

November 30, 2023

The following is a response from Adkan Engineers, Gonzales Environmental Consultants LLC, and ECORP Consulting Inc. to the April 28, 2022, comment letter submitted by Lozeau Drury LLP on the Initial Study/Mitigated Negative Declaration (MND) for the Amazing 34 Distribution Center Project (Project). This revised response focuses on Section III: Discussion of the letter.¹ The introduction and Sections I and II of the letter contain the commenter's discussion of the project description and legal background and do not raise an environmental issue necessitating a response.

Section A: The City Has Allowed Project Development Prior to the Certification of the Final MND, Thereby Undermining the Fundamental Purpose of CEQA – To Require Consideration of Environmental Factors Prior to Project Implementation.

As further explained in Section 2.3 of the MND, the existing project site condition has been updated to remove “existing buildings” as this project does not include the demolition of existing buildings. The demolition of the former buildings was completed in 2021 pursuant to a demolition permit (#D2100012, issued by the City of San Bernardino on April 29, 2021) in response to emergency orders from the San Bernardino County Fire Protection District. On March 2, 2021, the San Bernardino County Fire Protection District sent a letter to the City of San Bernardino Code Enforcement stating “A Fire and Life Safety inspection was conducted at a vacant building located at 791 S. Waterman Ave., San Bernardino. This building has prior fire damage and the condition of the structure constitutes a clear and imminent threat to human life, safety, and/or health and is deemed and attractive nuisance for vagrants, illegal activities, and an immediate life safety hazard for neighboring residences and businesses.” The San Bernardino County Fire Protection District therefore declared the property unsafe and subject to immediate demolition. A permit application for demolition was submitted to the City on March 3, 2021, and demolition permit #D2100012 was issued on April 29, 2021. The demolition permit also covered the second warehouse building because the trespassers had stripped out the electrical and mechanical infrastructure in the second building, making it susceptible to hazards. At the time environmental review commenced for the proposed project, the former industrial buildings were in place, so impacts were analyzed to include their demolition to make way for the project. This resulted in a more conservative environmental impact analysis for the proposed project. The impacts and “Existing Conditions” have been revised to clarify that the demolition of the former buildings has been completed. Further, demolition of the former buildings was not done to effectuate

¹ An earlier version of this response was submitted to the City and made available on the City's website. This response has since been updated and replaces the earlier version in its entirety.

the project, but instead to alleviate a public health and safety hazard. There has been no violation of CEQA due to the 2021 demolition of the two former buildings on site.

Section B: The MND Fails to Provide an Accurate Project Description.

The Project Summary in Section 3 of the MND has been revised with an updated description of the current site condition to reflect the demolition of the prior buildings in 2021 in response to emergency orders issued by the San Bernardino County Fire Protection District due their findings that the buildings “constitute a clear and imminent threat to human life, safety, and/or health and is deemed an attractive nuisance for vagrants, illegal activities, and an immediate life safety hazard for neighboring residences and businesses” and declaring the property unsafe and subject to immediate demolition. See also response to **Section A**.

Section C: The MND Incorrectly Reports the Project’s Baseline Environmental Conditions, Therefore its Analysis of Impacts is Inadequate.

At the time environmental review commenced for the Project, the former industrial buildings were in place, so impacts were analyzed to include their demolition. This resulted in a more conservative environmental impact analysis for the Project, which has been revised to clarify that the demolition of the former buildings has been completed. This clarification does not require recirculation of the MND under Title 14 of the California Code of Regulations, section 15073.5 because it does not constitute a “substantial revision,” i.e., it does not constitute a new, avoidable significant effect. Recirculation is not required for information added to a negative declaration that merely clarifies, amplifies, or makes insignificant modifications. See response to **Section A** above and **Section E** below for details.

Section D: The Project Will Have Significant Adverse Energy Impacts That the IS/MND Fails to Adequately Analyze and Mitigate.

1. The MND Fails to Adequately Discuss Renewable Energy Sources.

RK Engineering Group Inc.’s April 28, 2022 “peer review” of the project’s energy impact requests that the MND discuss whether renewable energy sources could be incorporated into the project. Section 6 of the Environmental Checklist in the MND has been revised to clarify that the project includes the installation of solar panels for the warehouse to further reduce energy consumption, which would be a condition of project approval. More specifically, the Project will be consistent with the new Nonresidential Mandatory Requirements of the 2022 California Energy Code – Sub Chapter 5 – Section 140.10 - Photovoltaic Generation and Battery Storage Systems and 2022 California Green Code - Chapter 5 for Electric Vehicle Charging. For the reasons explained in Section 6(a) of the Environmental Checklist in the MND, the project would not result in a significant energy impact, and therefore no mitigation is required under CEQA.

2. The MND Fails to consider and Implement all Feasible Mitigation Measures.

RK Engineering Group further requests that “additional energy mitigation measures” be imposed on the project, citing examples of measures to mitigate air quality and greenhouse gas impacts in the California Attorney General’s Bureau of Environmental Justice’s *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*. CEQA does not require mitigation where impacts are less than significant. Nonetheless, the proposed project will include solar panels as a condition of project approval. More specifically, the Project will be consistent with the new Nonresidential Mandatory Requirements of the 2022 California Energy Code – Sub Chapter 5 – Section 140.10 - Photovoltaic Generation and Battery Storage Systems and 2022 California Green Code - Chapter 5 for Electric Vehicle Charging. This would generate enough energy to offset the building’s lighting, general power and air conditioning and would further reduce energy use. The applicant is willing to consider additional, feasible project conditions, such as using light colored roofing materials with a solar reflective index of 78 or greater and designing skylights to provide natural light to interior worker areas, to further reduce energy related impacts.

Section E. The Project Will Have Significant Adverse Biological Impacts That the IS/MND Fails to Adequately Analyze and Mitigate.

(Response Provided by Gonzales Environmental Consulting, Adkan Engineers, and ECORP Consulting Inc.)

1. The IS/MND is inadequate in its characterization of the existing environmental settings as it relates to wildlife.

A General Biological Resource Assessment and Habitat Assessment was prepared by Gonzales Environmental Consulting, LLC on July 15, 2021 (2021 Biological Report) for the Project, which concluded that the Project would not have a significant impact on sensitive species or habitat. The 2021 Biological Report stated that the survey results for sensitive species was good for one year. For this reason, in October 2023 an updated database search and field survey were completed by ECORP Consulting Inc. to update the biological information for the Project.²

The Project’s baseline and impacts are established in the 2021 Biological Report and were confirmed in the 2023 update. GEC biologists conducted an extensive literature review and conducted field visits of the Project site in 2021. ECORP biologists also conducted literature review and field visits of the Project site in 2023. During the 2021 and 2023 field visits, a habitat-based analysis was performed to evaluate the potential

² Gonzales Environmental Consulting, LLC was no longer available to update its report.

for special-status species to occur at the Project site. Both the 2021 Biological Report and the 2023 update conclude that that no special status species have the potential to occur on site.

The comment relies on a letter prepared by Shawn Smallwood, PhD. Dr. Smallwood's letter provides no facts to indicate that the baseline conditions analyzed in the MND were inadequate to serve as a baseline or that the Project would have greater impacts on wildlife than already discussed in the 2021 Biological Report and MND. The 2021 Biological Report reviewed the following resources: California Natural Diversity Database, California Native Plant Society's online inventory of Rare and Endangered Plants, USFWS database of designated Critical Habitat, USFWS Information, Planning and Conservation System, US Forest Service plant and animal lists, eBird, and Calflora What Grows Here online application. The 2023 update included a search of the California Natural Diversity Database, the California Native Plant Society's online inventory of Rare and Endangered Plants, USFWS database of Critical Habitat, eBird, iNaturalist, USFWS Information, Planning and Conservation System, and several other databases and other literature to compile a thorough analysis of the site.

Contrary to Dr. Smallwood's assertion, the GEC report cites eBird as one of its sources of literature review. Both eBird and iNaturalist database searches were raised by the commenter. Both resources are considered citizen science and are general to a region or to specific "hot spots" rather than being site specific, and they are not the same as peer-reviewed research and studies made of a specific area by local biologists. The inclusion or absence of these citizen science databases does not, in and of itself, render the analysis inadequate.

In contrast to the two firms that analyzed the Project's potential biological impacts, Dr. Smallwood only provides a list of species he observed during a visit during the spring migration and lists some additional species, none of which are unexpected to occur in the manner observed by Dr. Smallwood. For instance, in his analysis he defines "very close" as being within 1.5 miles of the site. This would include Seccomb Lake, to the north a few blocks along Waterman Avenue. The black-crowned night-heron (*Nycticorax nycticorax*) that he reports as flying over the site likely originated there. Night-herons are a species that favors aquatic environments for support and can be seen flying over many otherwise non-habitat areas on their way from one aquatic environment to another. Dr. Smallwood, however, uses the sighting to imply that the Project site has potential for supporting the species. This is inaccurate because the species clearly does not favor disturbed habitats such as are found on the Project site, based on its natural history (Cornell Lab of Ornithology 2023; https://www.allaboutbirds.org/guide/Black-crowned_Night_Heron/lifehistory). Dr. Smallwood's letter goes on to list 15 other aquatic avian species as having potential to

occur, such as common loon (*Gavia immer*), when there is no aquatic habitat present on the Project site. Dr. Smallwood's conclusions and implications about species are not supported by the habitat present on the site. Dr. Smallwood also claims there are numerous pocket gophers on or near the Project site. But the Bott's pocket gopher is a common garden rodent that occurs within both urban and natural environments and is not considered a sensitive species under CEQA.

The Project is within an urban environment in the middle of a highly developed part of the City of San Bernardino. It contains no aquatic environments. The 2021 Biological Report and the 2023 update specifically address urban-dwelling plant and wildlife species within the San Bernardino area providing a full and complete biological resources evaluation conducted in accordance with City of San Bernardino and CEQA requirements. This is shown in the requirement for preconstruction nesting bird surveys as a mitigation measure because nesting birds can occur practically everywhere even within an urban environment. These surveys would be conducted in compliance with the Migratory Bird Treaty Act, which is the overarching regulatory authority. The 2021 Biological Report further identifies burrowing owl mitigation, even though this species has a very limited chance to occur on the Project site. There are also recommendations for best management practices, which are typical and required within every development, urban environment or otherwise. With implementation of the mitigation measures in the MND, any potentially significant impacts would be reduced to less than significant.

2. The IS/MND fails to analyze the project's impact on lost breeding capacity.

Current trees on the project provide minimal nesting locations and potential removal of these trees on-site would present a less than significant impact to wildlife. North America includes an area of approximately 9.4 million square miles in extent, including myriad habitats from urban areas to native riparian forests to palustrine environments. Breeding capacity for nesting bird species throughout North America in the context the commenter has described is a highly speculative concept which has no current standards for analysis and is far too broadly based to be of use in the analysis of breeding capacity of a 3.8-acre Project site. Dr. Smallwood does not have evidence that 66 bird nests with the capacity of 217 birds per year occur on the Project site. Additionally, even if Dr. Smallwood's assertions were correct, he does not show the context in which the loss of this potential capacity is a substantial adverse effect on candidate, sensitive, or special status species and, therefore, a significant impact that requires mitigation.

The analysis of breeding capacity is implied and inherent in the overall analysis of biological impacts related to the Project. Both biological studies concluded that the Project could potentially have an adverse impact on nesting bird species and address

this impact by the provision of MM BIO-1, which will protect any species of birds during construction if construction is to occur during the MBTA nesting cycle.

The nesting bird species expected on the Project site, and within the immediate vicinity, are birds adapted specifically to the urban environment and adapted specifically to disturbances such as noise, traffic and other human activity. Although development of the site reduces breeding bird capacity within the Project site, this is not a significant impact under CEQA due to the abundance of breeding habitat that will remain in the City and, specifically, surrounding the Project site. Further, many nesting birds adapted to urban environments are still expected to use the Project site's landscaping after development.

3. The IS/MND fails to analyze the project's impact to wildlife movement.

The biological studies for the Project were conducted in 2021 and 2023 and they considered and analyzed wildlife movement to the standards of CEQA. According to the conclusions of both biological studies, the property has not been determined to be a part of a biological corridor or linkage area between large blocks of undeveloped areas, and therefore impacts to native species movement are considered less than significant.

Dr. Smallwood states that the Project site represents "one of the last remaining patches of open space in the region"; however, the surrounding parcels show similar amounts of open space and landscaped areas as the Project site. The Project area is urbanized and is expected to support primarily the wildlife species associated with urban and suburban environments. The diversity of wildlife is less within urban zone and is limited as far as species frequency due to the disturbances associated with developed areas. The type of species associated with urbanized areas within this part of the City of San Bernardino are expected to consist of largely non-sensitive wildlife species.

Further, the current wildlife movement will continue even with the construction of the new warehouse building, just as it did with the previous existing warehouses.

4. The IS/MND fails to analyze the project's impact on wildlife from additional traffic generated by the project.

The potential for vehicular impacts to wildlife are addressed in the context of wildlife corridors, which are adequately analyzed in the 2021 Biological Report. Wildlife corridors are linear features through which wildlife move from one block of open space to another. The Project site, which is surrounded by the urban environment, is not located within any open space areas and there are no wildlife corridors or linkages on or adjacent to the Project site.

The Project is in a heavily urbanized character near busy arterial roadways. The traffic impact analysis prepared by Urban Crossroads concluded there would not be a significant increase in vehicle miles traveled from the Project. Therefore, there would be

a less than significant impact to wildlife from the Project and no additional studies are required.

Any risk to wildlife from traffic collisions near the Project site would be primarily due to the busy, arterial road that exists just to the west of the Project site (Waterman Avenue). This risk is present with or without the Project as the busy arterial roads near the Project site are already subject to large traffic volumes. Based on field visits to the Project site, and observations of multiple urban environments and in fill parcels, traffic volumes result in avoidance of an area by most wildlife except for those that are adapted to crossing busy roads and living within an urban setting. Due to the aforementioned factors, any minimal increase in traffic resulting from the Project would not significantly add to the existing risk to wildlife and would not be a significant impact under CEQA.

Lastly, the Smallwood letter contains no evidence that the Project's site conditions and traffic are comparable to Vasco Road in Contra Costa County, which runs mostly through the undeveloped foothills of Livermore and is largely surrounded by wide expanses of grasslands and oak woodlands, with relatively little urban development or disturbed areas. The Smallwood letter does not support its arbitrary percentage for a reduction in deaths due to urbanization. The report's "assumptions and simple calculations" are unfounded and speculative.

5. The IS/MND fails to adequately address the cumulative impacts of the project on wildlife.

The Project site previously contained two warehouses and asphalt. The Project would only modify the existing condition with one warehouse rather than two, which would not significantly change the site conditions. Implementation of MM BIO-1 would protect any species of birds during construction if construction would occur during the MBTA nesting cycle. Because the site is surrounded by a mixture of developed and disturbed habitats, the incremental impacts for the Project conversion from disturbed habitat to developed habitat is not expected to change the environment present within the immediate vicinity of the site. Cumulative impacts are therefore not considered to be significant.

The Smallwood letter suggests compensatory mitigation that is not required under CEQA as there would be no significant species impacts. The Detection Surveys are specified for "Special Status Species" and "Burrowing Owl". Although 14 special status species (records from 1800's to early 1900's Rarefind 5 2021) have been documented within one mile of the proposed project site (Table 7.1 of Appendix F to the MND), no special status species were found at the site during field assessment. Special-status plant species documented within the San Bernardino South quadrangle and each species' possibility of occurring at the project site are set forth in Table 7.2 of Appendix F to the MND. MM BIO-2 covers any Burrowing Owl activity/colonization on the project site. The project would not result in significant effects related to road mortality or habitat

loss. Therefore, impacts would be less than significant and compensatory mitigation is not required.

Based on the above responses, an EIR is not warranted to address the biological impacts of the Project.

Sincerely,

Adkan Engineers