of giant garter snake, Swainson’s hawk and Valley Elderberry Longhorn Beetle. The design included replication and interspersions of treatments for experimental testing of critical habitat elements. I provided a report to Northern Territories, Inc.

Assessments of agricultural production system and environmental technology transfer to China. Twice visited China and interviewed scientists, industrialists, agriculturalists, and the Directors of the Chinese Environmental Protection Agency and the Department of Agriculture to assess the need and possible pathways for environmental clean-up technologies and trade opportunities between the US and China.

Yolo County Habitat Conservation Plan. Conducted landscape ecology study of Yolo County to spatially prioritize allocation of mitigation efforts to improve ecosystem functionality within the County from the perspective of 29 special-status species of wildlife and plants. Used a hierarchically structured indicators approach to apply principles of landscape and ecosystem ecology, conservation biology, and local values in rating land units. Derived GIS maps to help guide the conservation area design, and then developed implementation strategies.



Mountain lion track count. Developed and conducted a carnivore monitoring program throughout California since 1985. Species counted include mountain lion, bobcat, black bear, coyote, red and gray fox, raccoon, striped skunk, badger, and black-tailed deer. Vegetation and land use are also monitored. Track survey transect was established on dusty, dirt roads within randomly selected quadrats.

Sumatran tiger and other felids. Upon award of Fulbright Research Fellowship, I designed and initiated track counts for seven species of wild cats in Sumatra, including Sumatran tiger, fishing cat, and golden cat. Spent four months on Sumatra and Java in 1988, and learned Bahasa Indonesia, the official Indonesian language.

Wildlife in agriculture. Beginning as post-graduate research, I studied pocket gophers and other wildlife in 40 alfalfa fields throughout the Sacramento Valley, and I surveyed for wildlife along a 200 mile road transect since 1989 with a hiatus of 1996-2004. The data are analyzed using GIS and methods from landscape ecology, and the results published and presented orally to farming groups in California and elsewhere. I also conducted the first study of wildlife in cover crops used on vineyards and orchards.

Agricultural energy use and Tulare County groundwater study. Developed and analyzed a data base of energy use in California agriculture, and collaborated on a landscape (GIS) study of groundwater contamination across Tulare County, California.

Pocket gopher damage in forest clear-cuts. Developed gopher sampling methods and tested various poison baits and baiting regimes in the largest-ever field study of pocket gopher management in forest plantations, involving 68 research plots in 55 clear-cuts among 6 National Forests in northern California.

Risk assessment of exotic species in North America. Developed empirical models of mammal and bird species invasions in North America, as well as a rating system for assigning priority research and control to exotic species in California, based on economic, environmental, and human health hazards.

### **Peer Reviewed Publications**

Smallwood, K. S. 2022. Utility-scale solar impacts to volant wildlife. *Journal of Wildlife Management*: e22216. <https://doi.org/10.1002/jwmg.22216>

Smallwood, K. S., and N. L. Smallwood. 2021. Breeding Density and Collision Mortality of Loggerhead Shrike (*Lanius ludovicianus*) in the Altamont Pass Wind Resource Area. *Diversity* 13, 540. <https://doi.org/10.3390/d13110540>.

Smallwood, K. S. 2020. USA wind energy-caused bat fatalities increase with shorter fatality search intervals. *Diversity* 12(98); <https://doi.org/10.3390/d12030098>

Smallwood, K. S., D. A. Bell, and S. Standish. 2020. Dogs detect larger wind energy impacts on bats and birds. *Journal of Wildlife Management* 84:852-864. DOI: 10.1002/jwmg.21863.

Smallwood, K. S., and D. A. Bell. 2020. Relating bat passage rates to wind turbine fatalities.

- Diversity 12(84); doi:10.3390/d12020084.
- Smallwood, K. S., and D. A. Bell. 2020. Effects of wind turbine curtailment on bird and bat fatalities. *Journal of Wildlife Management* 84:684-696. DOI: 10.1002/jwmg.21844
- Kitano, M., M. Ino, K. S. Smallwood, and S. Shiraki. 2020. Seasonal difference in carcass persistence rates at wind farms with snow, Hokkaido, Japan. *Ornithological Science* 19: 63 – 71.
- Smallwood, K. S. and M. L. Morrison. 2018. Nest-site selection in a high-density colony of burrowing owls. *Journal of Raptor Research* 52:454-470.
- Smallwood, K. S., D. A. Bell, E. L. Walther, E. Leyvas, S. Standish, J. Mount, B. Karas. 2018. Estimating wind turbine fatalities using integrated detection trials. *Journal of Wildlife Management* 82:1169-1184.
- Smallwood, K. S. 2017. Long search intervals under-estimate bird and bat fatalities caused by wind turbines. *Wildlife Society Bulletin* 41:224-230.
- Smallwood, K. S. 2017. The challenges of addressing wildlife impacts when repowering wind energy projects. Pages 175-187 in Köppel, J., Editor, *Wind Energy and Wildlife Impacts: Proceedings from the CWW2015 Conference*. Springer. Cham, Switzerland.
- May, R., Gill, A. B., Köppel, J. Langston, R. H.W., Reichenbach, M., Scheidat, M., Smallwood, S., Voigt, C. C., Hüppop, O., and Portman, M. 2017. Future research directions to reconcile wind turbine–wildlife interactions. Pages 255-276 in Köppel, J., Editor, *Wind Energy and Wildlife Impacts: Proceedings from the CWW2015 Conference*. Springer. Cham, Switzerland.
- Smallwood, K. S. 2017. Monitoring birds. M. Perrow, Ed., *Wildlife and Wind Farms - Conflicts and Solutions*, Volume 2. Pelagic Publishing, Exeter, United Kingdom. [www.bit.ly/2v3cR9Q](http://www.bit.ly/2v3cR9Q)
- Smallwood, K. S., L. Neher, and D. A. Bell. 2017. Turbine siting for raptors: an example from Repowering of the Altamont Pass Wind Resource Area. M. Perrow, Ed., *Wildlife and Wind Farms - Conflicts and Solutions*, Volume 2. Pelagic Publishing, Exeter, United Kingdom. [www.bit.ly/2v3cR9Q](http://www.bit.ly/2v3cR9Q)
- Johnson, D. H., S. R. Loss, K. S. Smallwood, W. P. Erickson. 2016. Avian fatalities at wind energy facilities in North America: A comparison of recent approaches. *Human–Wildlife Interactions* 10(1):7-18.
- Sadar, M. J., D. S.-M. Guzman, A. Mete, J. Foley, N. Stephenson, K. H. Rogers, C. Grosset, K. S. Smallwood, J. Shipman, A. Wells, S. D. White, D. A. Bell, and M. G. Hawkins. 2015. Mange Caused by a novel *Micnemidocoptes* mite in a Golden Eagle (*Aquila chrysaetos*). *Journal of Avian Medicine and Surgery* 29(3):231-237.
- Smallwood, K. S. 2015. Habitat fragmentation and corridors. Pages 84-101 in M. L. Morrison and H. A. Mathewson, Eds., *Wildlife habitat conservation: concepts, challenges, and solutions*. John Hopkins University Press, Baltimore, Maryland, USA.



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



September 15, 2022  
*Sent via email*

Alyssa Berlino  
Associate Planner  
City of Riverside  
3900 Main Street, 3<sup>rd</sup> Floor  
Riverside, CA 92522

Subject: Mitigated Negative Declaration  
Marlborough Northgate Light Industrial/Warehouse Buildings Project  
State Clearinghouse No. 2022080606

Dear Ms. Berlino:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) on August 26, 2022, from the City of Riverside (City) for the Marlborough Warehouse Project (Project) for Magnon Companies (Project Applicant/Proponent) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **CDFW ROLE**

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Alyssa Berlino, Associate Planner  
City of Riverside  
September 15, 2022  
Page 2 of 8

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

### *Project Location*

The Marlborough Northgate Light Industrial/Warehouse Buildings Project covers approximately 6 acres, located at 900 Marlborough Avenue on the southwest corner of Northgate Street and Marlborough Avenue in the City of Riverside. The proposed Project includes three parcels: Assessor's Parcel Numbers 249-130-023, 240-130-024, and 240-130-026.

### *Project Description*

The proposed Project includes: 1) an industrial non-refrigerated warehouse A with 38,000 square feet of warehouse/industrial area, 1,000 square feet of office space, four truck loading docks and passenger vehicle parking spaces; 2) an industrial non-refrigerated warehouse B with 56,950 square feet of warehouse, 3,000 square feet of manufacturing area, 1,000 square feet for office space, six truck-loading docks and 71 passenger vehicle parking spaces; and 3) additional improvements of 71,404 square feet of parking, drive aisles, associated hardscape, and sidewalks and 73,789 square feet of landscaping. The Box Springs Mountain Reserve is located to the southeast of the Project site.

## **COMMENTS AND RECOMMENDATIONS**

To assist the City of Riverside in adequately mitigating the Project's potentially significant impacts to biological resources, CDFW offers the comments and recommendations presented below, and in Attachment 1 "Mitigation Monitoring and Reporting Program" for consideration by the City of Riverside prior to adoption of the MND for the Project.

### Nesting Birds and Migratory Bird Treaty Act

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it

Alyssa Berlino, Associate Planner  
 City of Riverside  
 September 15, 2022  
 Page 3 of 8

unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act.

Birds have been documented nesting outside of the nesting bird period identified (February 15 to August 31) in the draft MND. For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame (February 15 to August 31) due to recent changes in timing of avian breeding activity.

CDFW recommends inclusion of the following mitigation measure for nesting birds (added text shown in **bold** and deleted text shown in ~~strikethrough~~):

MM BIO-1: Prior to the issuance of any grading permit that would impact potentially suitable nesting habitat for avian species, the project applicant shall **ensure that impacts to nesting bird species at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures** ~~retain a qualified biologist;~~ and adhere to the following:

1. **As a condition of a grading permit and regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist within three (3) days prior to vegetation clearing or ground-disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Surveys shall be conducted by the qualified avian biologist at the appropriate time of day/night, and during appropriate weather conditions. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every**

Alyssa Berlino, Associate Planner  
City of Riverside  
September 15, 2022  
Page 4 of 8

**effort to avoid potential nest predation as a result of survey and monitoring efforts.**

- 2. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist and submitted to City of Riverside for review and approval. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and City of Riverside verify that the nests are no longer occupied, and the juvenile birds can survive independently from the nests. The results of the nesting bird survey shall be reviewed and approved by City of Riverside prior to initiating vegetation removal or ground-disturbance activities. Fencing shall be evaluated on a weekly basis by the qualified biologist and shall be subject to field inspections by City staff while the nests are active, if warranted. ~~Vegetation removal activities shall be scheduled outside the nesting season (September 1 to February 14 for songbirds; September 1 to January 14 for raptors) to the extent feasible to avoid potential impacts to nesting birds and/or ground nesters. Any construction activities that occur during typical nesting season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors) will require that all suitable habitat, on-site and within 300-feet surrounding the site (as feasible), be thoroughly surveyed for the presence of nesting birds by a qualified biologist before commencement ground disturbances. If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for nonraptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The onsite biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance~~**

Alyssa Berlino, Associate Planner  
City of Riverside  
September 15, 2022  
Page 5 of 8

management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

### Drought-tolerant Landscaping

California is experiencing one of the most severe droughts on record. To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data> . The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **ENVIRONMENTAL DOCUMENT FILING FEES**

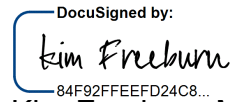
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

Alyssa Berlino, Associate Planner  
City of Riverside  
September 15, 2022  
Page 6 of 8

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND for the Marlborough Northgate Light Industrial/ Warehouse Buildings Project in the City of Riverside (SCH No. 2022080606) and recommends that the City of Riverside address CDFW's comments and concerns prior to adoption of the MND to avoid, minimize, or mitigate Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to John Dempsey, Environmental Scientist, at [john.dempsey@wildlife.ca.gov](mailto:john.dempsey@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84F92FFEEFD24C8...

9/15/2022

Kim Freeburn-Marquez  
Acting Environmental Program Manager

ec: **California Department of Fish and Wildlife:**

Heather Pert, Senior Environmental Scientist Supervisory  
John Dempsey, Environmental Scientist  
HCPB CEQA Program, Habitat Conservation Planning Branch

### State Clearinghouse:

Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

**Attachment 1:** Mitigation and Monitoring Report for CDFW-Proposed Mitigation Measures



Alyssa Berlino, Associate Planner  
 City of Riverside  
 September 15, 2022  
 Page 7 of 8

## ATTACHMENT 1

### MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

#### PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during Project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

#### TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>MM BIO-1: Prior to the issuance of any grading permit that would impact potentially suitable nesting habitat for avian species, the project applicant shall ensure that impacts to nesting bird species at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization; and adhere to the following:</p> <p>1. As a condition of a grading permit and regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist within three (3) days prior to vegetation clearing or ground-disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Surveys shall be conducted by the qualified avian biologist at the appropriate time of day/night, and during appropriate weather conditions. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density,</p>	<p>Prior to issuance of any grading or construction permits by the County</p>	<p>Project Applicant</p>

Alyssa Berlino, Associate Planner  
City of Riverside  
September 15, 2022  
Page 8 of 8

<p>and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.</p> <p>2. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist and submitted to City of Riverside for review and approval. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and City of Riverside verify that the nests are no longer occupied, and the juvenile birds can survive independently from the nests. The results of the nesting bird survey shall be reviewed and approved by City of Riverside prior to initiating vegetation removal or ground-disturbance activities. Fencing shall be evaluated on a weekly basis by the qualified biologist and shall be subject to field inspections by City staff while the nests are active, if warranted. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.</p>		
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**VIA EMAIL ONLY**

September 20, 2022

Alyssa Berlino, Associate Planner  
City of Riverside, Planning Division  
3900 Main Street, 3rd Floor  
Riverside, CA 92522  
[aberlino@riversideca.gov](mailto:aberlino@riversideca.gov)

**Re: Notice of Withdrawal of Comment  
Marlborough Northgate Light Industrial/Warehouse Buildings (Planning Case PR-  
2021-000932; APN Nos.: 249-130-023, 249-130-024 and 249-130-026)**

Dear Ms. Berlino:

On September 14, 2022, Supporters Alliance for Environmental Responsibility ("SAFER") submitted a comment letter to the City of Riverside Planning Division, expressing its concerns related to the Initial Study/Mitigated Negative Declaration ("IS/MND") prepared for the Marlborough Northgate Light Industrial/Warehouse Buildings Project (Planning Case PR-2021-000932) ("Project").

SAFER is pleased to announce that they have reached an agreement with the Property Owner ("Property Owner"), who sought approvals from the City of Riverside for the Project, to resolve the issues raised in SAFER's comment letters. Pursuant to the agreement, the Property Owner has agreed to implement additional measures to address SAFER's environmental concerns. SAFER believes that its concerns raised in the comment letter have been adequately addressed and accordingly withdraws the comment letters. SAFER has no further objection to the Project.

Sincerely,

Adam Frankel  
Lozeau Drury LLP



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## MEMORANDUM

To: Alyssa Wiedeman (Berlino), City of Riverside  
Via email: [ABerlino@riversideca.gov](mailto:ABerlino@riversideca.gov)

From: Ray Hussey, Enplanners

Date: September 19, 2022

Subject: Marlborough Northgate (PR-2021-000932) IS/MND  
Responses to California Department of Fish and Wildlife and Friends of Riverside  
Hills Comments

Enplanners has reviewed the comments received by the California Department of Fish and Wildlife (CDFW) and Friends of Riverside's Hills (FORH) and offers the following responses.

### **CDFW Letter dated September 15, 2022**

The CDFW commenter suggests changes to the mitigation measure pertaining to preconstruction nesting bird surveys and offers general guidance regarding drought tolerant landscaping, the CNDDB data base, and environmental filing fees. The following response is made to the comment regarding the preconstruction mitigation measure.

*Preconstruction Surveys.* The IS/MND identified potential impacts to nesting birds could occur if Project construction were to start after late winter to late summer nesting season should birds occupy the site prior to construction. For this reason, Mitigation Measure (MM) BIO-1 is required to ensure nesting birds are not harmed or disturbed during Project construction. The Project site is mostly covered by weeds and related ruderal vegetation plus a queen palm, some Washingtonian palms, and small street trees along Marlborough Avenue. The Project site is void of suitable habitat for the bird species identified by CDFW known to nest year-round (i.e., barn owl, certain hummingbird species, and red-tailed hawk). Therefore, CDFW's suggested changes to MM BIO-1 are unnecessary. Under CEQA, mitigation measures are not necessary to address less than significant impacts.

### **FORH Emails dated September 12 and 14, 2022**

The two emails submitted by Richard Block on behalf of FORH contain similar comments focusing on the Project's proximity to the Gage Canal Multi-Purpose Trail (Trail). The Gage Canal is located along the south side of the Project, and the Trail crosses the Project site as shown on Figure 2 in the IS/MND. The commentator notes that analysis of impacts to Trail users related to air pollution, noise, lighting, and aesthetics is required.

The Trail alignment follows an informal trail that follows the northern base of the nearby Box Springs Mountains. A litany of existing commercial and industrial projects are also adjacent to the

Trail and the Trail was historically originated by pedestrians who would trespass on private property. The Project proposes to dedicate the portion of the Project site in the southeast corner to the City to accommodate the trail as acknowledged by the commenter ‘the Report to the Council on that item stated “Grant Deed Turn 9, LLC., headquartered at 1325 Spruce Street #100, Riverside, CA 92507, is currently developing their property at 900 Marlborough Avenue, and has proposed to provide a 184 square feet Grant Deed of undeveloped land from Assessor’s Parcel Number 249-130-026 to RPU.”’

The City is moving forward with the Trail subject to its own environmental review (SCH Number 2022020488). The commenter’s primary concern is the adjacency of the Trail to the proposed warehouse buildings. However, the informal trail already exists today in an urban environment, primarily in an industrial and commercial section of the City. Specifically, the Project site is included in the Hunter Industrial Park. “The neighborhood consists almost entirely of industrial and commercial office development, with a small single-family residential area situated near the interchange of the 60 Freeway and I-215.” <https://www.riversideca.gov/athomeinriverside/neighborhoods-hunterindustrialpark.asp>.

The commenter appears to contend that the adjacency of the Trail merits heightened review under CEQA. In doing so, the commenter argues that the City should interpret the trail as a “park” under newly enacted regulations implementing the City’s Good Neighbor Guidelines for Siting New and/or Modified Industrial Facilities (Guidelines). However, the Project is not subject to the Guidelines and a trail is not a park. The City’s interpretation of its own code is entitled to significant deference, and CEQA does not merit special consideration of trails or parks. In addition, the City is unaware of any other jurisdiction which identifies a trail as a sensitive receptor. In a recent ordinance described by the attorney general as a “model” which sets for “the most stringent environmental standards in California for new warehouse projects” (<https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-innovative-settlement-city-fontana-address>) specifically excludes trails ([https://www.fontana.org/3453/Final-Approved-Industrial-Commerce-Cente; Sec. 9-71\(1\)](https://www.fontana.org/3453/Final-Approved-Industrial-Commerce-Cente; Sec. 9-71(1))). Trails are excluded for a myriad of uses, including the transitory nature of the use and the fact that trails are routinely included in urban settings.

Regarding commenters statement that the IS/MND needs to be updated to address impacts associated with aesthetics, lighting, air pollution, and noise, all of these issues are addressed in detail in the IS/MND because the southeast corner of the Project site is adjacent to the MSHCP conservation area. The IS/MND specifically addresses short term construction and operational impacts associated with night time lighting, day and night time noise, and LST impacts to the nearby MSHCP conservation area. The proposed Project would have a less than significant effect on viewsheds as seen from the Trail due to the topography of the site. The Trail would be higher than the proposed buildings, and more importantly, the viewsheds are oriented in a southerly direction and away from the proposed buildings and the existing industrial environment (see attached aerial).

Lastly, the commenter is directed to the final site plan and project description to observe the accommodation of various requests that have been implemented as part of the Project at the request of the commenter in its letter dated February 22, 2021, including but not limited to, additional screening and landscaping, as well as lighting modifications.

