

Application For Appeal

An appeal is hereby made to Your Honorable Body from the decision of the

Site Plan Review Committee
Zoning Administrator
Planning Commission
Cultural Heritage Commission

Which was taken on the ___ day of ___, 20 ___.

Project Address: _____

I/We, your appellant(s), hereby respectfully request that Your Honorable Body reject the decision and [] Approve / [] Deny the application or permit in question.

ALL INFORMATION BELOW IS REQUIRED

Reasons for Appeal: _____

Appellant Name(s): _____

Organization (if representing) _____

Address: _____

City _____ State _____ ZIP _____ Phone _____

Signature(s) [Handwritten Signature] Date _____

- A separate appeal form is required for each appellant party, except for appellants from the same address, or an appellant representing an organization.
Appeals must be filed within 10 days after the decision is made (LBMC 21.21.502).
You must have established aggrieved status by presenting oral or written testimony at the hearing where the decision was rendered; otherwise, you may not appeal the decision.
See reverse of this form for the statutory provisions on the appeal process.

BELOW THIS LINE FOR STAFF USE ONLY

[] Appeal by Applicant [X] Appeal by Third Party

Received by: MC Case No.: APL23-011 Appeal Filing Date: 7/27/23

Fee: \$432.00 [X] Fee Paid Project (receipt) No.: PLNB55578

Division V. - Appeals

21.21.501 - Authorization and jurisdiction.

- A. Authorization. Any aggrieved person may appeal a decision on any project that required a public hearing.
- B. Jurisdiction. The Planning Commission shall have jurisdiction on appeals of interpretations made pursuant to Section 21.10.045 and decisions issued by the Zoning Administrator and Site Plan Review Committee, and the City Council shall have jurisdiction on appeals from the Planning Commission as indicated in Table 21-1. Decisions lawfully appealable to the California Coastal Commission shall be appealed to that body.

21.21.502 - Time to file appeal. An appeal must be filed within ten (10) days after the decision for which a public hearing was required is made.

21.21.503 - Form of filing. All appeals shall be filed with the Department of Planning and Building on a form provided by that Department.

21.21.504 - Time for conducting hearing of appeals. A public hearing on an appeal shall be held:

- A. In the case of appeals to the City Planning Commission, within sixty (60) days of the date of filing of the appeal with the Department of Planning and Building; or
- B. In the case of appeals to the City Council, within sixty (60) days of the receipt by the City Clerk from the Department of Planning and Building of the appeal filed with the Department.

21.21.505 - Findings on appeal. All decisions on appeal shall address and be based upon the same conclusionary findings, if any, required to be made in the original decision from which the appeal is taken.

21.21.506 - Finality of appeals.

- A. Decision Rendered. After a decision on an appeal has been made and required findings of fact have been adopted, that decision shall be considered final and no other appeals may be made except:
 - 1. Projects located seaward of the appealable area boundary, as defined in Section 21.25.908 (Coastal Permit—Appealable Area) of this title, may be appealed to the California Coastal Commission; and
 - 2. Local coastal development permits regulated under the city's Oil Code may be appealed to the city council.
- B. No Appeal Filed. After the time for filing an appeal has expired and no appeal has been filed, all decisions shall be considered final, provided that required findings of fact have been adopted.
- C. Local Coastal Development. Decisions on local coastal development permits seaward of the appealable area shall not be final until the procedures specified in Chapter 21.25 (Coastal Permit) are completed.

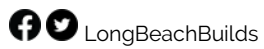


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LICENSED CONTRACTORS DECLARATION				WORKER'S COMPENSATION DECLARATION			
I hereby affirm that I am licensed under provisions of Chapter 9 {Commencing with Section 7000} of Division 3 of the Business and Professional Code, and my license is License _____ License _____ Dat _____ Contract _____				_____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are: Carrier: _____ Policy _____ (This Section need not be completed if the permit is for one hundred dollars (\$100) or less) _____ I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall Dat _____ Applica _____			
OWNER-BUILDER DECLARATION I hereby affirm that I am exempt from the Contractors License Law for the following reason {Sec.7031 California Business and Professional Code: Any City which requires a permit to construct, alter, improve, demolish or repair any structure prior to its issuance also requires the applicant for such permit to file a signed statement that he is a licensed contractor pursuant to the provisions of the Contractors License Law {Ch.9} {Commencing with Sec.7000 of Div.3 of the B. & P. C.} or that he is exempt therefrom and the basis for the alleged exemption. Any violation of Sec.7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars {\$500.00}: • I as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale {Sec.7044, B. & P. C. : The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvements is sold within one year of completion, the owner-builder will have burden of proving that he did not build or improve for the • I am exempt under _____, B. & P. C. for this _____ Dat _____ Owne _____ - IMPORANT - Application is hereby made to the Superintendent of Building and Safety for a permit subject to the conditions and restrictions set forth on the front faces of this application 1. Each person upon whose behalf this application is made and each person at whose benefit work is performed under or pursuant to any permit issued as a result of this application agrees to and shall indemnify and hold harmless the City of Long Beach its officers, agents, and employees from any liability arising out of the issuance of any permit from this application. 2. Any permit issued as a result of this application becomes null and void if work is				WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS, IN ADDITION TO THE COST OF COMPENSATION DAMAGES AS PROVIDED FOR IN SECTION I hereby state that there is a construction lending agency for the performance of the work for which this permit is issued {Sec.3907, Civ. C.}. Lender's _____ Lender's _____ I certify that I have read this application and state that the above information is correct. I agree to comply with all City and State laws relating to the building construction, and hereby authorize representatives of this city to enter upon the _____ Signature of Owner or Contractor _____ Date _____			
JOB ADDRESS		RECEIPT NO.		DATE		PROJECT NO.	
6615 200 PACIFIC COAST HWY		04290773		7/28/23		PLNB55578	
JOB DESCRIPTION						AREA	
Third-party appeal of Planning Commission decision on July 20, 2023 for 6615-6695 E						0	
OWNER			OCCUPANCY			PLANNING	
ADDRESS			ASSESSOR NO.			ZONE	
CITY		STATE		ZIP CODE		CENSUS TRACT	
						0	
APPLICANT							
LOZEAU DRURY							
CONTRACTOR							
ADDRESS							
CITY			STATE			ZIP CODE	
						PHONE NO.	
STATE LICENSE NO.				CITY LICENSE NO.			
ARCHITECT/ENGINEER				LICENSE NO.			
ADDRESS							
CITY			STATE			ZIP CODE	
						PHONE NO.	
VALUATION		PRESENT BLDG USE		PROPOSED BLDG USE		BLDG HEIGHT	
0.00						0	
LEGAL DESCRIPTION							
APPTHPTY							

Paid by: LOZEAU DRURY

\$432.00 Credit or Debit Card (PC)

24219039	400.00	Appeal by Third Party	
24219040	16.00	Surcharge General Plan	N
24219041	16.00	Surcharge Technology	N
	432.00		
<hr/>			CHECK



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July 20, 2023

VIA EMAIL

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Jane Templin, Vice Chair
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**Re: Comment on 6615 E. Pacific Coast Highway (SPR22-082, CDP22-049)
July 20, 2023 Planning Commission Agenda Item 3**

Dear Chair Verduzco-Vega, Vice Chair Templin, Honorable Planning Commissioners of Long Beach, and Ms. Harbin:

I am writing on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”), a California nonprofit benefit corporation, regarding the proposed mixed-use development at 6615 East Pacific Coast Highway (“Project”) in the City of Long Beach (“City”). City staff has determined that the Project is exempt from the requirement for preparation of environmental documents pursuant to Sections 15162, 15168, and 15183 of the California Environmental Quality Act (“CEQA”) and that the Project was adequately analyzed in the environmental impact report prepared for the Southeast Area Specific Plan (SCH No. 2015101075), certified in 2017 (“SEASP EIR”).

After reviewing the Section 15183 Compliance Checklist prepared for the Project, and the SEASP EIR that the Project relies upon, we conclude that the Project does not meet the requirements for an exemption under CEQA Section 15183, nor does it satisfy CEQA Sections 15162 or 15168(c)(2). The Project fails to comply with the SEASP because it exceeds height and density limits. The Project fails to implement numerous mitigation measures required by the SEASP. The Project has significant impacts not analyzed in the SEASP.

Notably, on July 13, 2023, wildlife biologist, Noriko Smallwood, M.S., conducted a site visit. Ms. Smallwood positively identified at least six special status species on or adjacent to the

Project site. Only two of these six species were evaluated for the Project site and all were found not to occur on the site. Furthermore, none of these species are identified in the SEASP EIR and there are no adequate mitigation measures for the Project's impacts on these species. Dr. Shawn Smallwood concluded that the Project will have significant adverse impacts on these and other species. (Exhibit A). Also, the City fails entirely to analyze the cumulative impacts of the 6615 PCH project with the 6700 Pacific Coast Highway (6700 PCH) project which is proposed almost directly across the street. Dr. Smallwood concludes that the two projects will have significant cumulative impacts on sensitive species.

SAFER respectfully requests that the Planning Commission deny the applications for Site Plan Review (SPR 22-082) and a Local Coastal Development Permit (LCDP 22-049) and decline to adopt findings and determinations related thereto for a project within the appealable area of the Coastal Zone consisting of the demolition of all existing structures on the site, and construction of a new mixed-use Project. We urge the City to require preparation of a CEQA environmental review document to analyze and mitigate the Project's environmental impacts prior to issuing any Project approvals.

I. PROJECT DESCRIPTION

The proposed Project involves the demolition of two existing office buildings on the site and the construction of a new mixed-use project that would include one partially subterranean level, six stories above grade, and a roof deck. The project would be approximately 645,045 gross square feet of total area, and would consist of 390 residential dwelling units, 5,351 square feet of commercial space, 576 vehicular parking spaces in an above-grade parking structure, 196 bicycle parking spaces, and 45,151 square feet of public and private open space area within the Mixed-Use Community Core (MU-CC) designation of the Southeast Area Specific Plan.

The Project would be located in the Coastal Zone, and therefore requires a Local Coastal Development Permit. It is adjacent to the open space area known as the "Pumpkin Patch," and the San Gabriel River, very close to where the river empties into San Pedro Bay. The Project is immediately adjacent to the sensitive Los Cerritos Wetlands Complex (LCWC). The San Gabriel River contains Environmentally Sensitive Habitat Areas (ESHA). The Project would be located on the scenic Pacific Coast Highway ("PCH"). The Project would replace existing two-story buildings with a six-story, 73-foot tall building. The Project site is contaminated with several toxic chemicals.

II. LEGAL STANDARD

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 (*Pocket Protectors*). 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.

Here, the City contends that no subsequent EIR is necessary pursuant to CEQA Guidelines section 15168(c)(2) because the Project is within the scope of activities analyzed in the SEASP and will not result in any new significant impacts. Specifically, the City’s agenda for the hearing provides:

Recommendation to determine that the project is consistent with and within the scope of the project previously analyzed as part of the Southeast Area Specific Plan Program Environmental Impact Report (State Clearinghouse No. 2015101075) (PECC 03-23) and subject to the Southeast Area Specific Plan Mitigation Monitoring and Reporting Program and warrants no further environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15168 and 15162. (July 20, 2023 Planning Commission Agenda, p. 4).

However, CEQA section 15162 of the CEQA Guidelines requires a subsequent EIR when:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(14 CCR § 15162).

Given that there have been substantial changes to the Project and Project circumstances, and new information of substantial importance has come out since the certification of the SEASP EIR, a subsequent EIR must be prepared.

The City also appears to rely on CEQA section 15183 to claim that the Project is exempt from CEQA review. But it is important to note that the City chose to prepare a CEQA Section 15183 Compliance Checklist for the Project but is requesting that the Planning Commission approve the Project based on its alleged compliance with CEQA sections 15162 and 15168 (c)(2) without conducting any analysis to determine that no subsequent CEQA review is necessary under these sections.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. “Exemptions to CEQA are narrowly construed and ‘[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.’” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125. The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’”)

Here, the City contends that the proposed Project is exempt from CEQA review under Section 15183. Section 15183 of the CEQA Guidelines allows a project to avoid environmental review if it is:

“consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified . . . except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” 14 CCR 15183 (emphasis added).

The intention of this section is to “streamline” CEQA review for projects and avoid the preparation of repetitive documents. While this section is considered an exemption from CEQA, environmental review is still required for various types of impacts, including those “peculiar to the project or parcel on which the project would be located,” those which “were not analyzed as significant effects in a prior EIR,” “are potentially significant off-site impacts and cumulative

impacts which were not discussed in the prior EIR,” or “[a]re previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.” Section (f) of the exemption states that a Project’s environmental effects are not peculiar to a project if “uniformly applied development policies or standards have been previously adopted” which serve to mitigate environmental impacts, “**unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.**” (Emphasis added). The standard set forth by the statute for this analysis is substantial evidence.

Here, there is substantial evidence demonstrating that the Project will have significant impacts which were not addressed in SEASP EIR. The Section 15183 Exemption therefore does not apply, and the City must prepare appropriate CEQA documents for this Project.

III. DISCUSSION

A. The City May Not Rely on the SEASP EIR Because the Proposed Project is not Consistent with the Density and Zoning Assumed in the SEASP EIR.

The City may only rely on the Section 15183 Exemption if the proposed project is “**consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified.**” 14 CCR 15183(a) (emphasis added). Section 15183 states similarly,

This section shall apply only to projects which meet the following conditions:

- (1) The project is consistent with:
 - (A) A community plan adopted as part of a general plan,
 - (B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or
 - (C) A general plan of a local agency

(Section 15183(d)).

However, the proposed Project is plainly inconsistent with the density and zoning assumed in the SEASP EIR. As such, the City may not rely on the SEASP EIR and the 15183 CEQA exemption. Nor can the City rely on 15162 or 15168(c)(2) because the density and zoning may have impacts that were not subject to any analysis in the SEASP EIR, and therefore subsequent CEQA review is required. (*See Save Our Access v. City of San Diego* (Cal. Ct. App., June 23, 2023, No. D080071) 2023 WL 4144495).

1. Project Exceeds Allowable Height.

The proposed Project exceeds the maximum height allowed in the SEASP. The SEASP allows a maximum of five stories for buildings on Pacific Coast Highway (“PCH”). (SEASP p.

92). The SEASP states, “no building or projection shall exceed a maximum of 80 feet in height (including non-habitable spaces such as architectural features or spaces required for mechanical equipment). (SEASP p. 93). The proposed Project seeks multiple waivers to allow building heights that exceed the maximum allowed by the SEASP. The Project seeks a waiver to allow an increased building height to a maximum of 91 feet and eight and a half inches, measured to the highest vertical component of the amenity deck. This height well exceeds the 80-foot maximum allowed by the SEASP. The Project further seeks waivers to allow the proposed building to exceed the building height requirements along Pacific Coast Highway (limited to 5 stories) and along Shopkeeper Road (limited to 3 stories), and to allow the project to exceed the building height requirements for projects along Shopkeeper Road fronting wetlands.

In light of the above, the Project is not “consistent with a community plan adopted as part of a general plan, or a zoning action which zoned or designated the parcel on which the project would be located.” (CEQA Guidelines Section 15183(d)). As such, the City may not rely on the SEASP EIR and Section 15183. Nor can the City rely on Sections 15162 or 15168(c)(2) because the allowable height exceeds the scope of the SEASP EIR and was not subject to any analysis in the SEASP EIR. Therefore, a subsequent EIR is required to analyze the impacts of this Project which were not analyzed in the SEASP EIR since it assumed much less dense development.

B. The City May Not Rely on the SEASP EIR Because the Proposed Project will have Significant Cumulative Impacts with the 6700 PCH Project Across the Street.

At the same time as this Project is being considered, the City is considering another Project almost immediately across the street, at 6700 East Pacific Coast Highway (“6700 PCH”). Indeed, the Project is being considered by the Planning Commission only two days after the City Council voted to approve 6700 PCH on July 18, 2023. The two projects will clearly have cumulative impacts. Yet, the environmental review for each project fails to adequately discuss the other (despite the fact that the environmental review documents were prepared by the same consulting firm, Placeworks). 6700 PCH proposes 281 residential dwelling units in a six-story building with two levels of parking. 6700 PCH similarly sought to avoid CEQA review by relying on the SEASP EIR. The staff report and CEQA compliance checklist for 6700 PCH are available on the City’s website at:

<https://longbeach.legistar.com/LegislationDetail.aspx?ID=6283969&GUID=BA29DE75-9482-47CA-8EFB-73F14B0EB77F>.

By failing to consider the cumulative impacts of these two projects, the City has violated a fundamental requirement of CEQA that a CEQA document must discuss significant cumulative impacts. (CEQA Guidelines section 15130(a); CEQA section 21083).

Section 15183(j) states:

This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then

this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

The City's CEQA Compliance Checklist fails to adequately discuss the similar Project across the street at 6700 PCH, which was considered at almost the same time as 6615 PCH and approved by City Council only two days prior to the Planning Commission hearing for this Project. 6700 PCH and 6615 PCH will clearly have significant cumulative impacts.

1. 6615 PCH and 6700 PCH will have significant cumulative biological impacts.

Dr. Smallwood concludes that the projects at 6615 PCH and 6700 PCH will have cumulatively significant impacts on wildlife, including special status species. Dr. Smallwood states:

The project would insert a six-story building into the airspace that has been used by volant wildlife for many thousands of years to travel along the coast, and very likely to enter or leave from the nearby wetlands or to fly the shortest distance between Santa Monica Bay and San Pedro Bay. The project would further fragment aerial habitat of volant wildlife, and this would contribute cumulatively to other similar impacts caused by other mid-rise and high-rise buildings in the area. The project would also cause a predicted 405 (95% CI: 241–570) bird-window collision fatalities per year, and would generate a predicted additional 15,594,414 annual VMT, which would contribute cumulatively to the wildlife-automobile collision mortality that is ongoing in the region. (Ex. A, p. 26).

These significant cumulative biological impacts were not analyzed in the SEASP EIR because the SEASP EIR assumed that buildings would not exceed 5-stories in height and that buildings would have a less dense floor area ratio. Therefore, subsequent CEQA review is required to analyze and mitigate these impacts.

2. 6615 PCH and 6700 PCH will have significant cumulative air quality impacts.

The Project will have significant cumulative air quality impacts. The CEQA Compliance Checklist for 6615 PCH states that the Project will have construction air quality NOx emissions of 96 pounds per day (ppd), which is below the CEQA significance threshold of 100 ppd. (6615 PCH Checklist, p. 53). However, the CEQA Compliance Checklist for 6700 PCH states that this project will have NOx construction emissions of 41 ppd. (6700 PCH Checklist, p. 51). The cumulative emissions of the two projects is 137 ppd, which will obviously exceed the CEQA significance threshold.

Similarly, 6700 PCH will have operational daily CO emissions of 47 ppd, which is slightly less than the CEQA significance threshold of 55 ppd. (6700 PCH Checklist, p. 52). The 6615 PCH Compliance Checklist does not quantify operational CO emissions, but it is

reasonable to assume that they will be more than 8 ppd, which would make the cumulative CO emissions exceed the CEQA significance threshold of 55 ppd.

Cumulative impacts analysis is critical to CEQA review. A CEQA document must discuss significant cumulative impacts. (CEQA Guidelines section 15130(a)). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines section 15355(a)). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” (CEQA Guidelines section 15355(a)).

The point is that the City’s CEQA documentation entirely ignores the cumulative impacts of the two projects and does not even attempt to analyze those impacts. As such, the City has failed to comply with Section 15183 and may not rely on the SEASP EIR. Since the CEQA documentation is devoid of any mention of the 6700 PCH project, there is no substantial evidence to support a finding that the 6615 PCH project does not have significant cumulative impacts.

C. The City May Not Rely on the SEASP EIR Because the Proposed Project will have Project-Specific Effects that are Peculiar to the Project or its Site, which Constitutes New Information Requiring Subsequent CEQA Review.

The City may not rely on Section 15183 if the proposed Project will have “**project-specific significant effects which are peculiar to the project or its site.**” (14 CCR 15183(a) (emphasis added)). The City’s own CEQA Checklist admits that the Project will have impacts that are “peculiar to the project or the parcel,” and which were “not analyzed as significant effects in the SEASP PEIR.” (6615 PCH Checklist, pp. 111 (hazardous material impacts); 121 (impede or redirect flood flows); 147 (noise); 164 (transportation)). As such, this analysis also constitutes significant new information requiring supplemental environmental review under CEQA section 21166.

1. The Project has Hazardous Material Impacts that are Peculiar to the Project, which is New Information Requiring Subsequent CEQA Review.

The project site is located within the boundary of the Seal Beach Oil Field, and was previously used for oil production and as a landfill. Two oil and gas production wells are located on the Project site. One well is located in the southeastern portion of the Phase I Environmental Site Assessment (“ESA”) study area and is listed as “plugged and abandoned.” (6615 PCH Checklist, pp. 113). The second well is located near the southeastern corner of the Phase I ESA study area. In addition, past investigations at the project site conducted under Los Angeles

Regional Water Quality Control Board oversight indicate that industrial waste may have been disposed of at the project site. (6615 PCH Checklist, pp. 113-114). Volatile organic compounds (“VOCs”), pesticides, and metals have been detected in groundwater and are attributable to historical oil and gas production and potentially to historic landfill operations. Landfill gas and migration of methane from adjoining oil field properties also presents an “ongoing concern” (6615 PCH Checklist, p. 114), and a passive landfill gas control system supplemented by an intermittently operated air blower is present at the project site.

The Phase I analysis concluded that the past presence of the landfill, two oil sumps, oil wells, and oil-related infrastructure at the project site constitute Recognized Environmental Conditions (“RECs”). The study also found that associated oil pipeline and storage tank infrastructure to the north and east of the project site also constitute an REC. (6615 PCH Checklist, pp. 113-114.) The Phase II site investigation found areas with elevated concentrations of petroleum hydrocarbons and petroleum-related VOCs in soil to the southeast of the building at 6621 East PCH, within the Project site. Benzene and naphthalene were detected in groundwater at concentrations above drinking water Maximum Contaminant Levels (“MCLs”). Arsenic, barium, and lead were also detected in groundwater at concentrations equal or greater to their MCLs. VOCs were detected in soil vapor at concentrations generally below regulatory screening levels, but an isolated detection of chloroform was above the screening level. (6615 PCH Checklist, Appendix G, p. 4).

Many of these chemicals are toxic and/or cancer-causing chemicals:

Arsenic: Has been classified by the Environmental Protection Agency (EPA) as a carcinogen. Ingestion of inorganic arsenic by humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. Chronic exposure to arsenic is linked to gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage.
(<https://www.epa.gov/sites/default/files/2016-09/documents/arsenic-compounds.pdf>).

Benzene: The Department of Health and Human Services (DHHS) has determined that benzene causes cancer in humans. Long-term exposure to high levels of benzene in the air can cause leukemia, cancer of the blood-forming organs.
(<https://emergency.cdc.gov/agent/benzene/basics/facts.asp>).

Naphthalene: The EPA has classified it as a possible human carcinogen. Chronic exposure of workers to naphthalene has been reported to cause cataracts and retinal hemorrhage. Acute exposure of humans to naphthalene by inhalation, ingestion, and dermal contact is associated with hemolytic anemia, damage to the liver, and, in infants, neurological damage.
(<https://www.epa.gov/sites/default/files/2016-09/documents/naphthalene.pdf>).

Chloroform: is a probable human carcinogen. Chronic exposure to chloroform by inhalation in humans is associated with effects on the liver, including hepatitis and jaundice, and central nervous system effects, such as depression and irritability. Inhalation exposures of

animals have also resulted in effects on the kidney.

(<https://www.epa.gov/sites/default/files/2016-09/documents/chloroform.pdf>)

Lead: Adults exposed to lead can suffer from cardiovascular effects, increased blood pressure and incidence of hypertension, decreased kidney function, and reproductive problems. Even low levels of lead in the blood of children can result in behavior and learning problems, slowed growth, and anemia. Pregnant women exposed to lead are at increased risk for miscarriage, and lead exposure can result in numerous serious effects to the developing fetus and infant. (<https://www.epa.gov/lead/learn-about-lead>).

The SEASP EIR did not analyze these chemicals, it did not propose a site clean-up plan, and it did not propose mitigation measures to protect construction workers or future residents of the Project. Even the City's own CEQA Compliance Checklist for 6615 PCH admits that this is an impact that is "peculiar" to the Project and was not analyzed in the SEASP EIR. Under the express terms of Section 15183, subsequent CEQA review is required to analyze and mitigate this impact. As such, this analysis also constitutes significant new information requiring supplemental environmental review under CEQA section 21166.

Even worse, the City has eliminated mitigation measures required by the SEASP EIR. The SEASP EIR required preparation of a soil management plan (SMP), which was required to be "evaluated by a qualified environmental professional." (HAZ-2). However, the City has now, inexplicably eliminated the requirement that the SMP be evaluated by the qualified environmental professional. (6615 PCH Checklist, p. 117). Thus, there is no assurance that the SMP will be adequate and will meet necessary requirements to safeguard workers and residents. Section 15183 states, that in order to take advantage of the section, the City must "undertake mitigation measures specified in the EIR." (Section 15183(e)(1)). Since the City has eliminated this mitigation measure, it may not rely on the SEASP EIR.

2. The Project has Biological Impacts that are Peculiar to the Project, which is New Information Requiring Subsequent CEQA Review.

On July 13, 2023, wildlife biologist Noriko Smallwood, MS, conducted a site visit at 6615 PCH. She positively identified six special status species: Monarch, Allen's hummingbird, Western gull, Double-crested cormorant, Cooper's hawk, and Red-shouldered hawk. (Ex. A, p. 3). Dr. Shawn Smallwood analyzed these results and concluded that at least 135 species of vertebrate wildlife make use of the site and at least 29 of them are special-status species. (Ex. A, p. 8). Dr. Smallwood concludes that the Project will adversely affect these species by placing a 6-story building in their flight-path, which will result in 405 bird-window collision fatalities per year. (Ex. A, p. 26). Vehicle collisions from the Project will cause additional collision fatalities of special status species. (*Id.*) Dr. Smallwood proposes feasible mitigation measures such as bird-safe window treatments, compensatory mitigation, and landscaping measures. (*Id.* pp. 28-29).

None of these impacts were analyzed in the SEASP EIR. In fact, the SEASP EIR stated “the Pacific Coast Highway commercial corridor within the proposed Mixed Use Community Core and Mixed Use Marina land uses. These areas of change are entirely developed and do not include native habitat or other suitable habitat for sensitive species.” (SEASP EIR, p. 5.4-36). Thus, the SEASP EIR concluded that there were no sensitive species on the Project site. Also, the SEASP EIR did not analyze the impacts of this 6-story building on avian flight collisions since the SEASP EIR assumed that buildings would not exceed 5-stories in height. Furthermore, the SEASP EIR did not analyze impacts of bird-window collisions, or traffic collisions at all. Dr. Smallwood’s analysis proves that the EIR’s conclusion that there are no sensitive species on the Project site was wrong. Dr. Smallwood’s analysis constitutes significant new information requiring supplemental environmental review under CEQA section 21166, and 15183.

D. The City May Not Rely on the SEASP EIR Because it Fails to Implement Feasible Mitigation Measures Required in the SEASP EIR as well as Long Beach Adaptation Action Consistency Requirements.

Section 15183 states, that in order to take advantage of the section, the City must “undertake mitigation measures specified in the EIR.” (Section 15183(e)(1)). As discussed above the City eliminated a requirement from SEASP mitigation measure HAZ-2 for a qualified environmental professional to review the soil management plan. The City has also failed to implement several other feasible mitigation measures.

BIO-1: SEASP BIO-1 requires that “Concurrent with submittal of site development plans for development on or adjacent to undeveloped land and all land within the Coastal Habitat, Wetlands & Recreation land use, the project applicant shall submit a biological resources report conducted by a qualified biologist.” (SEASP DEIR p. 5.4-47). The City has failed to fully comply with this requirement. The CEQA Compliance Checklist for 6615 PCH presumably regards the Biological Technical Report prepared by Glenn Lukos Associates (2023) as satisfaction of SEASP mitigation measure BIO-1. But Glenn Lukos Associates’s Biological Technical Report does not satisfy it, because it fails to identify the special-status species of wildlife that occur on the Project site. (6615 PCH Checklist, p. 61). As Dr. Smallwood points out:

Its survey is too cursory, and its survey outcome is misleadingly interpreted, as its negative findings are mis portrayed as definitive. Noriko Smallwood readily refuted multiple determinations of occurrence likelihood that Glenn Lukos Associates had applied to special-status species, all of which were “Does not occur.” Furthermore, Noriko’s survey data applied to an analytical bridge to a more extensively studied research site predicts 135 species of vertebrate wildlife would eventually be detected by diurnal surveys alone, and that 29 of these species would be special-status species. The survey by Glenn Lukos Associates only detected 11.8% of the species that are available to be detected during diurnal surveys, and they detected only 3% of the available special-status species. The survey by Glenn Lukos Associates was inadequate, and its

desktop review was a misapplication of CNDDDB while also making no use of other available species occurrence databases. (Ex. A, p. 27).

Dr. Smallwood also concluded that BIO-1 was not satisfied for additional reasons, including:

It has not avoided impacts to special-status species of wildlife. In addition to failing to identify the special-status species that would be vulnerable to project impacts, nothing is proposed to avoid or minimize the 6-story building's potential interference with wildlife movement in the area, or the building's contribution to bird-window collision mortality and the project's contribution to wildlife-automobile collision mortality. The measure specifies that "the proposed development and project design avoids impacts to special status species," yet no data were collected by Glenn Lukos Associates for this purpose. (Ex. A, p. 27).

Therefore, the City violated the SEASP by failing to prepare the required adequate biological analysis for the Project. Dr. Smallwood's analysis shows the importance and environmental impacts resulting from the City's failure to comply with BIO-1. (*See Ex. A*).

BIO-3: SEASP BIO-3 states that "[i]f sensitive biological resources are identified within or abutting to the proposed development area, the project applicant shall submit evidence to the Long Beach Development Services Department that a qualified biologist has been retained to prepare a construction management plan." (SEASP DEIR p. 5.4-46). However, because implementation of SEASP measure BIO-3 is conditioned on whether special-status species are found to occur at the project site," and "Glenn Lukos Associates (2023) misinforms whether this measure needs to be implemented," "[a]fter Noriko's survey, it clearly needs to be implemented." (Ex. A, p. 27). As such, the City violated the SEASP by failing to adequately implement BIO-3 for the Project.

The City also failed to implement applicable Long Beach CAP Adaptation Action Consistency requirements:

AQ-1: requires installation of photocatalytic tiles on outdoor surfaces. Photocatalytic tiles break down air pollutants such as nitrogen oxides (NO_x), which is a major smog-precursor chemical. The Project fails to implement this mitigation measure, which would reduce air quality impacts. (6615 PCH Checklist, p. 105).

EH-1: requires the use of cool roofs, cool walls, reflective streets, cool surfaces and shade canopies. While the Project would adhere to general energy efficiency regulations and CALGreen, it does not commit to complying with the requirements for cool roofs, cool walls, reflective streets, cool surfaces and shade canopies. (6615 PCH Checklist, p. 105).

AQ-2: requires projects to include community and private gardens. The Project fails to comply with this requirement, claiming that it is "not applicable." (6615 PCH Checklist, p. 106).

This makes no sense. The Project could easily have incorporated a community garden area, such as a rooftop garden, or a garden on an adjacent parcel.

DRT-4,5: requires projects to use reclaimed/ recycled /or grey water, including “residential greywater systems, rainfall capture systems, and dual plumbing for recycled water. (6615 PCH, p. 107). The Project fails to comply with these mitigation measures. (*Id.*)

BE 4, 5: requires projects to “reduce or eliminate the use of natural gas in place of electricity (i.e. replace natural gas appliances with electric alternatives). The CEQA Checklist contends that this requirement is “not applicable.” (6615 PCH Checklist p. 101). In fact, the Project intends to use natural gas for water and pool heaters and barbeques (6615 PCH Checklist, p. 88). The City is failing to comply with this feasible mitigation measure. Electric and/or solar water heating is feasible and readily available.

BE-6: requires projects to “install on-site renewable energy systems, such as rooftop solar PV.” The City contends that this requirement is “not applicable.” (6615 PCH Checklist, p. 101). This makes no sense. The Project could easily place solar panels on the large rooftop, which would save energy and reduce greenhouse gas emissions.

Since the Project fails to comply with numerous feasible mitigation measures from the SEASP EIR and LB Beach CAP Adaptation Actions, the City may not rely on that EIR and may not rely on Section 15183.

E. Subsequent CEQA Review is Required for Energy Impacts Since it was not Analyzed in the SEASP EIR.

Section 15183(a)(2) states that subsequent CEQA review is required for impacts that “were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent.” The City’s CEQA Checklist admits that “The [SEASP] PEIR did not analyze a standalone energy topic since the energy thresholds were added to the Appendix G checklist after the PEIR was certified.” (6615 PCH Checklist, p. 85). Thus, under the plain terms of Section 15183, these impacts must be analyzed in a subsequent CEQA document.

The CEQA consultant contends that further CEQA analysis is not required because the Project will comply with energy efficiency standards such as CALGreen and the California Energy Code. (*Id.*) However, this type of analysis is not adequate under CEQA. Subsequent CEQA review is required to analyze whether feasible energy efficiency measures are possible. For example, a CEQA document should analyze whether solar panels or wind turbines can be added to the Project. Heat pumps could reduce energy demands of the Project.

The CEQA checklist states that the Project would be “solar ready” and designed “with energy conservation in mind,” but the City has imposed no actual binding requirement to install solar panels or other feasible energy saving and greenhouse gas reducing devices. (Checklist, p.

101). The Project intends to use natural gas for water and pool heaters and barbeques. (CEQA Checklist, p. 88). A CEQA document should analyze whether natural gas could be replaced by clean electric power for all or at least some of these applications.

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake “an investigation into renewable energy options that might be available or appropriate for a project” violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.) Energy conservation under CEQA is defined as the “wise and efficient use of energy.” (CEQA Guidelines, app. F, § I.) The “wise and efficient use of energy” is achieved by “(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources.” (Id.)

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

F. Subsequent CEQA Review is Required for Impacts not Mitigated to Less Than Significant in the SEASP EIR.

The SEASP EIR concluded that several of the impacts identified as a result of the General Plan Update project were significant and unavoidable. These impacts included air quality (Checklist, p. 45), cultural resources (Checklist, p. 73), greenhouse gas (Checklist, p. 97), noise impacts (Checklist, p. 147), and transportation (Checklist, p. 164). In the Checklist, the City acknowledges these significant and unavoidable impacts, but argues that because the proposed Project would not result in any new or more severe impacts to the environment beyond what was previously evaluated and disclosed as part of the SEASP EIR, no additional environmental review is required for the proposed Project.

This conclusion is incorrect. Section 15183 states that it only applies to impacts that were “adequately addressed in the prior EIR.” (Section 15183(j).) In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are “mitigated or avoided.” *Id.* citing CEQA Guidelines §15152(f)). The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since they were not “mitigated or avoided.” *Id.* Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” *Id.* Such a second tier EIR is required, even if

the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” *Id.* at 124-125.

Thus, since the SEASP EIR admitted numerous significant, unmitigated impacts, a second tier EIR is now required to determine if mitigation measures can now be imposed to reduce or eliminate those impacts. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

G. The Project Will Have Significant Impacts That Were Not Analyzed in the SEASP EIR.

Section 15183 states that subsequent environmental review is required for environmental impacts that “were not analyzed as significant effects in a prior EIR,” “are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR,” or “are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.” (Section 15183(b).) Under CEQA, a subsequent EIR is required when “[n]ew information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified” shows that (1) the project will have one or more significant effects not discussed in the previous EIR or (2) mitigation measures considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment. (14 CCR §§ 15162). The Project will have several impacts that fall under this provision and should be analyzed and mitigated in a subsequent EIR.

Aesthetic Impacts: The SEASP EIR concluded that the SEASP program would not have significant aesthetic impacts. However, the SEASP EIR assumed that no building would exceed 5-stories or 80 feet in height. The proposed Project will be six stories and up to 91 feet in height at its tallest point. The SEASP EIR simply did not analyze the aesthetic impacts of this Project. The Project is on the scenic Pacific Coast Highway. Its overly tall height will obviously block views from PCH toward San Pedro Bay, making it less scenic. The Project is adjacent to the San Gabriel River and will block views of the scenic river. These are significant environmental impacts that must be analyzed in a subsequent CEQA document.

Biological Impacts: The impacts to special status species identified by Dr. Smallwood and discussed above and Exhibit A were not discussed in the SEASP EIR, and require subsequent CEQA review. Dr. Smallwood positively identified five special status species: Monarch Butterfly, Allen’s Hummingbird, Western Gull, Cooper’s Hawk, and Red-shouldered Hawk. (Ex. A, p. 3). Dr. Shawn Smallwood analyzed these results and concluded that at least 135 species of vertebrate wildlife make use of the site and at least 29 of them are special-status species. (Ex. A, p. 8). Dr. Smallwood concludes that the Project will adversely affect these

species by placing a 6-story building in their flight-path, which will result in 405 bird-window collision fatalities per year. (Ex. A, p. 26).

None of these impacts were analyzed in the SEASP EIR. In fact, the SEASP EIR stated “the Pacific Coast Highway commercial corridor within the proposed Mixed Use Community Core and Mixed Use Marina land uses. These areas of change are entirely developed and do not include native habitat or other suitable habitat for sensitive species.” (SEASP EIR p. 5.4-36). Thus, the SEASP EIR concluded that there were no sensitive species on the Project site. Dr. Smallwood’s analysis constitutes significant new information requiring supplemental environmental review under CEQA section 21166, and 15183.

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script that reads "Victoria Yundt".

Victoria Yundt
LOZEAU | DRURY LLP

EXHIBIT A

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Maryanne Cronin, Project Planner
Long Beach Development Services
411 W Ocean Blvd Fl 3
Long Beach CA 90802

15 July 2023

RE: 6615 Pacific Coast Highway Project

Dear Ms. Cronin,

I write to comment on potential impacts to biological resources that could result from the proposed project at 6615 Pacific Coast Highway (Site Plan Review SPR22-082 and Local Coastal Development Permit LCDP22-049), which I understand would add 390 residential dwelling units and 5,351 square feet of commercial/retail space in a 6-story building along with 576 vehicular parking spaces in a parking structure on a 3.75-acre site (5.75 acres, according to Glenn Lukos Associates 2023). I am concerned that the project would cause impacts to biological resources that have not been analyzed in any form of CEQA review, and the mitigation is inadequate.

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 anthrosphere, 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 1.97 hours from 08:02 to 10:00 hours on 13 July 2023. She walked the site's perimeter, stopping to scan for wildlife with use of binoculars. The sky was sunny with west winds of 2 mph and temperatures of 69° F. The site was composed of commercial buildings with ornamental landscaping and a parking lot (Photos 1 and 2). Noriko recorded all species of vertebrate wildlife she detected, including those whose members flew over the site or were seen nearby, off the site. Animals of uncertain species identity were either omitted or, if possible, recorded to the Genus or higher taxonomic level.

Noriko also surveyed 6700 Pacific Coast Highway just across the street from the project site on the same morning from 06:10 to 08:02. She implemented the same methods as summarized above. The sky was sunny with west winds of 2 mph and temperatures of 65–69° F. That site was also composed of a commercial building with ornamental landscaping and a parking lot.



Photos 1 and 2. Views of the project site on 13 July 2023. Photos by Noriko Smallwood.

Noriko detected 23 species of vertebrate wildlife during her survey of the 6615 PCH project site (Table 1), and 5 of these species are special-status species; she also saw 2 Monarch butterflies, which are members of a candidate species for federal listing. Including her survey at the 6700 PCH site next door, Noriko saw 29 species of vertebrate wildlife, including 7 special-status species in addition to 2 more Monarchs, which totaled at least 4 on both sites (Table 2).

Noriko saw California ground squirrels at both sites (Photos 7 and 8), which is significant because this species is a keystone species. The presence of ground squirrels contributes substantial ecosystem services such as soil bioturbation due to their fossorial habits, and as prey for multiple additional species including special-status species, e.g., raptors feed on ground squirrels. California ground squirrels are also mutualists with burrowing owls, as the co-habitation of these two species increases productivity of each through mutual vigilance for predators and predator alarm-calling.

Table 1. Species of wildlife Noriko observed during 1.97 hours of survey at 6615 Pacific Coast Highway on 13 July 2023.

Common name	Species name	Status ¹	Notes
Monarch	<i>Danaus plexippus</i>	FC	
American wigeon	<i>Anas americana</i>		Just off site
Mourning dove	<i>Zenaida macroura</i>		
Anna's hummingbird	<i>Calypte anna</i>		
Allen's hummingbird	<i>Selasphorus sasin</i>	BCC	
Western gull	<i>Larus occidentalis</i>	BCC	
Double-crested cormorant	<i>Nannopterum auritum</i>	TWL	
Great blue heron	<i>Ardea herodias</i>		Harassed by GTGR
Snowy egret	<i>Egretta thula</i>		
Black-crowned night heron	<i>Nycticorax nycticorax</i>		
Cooper's hawk	<i>Accipiter cooperii</i>	TWL, BOP	Flew low over site
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP	Just off site, with prey
Black phoebe	<i>Sayornis nigricans</i>		Nest on site, 3 juveniles
American crow	<i>Corvus brachyrhynchos</i>		
Barn swallow	<i>Hirundo rustica</i>		
Cliff swallow	<i>Petrochelidon pyrrhonota</i>		
Northern mockingbird	<i>Mimus polyglottos</i>		Just off site
European starling	<i>Sturnus vulgaris</i>	Non-native	
House sparrow	<i>Passer domesticus</i>	Non-native	
House finch	<i>Haemorphous mexicanus</i>		
Hooded oriole	<i>Icterus cucullatus</i>		
Great-tailed grackle	<i>Quiscalus mexicanus</i>		Just off site, harassed GBHE
Botta's pocket gopher	<i>Thomomys bottae</i>		Burrows
California ground squirrel	<i>Otospermophilus beecheyi</i>		Just off site

¹ Listed as FC = federal candidate for listing, BCC = U.S. Fish and Wildlife Service Bird of Conservation Concern, TWL = Taxa to Watch List (Shuford and Gardali 2008), BOP = Birds of Prey (California Fish and Game Code 3503.5).

Table 2. Additional species of wildlife Noriko observed during another 1.87 hours of survey at 6700 Pacific Coast Highway on 13 July 2023.

Common name	Species name	Status ¹	Notes
Black-necked stilt	<i>Himantopus mexicanus</i>		flew over site from river
Great egret	<i>Ardea alba</i>		flew over site, landed on top of large tree on site
California brown pelican	<i>Pelicanus occidentalis californicus</i>	CFP	flew over water off site
Eurasian collared-dove	<i>Streptopelia decaocto</i>	Non-native	perched on site, harassed by Cassin's kingbird
Cassin's kingbird	<i>Tyrannus vociferans</i>		foraged on site, perched, harassed Eurasian collared-dove
Western bluebird	<i>Sialia mexicana</i>		juvenile on site; nested?

¹ CFP = California Fully Protected (California Fish and Game Code 3511), During her survey of 6615 Pacific Coast Highway, Noriko also saw red-shouldered hawk and double-crested cormorant (Photos 3 and 4), snowy egret and western gull (Photos 5 and 6), Allen’s hummingbird and Anna’s hummingbird (Photos 7 and 8), a family of black phoebes (Photos 9 and 10), American wigeon and great blue heron (Photos 11 and 12), and Monarchs (Photo 13).



Photos 3 and 4. Red-shouldered hawk with prey item just offsite and double-crested cormorant on the project site. Photos by Noriko Smallwood, 13 July 2023.



Photos 5 and 6. Snowy egret and western gull over the project site. Photos by Noriko Smallwood, 13 July 2023.



Photos 7 and 8. Allen's and Anna's hummingbirds on site. Photos by Noriko Smallwood, 13 July 2023.



Photo 9. Part of a family of black phoebes. Photo by Noriko Smallwood, 13 July 2023.



Photo 10. *Part of a family of black phoebes. Photo by Noriko Smallwood, 13 July 2023.*



Photos 11 and 12. American wigeon just off site and great blue heron at the project site. Photo by Noriko Smallwood, 13 July 2023.

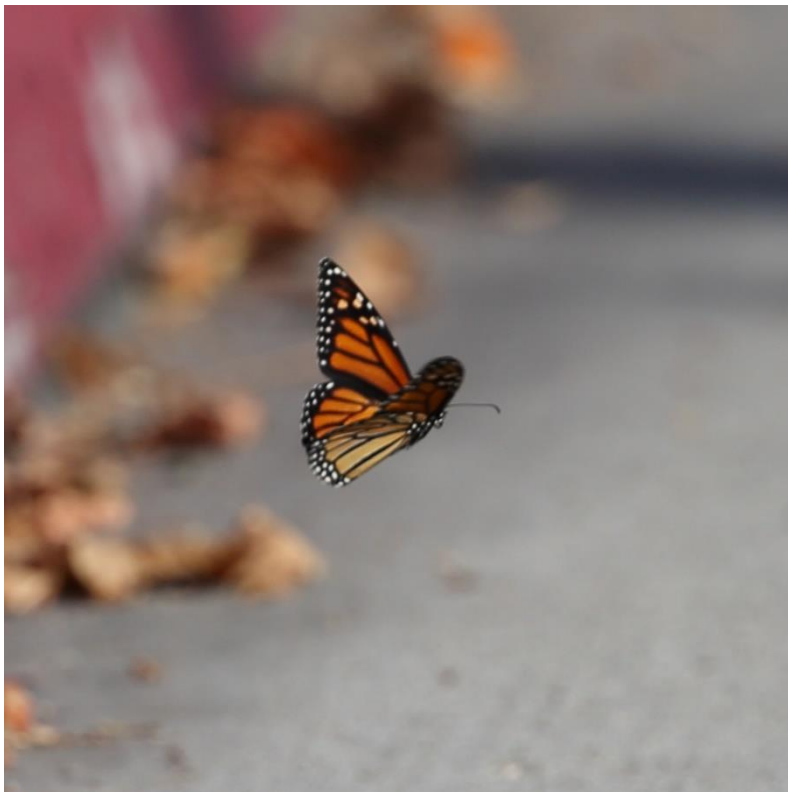


Photo 13. Monarch flying over the project site. Photo by Noriko Smallwood, 13 July 2023.

Reconnaissance surveys, such as the survey completed by Noriko and the once completed by Glenn Lukos Associates (2023), 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. But whereas 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. More than one survey is needed to inventory the species that make use of a site over the period of a year or longer.

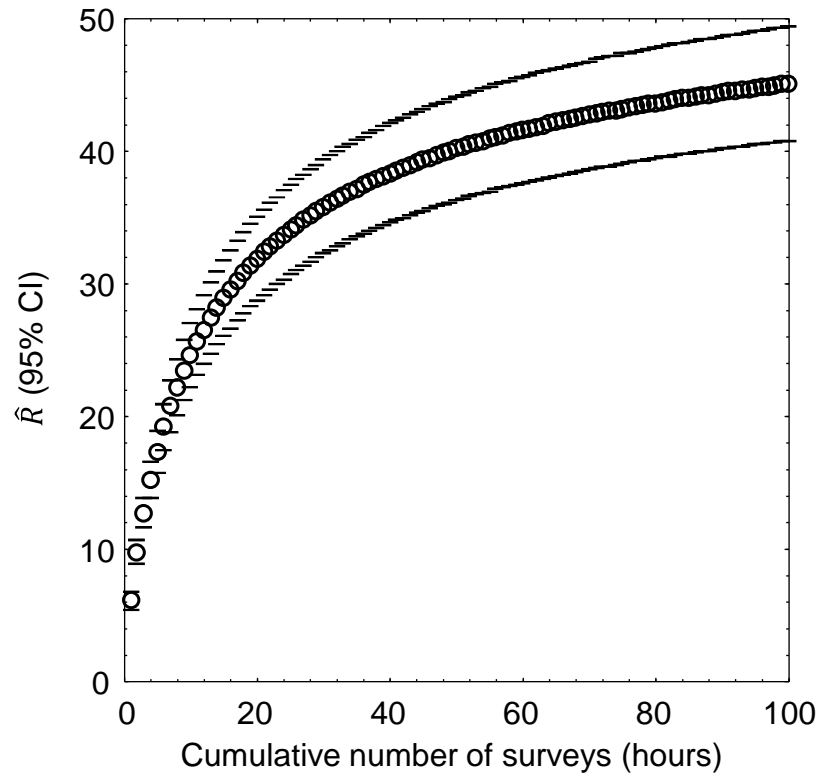
By use of an analytical bridge, a modeling effort applied to a large, robust data set from a research site can predict the number of vertebrate wildlife species that likely make use of the site over the longer term. As part of my research, I completed a much larger survey effort across 167 km² of annual grasslands of the Altamont Pass Wind Resource Area, where from 2015 through 2019 I performed 721 1-hour visual-scan surveys, or 721 hours of surveys, at 46 stations. I used binoculars and otherwise the methods were the same as the methods 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 of my research site. I also averaged model predictions of species richness at each incremental increase of number of surveys, i.e., number of hours (Figure 1). On average I detected 9.7 species over the first 2 hours of surveys at my research site in the Altamont Pass (2 hours to nearly match the 1.97 hours Noriko surveyed at the project site), which composed 17% 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 1, the 23 species Noriko detected after her nearly 2 hours of survey at the project site likely represented 17% 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 $23/0.17 = 135$ 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 135 predicted species, then continued surveys would eventually detect 29 special-status species of vertebrate wildlife.

Again, however, my prediction of 135 species of vertebrate wildlife, including 29 special-status species of vertebrate wildlife, is derived from daytime visual-scan surveys, and would not detect nocturnal mammals such as bats. The true number of species

composing the wildlife community of the site must be larger. A reconnaissance 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. More surveys are needed.

Figure 1. 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. Note that the location of the study is largely irrelevant to the utility of the graph to the interpretation of survey outcomes at the project site. It is the pattern in the data that is relevant, because the pattern is typical of the pattern seen elsewhere.



During her survey of the project site, Noriko also recorded flight attributes of 117 birds of 16 species engaged in 51 flights. The species she observed flying over the project site included Allen’s hummingbird, American crow, black-crowned night-heron (Photo 14), barn swallow (Photo 15), black phoebe, cliff swallow, Cooper’s hawk, double-crested cormorant, European starling, great blue heron, house finch, hooded oriole, house sparrow, mourning dove, snowy egret, and western gull. Of the flights, 42% headed south, 24% headed west, 14% headed north, 14% headed east, and another 3 circled, flew back and forth, or were of short distances. Flight heights ranged from 2 m to 90 m above ground, with disproportionate numbers of the highest flyers headed south or west. About 40% of the flights were within the height domain of the proposed building, and would be vulnerable to ending in collision fatalities should the building be constructed.



Photos 14 and 15. *Black-crowned night-heron and barn swallow flying over the project site. Photos by Noriko Smallwood on 13 July 2023.*

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 site's regional setting, is one of CEQA's essential analytical steps. 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. Glenn Lukos Associates (2023) performed one survey on one day for an unknown period of time, and consulted only the California Natural Diversity Data Base (CNDDDB) for species occurrence records. Insufficient effort was committed to characterization of the wildlife community as part of the existing environmental setting.

Environmental Setting informed by Field Surveys

Glenn Lukos Associates (2023) reported details about how they searched for each type of wildlife, such as for birds, mammals and reptiles. However, Glenn Lukos Associates (2023) did not report the most important information about how they surveyed for wildlife, and that was the survey start time and survey duration. The start time is well known in wildlife ecology as an important influence on wildlife activity and the number of species a survey is likely to detect. Survey duration is even more influential. This information should have been reported.

Survey duration is especially important to know because Glenn Lukos Associates (2023) pursued six objectives during the survey, and each of these objectives required time.

Only two biologists visited the site on one day for the purpose of (1) general reconnaissance survey and vegetation mapping; (2) general biological surveys; (3) habitat assessments for special-status plant species; (4) habitat assessments for special-status wildlife species; (5) assessment for the presence of wildlife migration and colonial nursery sites; and (6) evaluation for federal and state jurisdictional waters/wetlands. It is hard to believe that all 6 objectives could have been achieved with excellence within whatever time was allotted for the survey on 16 March 2023. An explanation is needed.

Because the survey was in pursuit of 6 objectives over some portion of a single day, it is perhaps understandable that Glenn Lukos Associates (2023) detected only 16 species of vertebrate wildlife, and that Noriko Smallwood detected 1.44 times as many species. Whereas Glenn Lukos Associates (2023) reports having found no special-status species (they actually found one – turkey vulture), Noriko found 6 special-status species on or adjacent to the project site and 7 special-status species altogether including her survey at 6700 Pacific Coast Highway across the street. Including both surveys by Noriko and that of Glenn Lukos Associates (2023), 34 species of vertebrate wildlife were documented at and next to the project site, which is more than twice the number reported by Glenn Lukos Associates (2023). Glenn Lukos Associates (2023) barely scratched the surface of wildlife use of the project site.

Glenn Lukos Associates (2023) also mischaracterizes the use of the site by raptors. Even though Glenn Lukos Associates (2023) reports the presence of turkey vulture at the site – turkey vulture is a species of raptor, Glenn Lukos Associates (2023:35) reports, “No raptor species, including special-status raptor species, were observed in the Study Area, and none are expected to occur except for occasional birds in transit. ... there is no suitable breeding or foraging habitat for special-status raptors in the Study Area.” But in addition to the turkey vulture identified by Glenn Lukos Associates (2023) on their study site, Noriko saw a Cooper’s hawk and a red-shouldered hawk. And not only was the red-shouldered hawk present, but it was foraging as evidenced by a prey item in its clutch.

Glenn Lukos Associates (2023) also mischaracterizes the use of the site by wading birds. p Glenn Lukos Associates (2023:35) reports, “No sign of past or current nesting by wading birds or raptors was detected during the biological survey, which was conducted during the nesting bird season; however, there is very low potential for such nesting to occur in the future.” Noriko saw something very different. During her survey of the 6615 Pacific Coast Highway project site, she saw western gull, great blue heron, snowy egret, black-crowned night-heron, and double-crested cormorant. During her survey across the street at 6700 Pacific Coast Highway, she additionally saw black-necked stilts and great egret.

A likely source of the mischaracterizations of wildlife use of the project site is Glenn Lukos Associates’ (2023) treatment of the list of species they detected during a single survey as definitive of the wildlife community of the project site. It was not definitive. It was a very small sampling of the species of wildlife that make use of the project site.

Environmental Setting informed by Desktop Review

The purpose of literature and database review and of consulting with local experts is to inform the reconnaissance survey, to augment interpretation of its outcome, 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 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).

Glenn Lukos Associates (2023) reports having queried CNDDDB for species occurrence records within the Quads encompassing and surrounding the project site. However, by including in the analysis of species' occurrence likelihoods only those species whose documented occurrences were within the nearest CNDDDB quadrangles, Glenn Lukos Associates (2023) screens out many special-status species from further consideration in its characterization of the wildlife community. CNDDDB is 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.*" Glenn Lukos Associates (2023) misuses CNDDDB.

CNDDDB relies entirely on volunteer reporting from biologists who were allowed access to whatever 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. The lack of many CNDDDB records for species recently assigned special status simply reflects the brief time for records to have accumulated since the species were assigned special status. 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 site visits, 133 special-status species of wildlife are known to occur near enough to the site to warrant analysis of occurrence potential (Table 3). Of these 133 species, 6 were confirmed on site by Noriko Smallwood and Glenn Lukos Associates' (2023). Another 76 (57%) have been documented within 1.5 miles of the site ('Very close'), and another 12 (9%) within 1.5 and 4 miles ('Nearby'),

and another 25 (19%) within 4 to 30 miles ('In region'). Nearly two-thirds (63%) of the species in Table 3 have been reportedly seen within 4 miles of the project site. It is reasonable to conclude, therefore, that the site supports at least six special-status species of wildlife and carries the potential for supporting many more special-status species of wildlife based on proximity of recorded occurrences.

Glenn Lukos Associates (2023) analyzes occurrence likelihoods of only 40 (30%) of the species listed in Table 3. Of the 6 special-status species detected on the project site, Glenn Lukos Associates (2023) concludes 3 (50%) do not occur. That is a high error rate in the context of special-status species, equal to a coin-flip. Of the 76 species occurrence records I found within 1.5 miles of the site, Glenn Lukos Associates (2023) concludes 23 (30%) do not occur on the project site (7 of these species were seen within 1.5 miles of the site very recently). Of the 12 occurrence records I found between 1.5 and 4 miles of the site, Glenn Lukos Associates (2023) concludes 3 (33%) do not occur. Considering the 50% error rate of Glenn Lukos Associates' occurrence likelihoods applied to species that Noriko confirmed on the project site, the numerous other species known to occur nearby yet determined to not occur on the project site is concerning. The project site provides much more value to wildlife than Glenn Lukos Associates (2023) characterizes.

Glenn Lukos Associates (2023) did not detect Monarch butterfly on the project site, and concluded that Monarch "does not occur." Nevertheless, Noriko detected Monarch on the project site. Monarch is a candidate for listing under the federal Endangered Species Act. Based solely on Noriko's sighting of Monarch on the project site, a fair argument can be made for the need to prepare an EIR to fully analyze the potential impacts and mitigation options related to Monarchs.

POTENTIAL BIOLOGICAL IMPACTS

An impacts analysis should consider whether and how a proposed project would affect members of a species, larger demographic units of the species, the whole of a species, and ecological communities. The accuracy of this analysis depends on an accurate characterization of the existing environmental setting. In the case of the proposed project, the existing environmental setting has not been accurately characterized, and two important types of potential project impact have not been analyzed.

WILDLIFE MOVEMENT

One of CEQA's principal concerns regarding potential project impacts is whether a proposed project would interfere with wildlife movement in the region. Glenn Lukos Associates' (2023) analysis of this issue is flawed. According to Glenn Lukos Associates (2023:36), "Due to the developed nature and urban setting of the Study Area, it is not associated with any habitat linkages, wildlife corridors, or wildlife nurseries." A problem with this speculation is that the primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor or a habitat linkage.

Table 3. Occurrence likelihoods of special-status bird species at or near the proposed project site, according to eBird/iNaturalist records (<https://eBird.org>, <https://www.inaturalist.org>) and on-site survey findings, where ‘Very close’ indicates within 1.5 miles of the site, “nearby” indicates within 1.5 and 4 miles, and “in region” indicates within 4 and 30 miles, and ‘in range’ means the species’ geographic range overlaps the site.

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Monarch	<i>Danaus plexippus</i>	FC	Does not occur	On site
Crotch’s bumble bee	<i>Bombus crotchii</i>	CCE	Does not occur	Nearby
Western pond turtle	<i>Emys marmorata</i>	SSC	Does not occur	In region
Coastal whiptail	<i>Aspidoscelis tigris stejnegeri</i>	SSC		In region
San Diegan legless lizard	<i>Anniella stebbinsi</i>	SSC	Does not occur	In region
Red-diamond rattlesnake	<i>Crotalus ruber</i>	SSC	Does not occur	Very close
Fulvous whistling-duck	<i>Dendrocygna bicolor</i>	SSC1		In region
Brant	<i>Branta bernicla</i>	SSC2		Very close
Cackling goose (Aleutian)	<i>Branta hutchinsii leucopareia</i>	WL		Very close
Redhead	<i>Aythya americana</i>	SSC2		Very close
Harlequin duck	<i>Histrionicus histrionicus</i>	SSC2		Nearby
Black storm-petrel	<i>Hydrobates melania</i>	SSC, BCC		In region
Western grebe	<i>Aechmophorus occidentalis</i>	BCC		Very close
Clark’s grebe	<i>Aechmophorus clarkii</i>	BCC		Very close
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	FT, CE, BCC	Does not occur	In region
Black swift	<i>Cypseloides niger</i>	SSC3, BCC		Nearby
Vaux’s swift	<i>Chaetura vauxi</i>	SSC2, BCC		Very close
Costa’s hummingbird	<i>Calypte costae</i>	BCC		Very close
Rufous hummingbird	<i>Selasphorus rufus</i>	BCC		Very close
Allen’s hummingbird	<i>Selasphorus sasin</i>	BCC		On site
Light-footed Ridgway’s rail	<i>Rallus obsoletus levipes</i>	FE, CE, CFP	Does not occur	Very close
Mountain plover	<i>Charadrius montanus</i>	SSC2, BCC		Very close
Snowy plover	<i>Charadrius nivosus</i>	BCC		Very close
Western snowy plover	<i>Charadrius nivosus nivosus</i>	FT, SSC, BCC	Does not occur	Nearby

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Whimbrel ⁴	<i>Numenius phaeopus</i>	BCC		Very close
Long-billed curlew	<i>Numenius americanus</i>	WL		Very close, recent
Marbled godwit	<i>Limosa fedoa</i>	BCC		Very close
Red knot (Pacific)	<i>Calidris canutus</i>	BCC		Very close
Short-billed dowitcher	<i>Limnodromus griseus</i>	BCC		Very close
Willet	<i>Tringa semipalmata</i>	BCC		Very close
American avocet ⁴	<i>Recurvirostra americana</i>	BCC		Very close, recent
Marbled murrelet	<i>Brachyramphus marmoratus</i>	FT, CE		In region
Rhinoceros auklet	<i>Cerorhinca monocerata</i>	WL		Very close
Cassin's auklet	<i>Ptychoramphus aleuticus</i>	SSC, BCC		Very close
Scripps' murrelet	<i>Synthliboramphus scrippsi</i>	CT, BCC		Very close
Laughing gull	<i>Leucophaeus atricilla</i>	WL		In region
Heermann's gull	<i>Larus heermanni</i>	BCC		Very close, recent
Western gull	<i>Larus occidentalis</i>	BCC		On site
California gull	<i>Larus californicus</i>	BCC, WL		Very close, recent
California least tern	<i>Sternula antillarum browni</i>	FE, CE, FP	Does not occur	Very close, recent
Gull-billed tern	<i>Gelochelidon nilotica</i>	BCC, SSC ₃		Very close
Black tern	<i>Chlidonias niger</i>	SSC ₂ , BCC		Very close
Elegant tern	<i>Thalasseus elegans</i>	BCC, WL		Very close, recent
Black skimmer	<i>Rynchops niger</i>	BCC, SSC ₃	Does not occur	Very close
Common loon	<i>Gavia immer</i>	SSC		Very close
Brandt's cormorant	<i>Urile penicillatus</i>	BCC		Very close
Double-crested cormorant	<i>Phalacrocorax auritus</i>	WL	Does not occur	On site
American white pelican	<i>Pelicanus erythrorhynchos</i>	SSC ₁ , BCC		Very close, recent
California brown pelican	<i>Pelecanus occidentalis californicus</i>	FP	Does not occur	Very close
Least bittern	<i>Ixobrychus exilis</i>	SSC ₂	Does not occur	Very close
White-faced ibis	<i>Plegadis chihi</i>	WL		Very close, recent
Turkey vulture	<i>Cathartes aura</i>	BOP		On site

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Osprey	<i>Pandion haliaetus</i>	WL, BOP	Does not occur	Very close, recent
White-tailed kite	<i>Elanus leucurus</i>	CFP, BOP	Does not occur	Very close
Golden eagle	<i>Aquila chrysaetos</i>	BGEPA, CFP, BOP, WL	Does not occur	Very close
Northern harrier	<i>Circus cyaneus</i>	BCC, SSC3, BOP	Does not occur	Very close, recent
Sharp-shinned hawk	<i>Accipiter striatus</i>	WL, BOP		Very close
Cooper's hawk	<i>Accipiter cooperii</i>	WL, BOP		On site
Bald eagle	<i>Haliaeetus leucocephalus</i>	CE, BGEPA, CFP		Very close
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP		Very close
Swainson's hawk	<i>Buteo swainsoni</i>	CT, BOP	Does not occur	Very close
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP		Very close, recent
Ferruginous hawk	<i>Buteo regalis</i>	WL, BOP	Does not occur	Very close
Zone-tailed hawk	<i>Buteo albonotatus</i>	BOP		Nearby
Harris' hawk	<i>Parabuteo unicinctus</i>	WL, BOP		In region
Rough-legged hawk	<i>Buteo lagopus</i>	BOP		Very close
Barn owl	<i>Tyto alba</i>	BOP		Very close, recent
Western screech-owl	<i>Megascops kennicotti</i>	BOP		In region
Great horned owl	<i>Bubo virginianus</i>	BOP		Very close
Burrowing owl	<i>Athene cunicularia</i>	BCC, SSC2, BOP	Does not occur	Very close
Long-eared owl	<i>Asio otus</i>	BCC, SSC3, BOP	Does not occur	In region
Short-eared owl	<i>Asia flammeus</i>	BCC, SSC3, BOP	Does not occur	Nearby
Lewis's woodpecker	<i>Melanerpes lewis</i>	BCC		In region
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC		Very close, recent
American kestrel	<i>Falco sparverius</i>	BOP		Very close, recent
Merlin	<i>Falco columbarius</i>	WL, BOP	Does not occur	Very close
Peregrine falcon	<i>Falco peregrinus</i>	CFP, BOP	Does not occur	Very close
Prairie falcon	<i>Falco mexicanus</i>	WL, BOP		Very close
Olive-sided flycatcher	<i>Contopus cooperi</i>	BCC, SSC2		Very close

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Willow flycatcher	<i>Empidonax trailii</i>	CE		Very close
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE, CE	Does not occur	In region
Vermilion flycatcher	<i>Pyrocephalus rubinus</i>	SSC2		Very close
Least Bell's vireo	<i>Vireo bellii pusillus</i>	FE, CE	Does not occur	Very close, recent
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC2	Does not occur	Very close
Oak titmouse	<i>Baeolophus inornatus</i>	BCC		Nearby
California horned lark	<i>Eremophila alpestris actia</i>	WL	Does not occur	Very close, recent
Bank swallow	<i>Riparia riparia</i>	CT	Does not occur	Very close
Purple martin	<i>Progne subis</i>	SSC2		Very close
Wrentit	<i>Chamaea fasciata</i>	BCC		In region
California gnatcatcher	<i>Polioptila c. californica</i>	CT, SSC2	Does not occur	Very close
Clark's marsh wren ³	<i>Cistothorus palustris clarkae</i>	SSC2		Very close
California thrasher	<i>Toxostoma redivivum</i>	BCC		Very close
Lawrence's goldfinch	<i>Spinus lawrencei</i>	BCC		Very close
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC2		Nearby
Black-chinned sparrow	<i>Spizella atrogularis</i>	BCC		In region
Gray-headed junco	<i>Junco hyemalis caniceps</i>	WL		Nearby
Bell's sparrow	<i>Amphispiza b. belli</i>	WL	Does not occur	In region
Oregon vesper sparrow	<i>Poocetes gramineus affinis</i>	SSC2, BCC		Very close
Belding's savannah sparrow ²	<i>Passerculus sandwichensis beldingi</i>	CE, BCC	Does not occur	Very close, recent
Large-billed savannah sparrow ²	<i>Passerculus sandwichensis rostratus</i>	SSC2		Very close
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	WL		Nearby
Yellow-breasted chat	<i>Icteria virens</i>	SSC3	Does not occur	Very close, recent
Yellow-headed blackbird	<i>Xanthocephalus xanthocephalus</i>	SSC3		Very close
Bullock's oriole	<i>Icterus bullockii</i>	BCC		Very close
Tricolored blackbird	<i>Agelaius tricolor</i>	CT, BCC, SSC1	Does not occur	Very close

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Lucy's warbler	<i>Leiothlypis luciae</i>	SSC3, BCC		Nearby
Virginia's warbler	<i>Leiothlypis virginiae</i>	WL, BCC		Nearby
Yellow warbler	<i>Setophaga petechia</i>	SSC2	Does not occur	Very close, recent
Hepatic tanager	<i>Piranga flava</i>	WL		In region
Summer tanager	<i>Piranga rubra</i>	SSC1		Very close
Pallid bat	<i>Antrozous pallidus</i>	SSC, WBWG:H		In range
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC, WBWG:H		In range
Canyon bat	<i>Parastrellus hesperus</i>	WBWG:L		In region
Big brown bat	<i>Episticus fuscus</i>	WBWG:L		In region
Silver-haired bat	<i>Lasionycteris noctivagans</i>	WBWG:M	Does not occur	In region
Spotted bat	<i>Euderma maculatum</i>	SSC, WBWG:H		In range
Western red bat	<i>Lasiurus blossevillii</i>	SSC, WBWG:H		In region
Hoary bat	<i>Lasiurus cinereus</i>	WBWG:M	Does not occur	In region
Western yellow bat	<i>Lasiurus xanthinus</i>	SSC, WBWG:H		In range
Western small-footed myotis	<i>Myotis cililabrum</i>	WBWG:M		In range
Miller's myotis	<i>Myotis evotis</i>	WBWG:M		In range
Little brown myotis	<i>Myotis lucifugus</i>	WBWG:M		In range
Fringed myotis	<i>Myotis thysanodes</i>	WBWG:H		In range
Long-legged myotis	<i>Myotis volans</i>	WBWG:H		In range
Yuma myotis	<i>Myotis yumanensis</i>	WBWG:LM		In region
California myotis	<i>Myotis californicus</i>	WBWG:L		In region
Western mastiff bat	<i>Eumops perotis</i>	SSC, WBWG:H	Does not occur	In range
Mexican free-tailed bat	<i>Tadarida brasiliensis</i>	WBWG:L		Very close
Southern California salt marsh shrew	<i>Sorex ornatus salicornicus</i>	SSC		In range
San Diego black-tailed jackrabbit	<i>Lepus californicus bennettii</i>	SSC		In region
Los Angeles pocket mouse	<i>Perognathus longimembris brevinasus</i>	SSC		In range

Common name	Species name	Status ¹	Occurrence potentials	
			Glenn Lukos Associates (2023)	Data base records, Site visits
Pacific pocket mouse	<i>Perognathus longimembris pacificus</i>	FE, SSC	Does not occur	In range
South coast marsh vole	<i>Microtus californicus stephensi</i>	SSC	Does not occur	In range

¹ Listed as FT or FE = federal threatened or endangered, FC = federal candidate for listing, BCC = U.S. Fish and Wildlife Service Bird of Conservation Concern, CT or CE = California threatened or endangered, CCT or CCE = Candidate California threatened or endangered, CFP = California Fully Protected (California Fish and Game 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 = Birds of Prey (CFG Code 3503.5), and WBWG = Western Bat Working Group with priority rankings, of low (L), moderate (M), and high (H).

² Uncertain of subspecies, but either resident Belding's or wintering large-billed savannah sparrows.

³ Reported simply as marsh wren, but marsh wrens in this area should be Clark's marsh wren.

⁴ Uncertain if BCC based on 2021 Bird of Conservation Concern list.

Glenn Lukos Associates' (2023) speculation is unsupported by any surveys intended to measure wildlife movement patterns on the project site or in the region. No sampling plots were surveyed and no program of observation was initiated to characterize how wildlife move across or over the site or surrounds. No behaviors were reported that could be used to infer how wildlife make use of the project site. Glenn Lukos Associates collected no evidence, and Glenn Lukos Associates relies on no evidence in support of its speculation regarding the site's role in wildlife movement.

However, ample evidence that the site is important to wildlife movement in the region is available in the documented occurrences of 34 vertebrate species of wildlife on and adjacent to the project site. These animals would not have occurred there had they been incapable of moving there on their own volition. Noriko also recorded flight attributes of 50 flight paths by 117 birds of 16 species within only 1.97 hours of survey. On average, she saw nearly one bird per minute flying through the airspace of the project site. The project would impose a barrier to wildlife movement. Considering the level of flight activity Noriko saw on site, the project's impact to wildlife movement would be significant, and as the project is currently proposed, it would be unmitigated.

BIRD-WINDOW COLLISIONS

Glenn Lukos Associates (2023) neglects a large portion of habitat that is essential to many species. To understand this part of their habitat, one must consider the definition of habitat, which is a species' use of the environment (Hall et al. 1997, Morrison et al. 1998, Smallwood 2002). The gaseous atmosphere, or aerosphere, is a principal medium of life to volant animals such as birds (Davy et al. 2017, Diehl et al. 2017). The aerosphere is where birds and bats and other volant animals with wings migrate, disperse, forage, perform courtship and where some of them mate. Birds are some of the many types of animals that evolved wings as a morphological adaptation to thrive by moving through the medium of the aerosphere. The aerosphere is habitat. Indeed, an entire discipline of ecology has emerged to study this essential aspect of habitat – the discipline of aeroecology (Kunz et al. 2008).

Many special-status species of birds have been recorded at or near the aerosphere of the project site. My database review and the site visits indicate there are 102 special-status species of birds with potential to use the site's aerosphere (Table 4). Of these, 10 have been recorded on or over the project site, 56 within 1.5 miles of the site ('Very close'), 16 within 1.5 and 4 miles ('Nearby'), and another 16 within 4 to 30 miles ('In region'). The birds reported within all these distance domains from the project site can quickly fly those distances, so they would all be within short flights of the proposed project's windows.

Window collisions are often characterized as either the second or third largest source or human-caused bird mortality. The numbers behind these characterizations are often attributed to Klem's (1990) and Dunn's (1993) estimates of about 100 million to 1 billion bird fatalities in the USA, or more recently by Loss et al.'s (2014) estimate of 365-988 million bird fatalities in the USA or Calvert et al.'s (2013) and Machtans et al.'s (2013)

estimates of 22.4 million and 25 million bird fatalities in Canada, respectively. The proposed project would impose windows in the airspace normally used by birds.

Glass-façades of buildings intercept and kill many birds, but these façades are differentially hazardous to birds based on spatial extent, contiguity, orientation, and other factors. At Washington State University, Johnson and Hudson (1976) found 266 bird fatalities of 41 species within 73 months of monitoring of a three-story glass walkway (no fatality adjustments attempted). Prior to marking the windows to warn birds of the collision hazard, the collision rate was 84.7 per year. At that rate, and not attempting to adjust the fatality estimate for the proportion of fatalities not found, 4,574 birds were likely killed over the 54 years since the start of their study, and that's at a relatively small building façade. Accounting for the proportion of fatalities not found, the number of birds killed by this walkway over the last 54 years would have been about 14,270. And this is just for one 3-story, glass-sided walkway between two college campus buildings.

Klem's (1990) estimate was based on speculation that 1 to 10 birds are killed per building per year, and this speculated range was extended to the number of buildings estimated by the US Census Bureau in 1986. Klem's speculation was supported by fatality monitoring at only two houses, one in Illinois and the other in New York. Also, the basis of his fatality rate extension has changed greatly since 1986. Whereas his estimate served the need to alert the public of the possible magnitude of the bird-window collision issue, it was highly uncertain at the time and undoubtedly outdated more than three decades hence. Indeed, by 2010 Klem (2010) characterized the upper end of his estimated range – 1 billion bird fatalities – as conservative. Furthermore, the estimate lumped species together as if all birds are the same and the loss of all birds to windows has the same level of impact.

By the time Loss et al. (2014) performed their effort to estimate annual USA bird-window fatalities, many more fatality monitoring studies had been reported or were underway. Loss et al. (2014) incorporated many more fatality rates based on scientific monitoring, and they were more careful about which fatality rates to include. However, they included estimates based on fatality monitoring by homeowners, which in one study were found to detect only 38% of the available window fatalities (Bracey et al. 2016). Loss et al. (2014) excluded all fatality records lacking a dead bird in hand, such as injured birds or feather or blood spots on windows. Loss et al.'s (2014) fatality metric was the number of fatalities per building (where in this context a building can include a house, low-rise, or high-rise structure), but they assumed that this metric was based on window collisions. Because most of the bird-window collision studies were limited to migration seasons, Loss et al. (2014) developed an admittedly assumption-laden correction factor for making annual estimates. Also, only 2 of the studies included adjustments for carcass persistence and searcher detection error, and it was unclear how and to what degree fatality rates were adjusted for these factors. Although Loss et al. (2014) attempted to account for some biases as well as for large sources of uncertainty mostly resulting from an opportunistic rather than systematic sampling data source, their estimated annual fatality rate across the USA was highly uncertain and vulnerable to multiple biases, most of which would have resulted in fatality estimates biased low.

In my review of bird-window collision monitoring, I found that the search radius around homes and buildings was very narrow, usually 2 meters. Based on my experience with bird collisions in other contexts, I would expect that a large portion of bird-window collision victims would end up farther than 2 m from the windows, especially when the windows are higher up on tall buildings. In my experience, searcher detection rates tend to be low for small birds deposited on ground with vegetation cover or woodchips or other types of organic matter. Also, vertebrate scavengers entrain on anthropogenic sources of mortality and quickly remove many of the carcasses, thereby preventing the fatality searcher from detecting these fatalities. Adjusting fatality rates for these factors – search radius bias, searcher detection error, and carcass persistence rates – would greatly increase nationwide estimates of bird-window collision fatalities.

Buildings can intercept many nocturnal migrants as well as birds flying in daylight. As mentioned above, Johnson and Hudson (1976) found 266 bird fatalities of 41 species within 73 months of monitoring of a four-story glass walkway at Washington State University (no adjustments attempted for undetected fatalities). Somerlot (2003) found 21 bird fatalities among 13 buildings on a university campus within only 61 days. Monitoring twice per week, Hager et al. (2008) found 215 bird fatalities of 48 species, or 55 birds/building/year, and at another site they found 142 bird fatalities of 37 species for 24 birds/building/year. Gelb and Delacretaz (2009) recorded 5,400 bird fatalities under buildings in New York City, based on a decade of monitoring only during migration periods, and some of the high-rises were associated with hundreds of fatalities each. Klem et al. (2009) monitored 73 building façades in New York City during 114 days of two migratory periods, tallying 549 collision victims, nearly 5 birds per day. Borden et al. (2010) surveyed a 1.8 km route 3 times per week during 12-month period and found 271 bird fatalities of 50 species. Parkins et al. (2015) found 35 bird fatalities of 16 species within only 45 days of monitoring under 4 building façades. From 24 days of survey over a 48-day span, Porter and Huang (2015) found 47 fatalities under 8 buildings on a university campus. Sabo et al. (2016) found 27 bird fatalities over 61 days of searches under 31 windows. In San Francisco, Kahle et al. (2016) found 355 collision victims within 1,762 days under a 5-story building. Ocampo-Peñuela et al. (2016) searched the perimeters of 6 buildings on a university campus, finding 86 fatalities after 63 days of surveys. One of these buildings produced 61 of the 86 fatalities, and another building with collision-deterrent glass caused only 2 of the fatalities, thereby indicating a wide range in impacts likely influenced by various factors. There is ample evidence available to support my prediction that the proposed project would result in many collision fatalities of birds.

Project Impact Prediction

By the time of these comments, I had reviewed and processed results of bird collision monitoring at 213 buildings and façades for which bird collisions per m² of glass per year could be calculated and averaged (Johnson and Hudson 1976, O'Connell 2001, Somerlot 2003, Hager et al. 2008, Borden et al. 2010, Hager et al. 2013, Porter and Huang 2015, Parkins et al. 2015, Kahle et al. 2016, Ocampo-Peñuela et al. 2016, Sabo et al. 2016, Barton et al. 2017, Gomez-Moreno et al. 2018, Schneider et al. 2018, Loss et al.

2019, Brown et al. 2020, City of Portland Bureau of Environmental Services and Portland Audubon 2020, Riding et al. 2020). These study results averaged 0.073 bird deaths per m² of glass per year (95% CI: 0.042-0.102). This average and its 95% confidence interval provide a robust basis for predicting fatality rates at a proposed new project.

Glenn Lukos Associates (2023) does not disclose the extent of glass windows and glass railings on the proposed new buildings. Fortunately, I have maintained a database of the extent of glass windows relative to the extents of floor space among other projects for which I have prepared expert testimony. For 13 recently proposed California apartment projects, the ratio of m² of windows to ft² of floor space was 0.0129 (95% CI: 0.0071–0.0187). Glenn Lukos Associates (2023) discloses the total floorspace of the project as 429,835 sf. This amount of floor space multiplied by the ratio above would predict 5,545 m² (95% CI: 3,052–8,038 m²) of glass in the project building's facades. Applying the mean fatality rate (above) to 5,545 m² of glass, I predict annual bird deaths of 405 (95% CI: 241–570).

The vast majority of these deaths would be of birds protected under the Migratory Bird Treaty Act and under the recently revised California Migratory Bird Protection Act, thus causing significant unmitigated impacts. Given the predicted level of bird-window collision mortality, and the lack of any proposed mitigation, it is my opinion that the proposed project would result in potentially significant adverse biological impacts. There is at least a fair argument for the need to prepare an EIR to appropriately analyze the impact of bird-glass collisions that might be caused by the project.

TRAFFIC IMPACTS TO WILDLIFE

Glenn Lukos Associates (2023) 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.

Photo 16. A white-tailed antelope squirrel runs across the road just in the Coachella Valley, 26 May 2022. Such road crossings are usually successful, but too often prove fatal to the animal.



Photo 17. A coyote uses the crosswalk to cross a road on 2 February 2023. Not all drivers stop, nor do all animals use the crosswalk. Too often, animals are injured or killed when they attempt to cross roads.



Photos 18 and 19. Raccoon killed on Road 31 just east of Highway 505 in Solano County (left; photo taken on 10 November 2018), and mourning dove killed by vehicle on a California road (right; photo by Noriko Smallwood, 21 June 2020.)

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 next to Vasco Road (Brown et al. 2016). Brown et al.'s (2016) adjustment factors for carcass persistence resembled those of Santos et al. (2011). Also applying searcher detection rates from 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 over 1.25 years and 2.5 miles of road translates to 3,900 wild animals per mile per year. 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.

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

Glenn Lukos Associates (2023) does not predict annual VMT. Fortunately, I have maintained a database of predicted annual VMT relative to the extents of floor space among other projects for which I have prepared expert testimony. For 5 recently proposed California residential projects (3 apartment projects), the ratio of annual VMT to ft² of floor space averaged 36.28. Applied to the project's 429,835 square feet of floor space, this ratio would predict 15,594,414 annual 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 × 2.5 miles × 365 days/year × 1.25 years = 22,242,187.5 vehicle miles per 12,187 wildlife fatalities, or 1,825 vehicle miles per fatality. This rate divided into my

predicted annual VMT would predict 8,545 vertebrate wildlife fatalities per year. However, fewer animals would be killed in the urbanized part of Long Beach that surrounds the project site as compared to the study area of Mendelsohn et al. (2009), so an adjustment is in order. Assuming that the number of wild animals encountered by project-generated traffic would range between 10% and 25% of the number of animals encountered by traffic in the Mendelsohn et al. (2009) study, the annual death toll to wildlife resulting from project-generated traffic would be 855 to 2,136, which would be a significant, unmitigated impact to wildlife caused by the project.

Based on my indicator-level analysis, the project-generated traffic would cause substantial, significant impacts to wildlife. Glenn Lukos Associates (2023) does not address this potential impact, let alone propose to mitigate it. Mitigation measures to improve wildlife safety along roads are available and are feasible, and they need exploration for their suitability with the proposed project. Given the predicted level of project-generated traffic-caused mortality, and the lack of any proposed mitigation, it is my opinion that the proposed project would result in potentially significant adverse biological impacts. A fair argument can be made for the need to prepare an EIR to appropriately analyze the impact of wildlife-automobile collisions resulting from project-generated traffic.

CUMULATIVE IMPACTS

The project would insert a six-story building into the airspace that has been used by volant wildlife for many thousands of years to travel along the coast, and very likely to enter or leave from the nearby wetlands or to fly the shortest distance between Santa Monica Bay and San Pedro Bay. The project would further fragment aerial habitat of volant wildlife, and this would contribute cumulatively to other similar impacts caused by other mid-rise and high-rise buildings in the area. The project would also cause a predicted 405 (95% CI: 241–570) bird-window collision fatalities per year, and would generate a predicted additional 15,594,414 annual VMT, which would contribute cumulatively to the wildlife-automobile collision mortality that is ongoing in the region.

Despite the obvious cumulative impacts, the cumulative impacts analysis is flawed. According to Glenn Lukos Associates (2023:42), “The Project site does not support any special-status biological resources and will not result in direct impacts to special-status biological resources. ... located a minimum of 194 feet from the nearest wetland areas ... With implementation of the SEASP mitigation monitoring and reporting measures identified in Section 6.2 below as applicable, no cumulative impacts will result from the Project.” This explanation implies that cumulative impacts are really just residual impacts of incomplete mitigation of project-level direct impacts. If that was CEQA’s standard, then cumulative effects analysis would be merely an analysis of the efficacy of mitigation directed to project-level direct impacts. But Glenn Lukos Associates’ (2023) implied standard is not the standard of analysis of cumulative effects. Individually mitigated projects do not negate the significance of cumulative effects. If they did, then CEQA would not require a cumulative effects analysis.

Another flaw of the cumulative effects analysis is that, as far as I can determine, the City of Long Beach has no regional monitoring program of wildlife, plants or other biological resources to assess the efficacy of the mitigation measures that have been implemented at other projects, including those involving SEASP mitigation. That is, there is no monitoring for cumulative effects nor for mitigation efficacy at the regional level. Therefore, there is no basis to trust the Glenn Lukos Associates' explanation over why cumulative impacts should be considered less than significant.

MITIGATION MEASURES

Glenn Lukos Associates (2023) lists a series of mitigation measures that are supposed to be implemented to be consistent with the Southeast Area Specific Plan (SEASP). City of Long Beach presumably regards Glenn Lukos Associates (2023) as satisfaction of SEASP mitigation measure BIO-1. But Glenn Lukos Associates (2023) does not satisfy it, because it fails to identify the special-status species of wildlife that occur on the project site. Its survey is too cursory, and its survey outcome is misleadingly interpreted, as its negative findings are mis portrayed as definitive. Noriko Smallwood readily refuted multiple determinations of occurrence likelihood that Glenn Lukos Associates had applied to special-status species, all of which were "Does not occur." Furthermore, Noriko's survey data applied to an analytical bridge to a more extensively studied research site predicts 135 species of vertebrate wildlife would eventually be detected by diurnal surveys alone, and that 29 of these species would be special-status species. The survey by Glenn Lukos Associates only detected 11.8% of the species that are available to be detected during diurnal surveys, and they detected only 3% of the available special-status species. The survey by Glenn Lukos Associates was inadequate, and its desktop review was a misapplication of CNDDDB while also making no use of other available species occurrence databases.

BIO-1 has not been satisfied for additional reasons, as well. It has not avoided impacts to special-status species of wildlife. In addition to failing to identify the special-status species that would be vulnerable to project impacts, nothing is proposed to avoid or minimize the 6-story building's potential interference with wildlife movement in the area, or the building's contribution to bird-window collision mortality and the project's contribution to wildlife-automobile collision mortality. The measure specifies that "the proposed development and project design avoids impacts to special status species," yet no data were collected by Glenn Lukos Associates for this purpose. An example of the type of data that could help to design the project to minimize the building's impacts to flying birds are the flight attribute data that Noriko Smallwood collected, and which I summarized earlier in this letter. This type of data collected over a longer term and in all types of weather conditions and times of day could inform of a safer building design that would minimize both interference to avian movement and risk of collision with the building.

Implementation of SEASP measure BIO-3 is conditioned on whether special-status species are found to occur at the project site. Glenn Lukos Associates (2023) misinforms whether this measure needs to be implemented. After Noriko's survey, it clearly needs to be implemented.

RECOMMENDED MEASURES

Guidelines on Building Design to Minimize Bird-Window Collisions: If the project goes forward, it should at a minimum adhere to available Bird-Safe Guidelines, such as those prepared by American Bird Conservancy and New York and San Francisco. The American Bird Conservancy (ABC) produced an excellent set of guidelines recommending actions to: (1) Minimize use of glass; (2) Placing glass behind some type of screening (grilles, shutters, exterior shades); (3) Using glass with inherent properties to reduce collisions, such as patterns, window films, decals or tape; and (4) Turning off lights during migration seasons (Sheppard and Phillips 2015). The City of San Francisco (San Francisco Planning Department 2011) also has a set of building design guidelines, based on the excellent guidelines produced by the New York City Audubon Society (Orff et al. 2007). The ABC document and both the New York and San Francisco documents provide excellent alerting of potential bird-collision hazards as well as many visual examples. The San Francisco Planning Department's (2011) building design guidelines are more comprehensive than those of New York City, but they could have gone further. For example, the San Francisco guidelines probably should have also covered scientific monitoring of impacts as well as compensatory mitigation for impacts that could not be avoided, minimized or reduced.

New research results inform of the efficacy of marking windows. Whereas Klem (1990) found no deterrent effect from decals on windows, Johnson and Hudson (1976) reported a fatality reduction of about 69% after placing decals on windows. In an experiment of opportunity, Ocampo-Peñuela et al. (2016) found only 2 of 86 fatalities at one of 6 buildings – the only building with windows treated with a bird deterrent film. At the building with fritted glass, bird collisions were 82% lower than at other buildings with untreated windows. Kahle et al. (2016) added external window shades to some windowed façades to reduce fatalities 82% and 95%. Brown et al. (2020) reported an 84% lower collision probability among fritted glass windows and windows treated with ORNILUX R UV. City of Portland Bureau of Environmental Services and Portland Audubon (2020) reduced bird collision fatalities 94% by affixing marked Solyx window film to existing glass panels of Portland's Columbia Building. Many external and internal glass markers have been tested experimentally, some showing no effect and some showing strong deterrent effects (Klem 1989, 1990, 2009, 2011; Klem and Saenger 2013; Rössler et al. 2015).

Monitoring and the use of compensatory mitigation should be incorporated at any new building project because the measures recommended in the available guidelines remain of uncertain efficacy, and even if these measures are effective, they will not reduce collision fatalities to zero. The only way to assess mitigation efficacy and to quantify post-construction fatalities is to monitor the project for fatalities.

Road Mortality: Compensatory mitigation is needed for the increased wildlife mortality that would be caused by bird-window collisions and the project-generated road traffic in the region. I suggest that this mitigation can be directed toward funding research to identify fatality patterns and effective impact reduction measures such as reduced speed limits and wildlife under-crossings or overcrossings of particularly

dangerous road segments. Compensatory mitigation can also be provided in the form of donations to wildlife rehabilitation facilities (see below).

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

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 building.

Landscaping: If the project goes forward, California native plant landscaping (i.e., chaparral, grassland, and locally appropriate scrub plants) should be considered to be used as opposed to landscaping with lawn and exotic shrubs. Native plants offer more structure, cover, food resources, and nesting substrate for wildlife than landscaping with lawn. Native plant landscaping has been shown to increase the abundance of arthropods which act as importance sources of food for wildlife and are crucial for pollination and plant reproduction (Narango et al. 2017, Adams et al. 2020, Smallwood and Wood 2022.). Further, many endangered and threatened insects require native host plants for reproduction and migration, e.g., monarch butterfly. Around the world, landscaping with native plants over exotic plants increases the abundance and diversity of birds, and is particularly valuable to native birds (Lerman and Warren 2011, Burghardt et al. 2008, Berthon et al. 2021, Smallwood and Wood 2022). Landscaping with native plants is a way to maintain or to bring back some of the natural habitat and lessen the footprint of urbanization by acting as interconnected patches of habitat for wildlife (Goddard et al. 2009, Tallamy 2020). Lastly, not only does native plant landscaping benefit wildlife, it requires less water and maintenance than traditional landscaping with lawn and hedges.

Thank you for your consideration,



Shawn Smallwood, Ph.D.

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