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July 17, 2023

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Re: Comment on 6700 E. Pacific Coast Highway (Council File No. 23-0762)
CITY COUNCIL PUBLIC HEARING AGENDA ITEM #17 (July 18, 2023)

Dear Mayor Richardson, Honorable Members of the City Council of Long Beach, Ms. Harbin, and Ms. De La Garza:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), a California nonprofit benefit corporation, regarding the proposed mixed-use development at 6700 East Pacific Coast Highway (APNs: 7242-012-006 and 7242-012-007) ("Project"). The Planning Commission has determined that the Project is exempt from the requirement for preparation of environmental documents pursuant to Section 15183 of the California Environmental Quality Act ("CEQA"). The Planning Commission determined that the Project was adequately analyzed in the environmental impact report prepared for the Southeast Area Specific Plan, which was prepared in 2015 and certified in 2017. (SCH No. 2015101075) ("SEASP EIR").

After reviewing the Section 15183 Compliance Memo 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. The Project fails to comply with the SEASP because it exceeds height and density limit. 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 five special status species on the Project site. None of these species are identified in the SEASP EIR and there are no 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 6700 PCH project with the 6615 Pacific Coast Highway (6615 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 City Council deny the applications for Site Plan Review (SPR 22-093) and a Local Coastal Development Permit (LCDP 2208-36) 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 all structures on site to facilitate development of a new mixed-use project consisting of: 281 residential dwelling units, 3,100 square feet of commercial retail space in a building with 592,100 square feet of total area, including parking and an overall building height of 85 feet 6 inches (6 levels over 2 levels of parking). The project includes 507 parking spaces, 143 bicycle parking spaces and approximately 27,534 square feet of common and private open space areas on the property within the MU-CC Zoning District.

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 whether 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 an existing 2-story building with an 8-story, 85-foot tall building. The Project site is contaminated with several toxic chemicals.

II. CITY FAILS TO CONSIDER THE CUMULATIVE IMPACTS OF 6700 PCH AND 6615 PCH.

At the same time as this Project is being considered, the City is considering another Project almost immediately across the street, at 6615 East Pacific Coast Highway ("6615 PCH"). Indeed, 6615 PCH is being considered by the Planning Commission on July 20, only two-days after the City Council considers 6700 PCH. The two projects will clearly have cumulative impacts. Yet, the environmental review for each project fails even to mention the other (despite the fact that the environmental review documents were prepared by the same consulting firm, Placeworks). 6615 PCH proposes 390 multi-family units in a 6-story wrap-style building with structured parking. 6615 PCH also seeks to avoid CEQA review by relying on the SEASP EIR. 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). The public hearing notice and CEQA compliance checklist are available on the City's website at: https://www.longbeach.gov/globalassets/lbds/media-library/documents/planning/current/public-hearings/pc-public-hearings/nph-6615-e--pch.

III. 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.

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.

IV. 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.

1. Project Exceeds Allowable FAR.

The SEASP and zoning allow a maximum Floor Area Ratio (FAR) of 2.0 in the MU-CC zone. (Compliance Checklist, p.23). However, the proposed Project has a Floor Area Ratio of between 2.3 and 2.8. (Id. p. 24). Since the Project exceeds the FAR, it is clearly not "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). As such, the city may not rely on Section 15183 and an project-specific EIR is required.

The City may argue that it is legally required to allow the excess FAR pursuant to the State Density Bonus Law. (Gov. Code §65915). Even if this is true, this does not mean that the Project is consistent with CEQA section 15183, and is exempt from CEQA review. Under the terms of Section 15183, subsequent CEQA review is required to analyze the increased density since it was not analyzed in the SEASP EIR. While the Project may ultimately be allowed to proceed at its increased density, CEQA review is still required to analyze the Project's environmental impacts and to propose feasible mitigation measures.

2. Project Exceeds Allowable Height.

The proposed Project exceeds the maximum height allowed in the SEASP. The SEASP allows a maximum of 5-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). By contrast, the proposed Project has an overall building height of 85 feet 6 inches (6 levels over 2 levels of parking). The penthouse elevator rises to 105 feet in height. Thus, the Project vastly exceeds the height allowed by the SEASP. The Project 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." (CEQA Guidelines Section 15183(d)). As such, the City may not rely on the SEASP EIR and Section 15183. 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 6615 PCH Project Across the Street.

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 mention at all that a similar Project is proposed and being considered two-days later across the street at 6615 Pacific Coast Highway. 6700 PCH and 6615 PCH will clearly have significant cumulative impacts.

Dr. Smallwood concludes that the projects at 6700 PCH and 6615 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 558 (95% CI: 331–735) bird-window collision fatalities per year, and would generate a predicted additional 21,481,388 annual VMT, which would contribute cumulatively to the wildlife-automobile collision mortality that is ongoing in the region. A cumulative impacts analysis needs to be completed. (Ex. A, p. 23).

These 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.

The Project will have significant cumulative air quality impacts. The CEQA Compliance Checklist for 6700 PCH states that the Project will have construction air quality NOx emissions of 41 pounds per day (ppd), which is below the CEQA significance threshold of 100 ppd. (6700 PCH Checklist, p. 51). However, the CEQA Compliance Checklist for 6615 states that this project will have NOx construction emissions of 96 ppd. (6615 PCH Checklist, p. 53). 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 CEQA 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 6615 PCH project, there is no substantial evidence to support a finding that the 6700 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.

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 impacts that are "peculiar to the project or the parcel," and which were "not analyzed as significant effects in the SEASP PEIR." (6700 PCH CEQA Checklist, p.

101 (hazardous material impacts); 110 (impede or redirect flood flows)).

1. The Project has Hazardous Material Impacts that are Peculiar to the Project.

The project site is located within the boundary of the Seal Beach Oil Field. In addition, active and abandoned oil pipelines were identified along the northeastern portion of the project site along Pacific Coast Highway and the project site contains an oil pipeline easement with at least one pipeline in the easement. While the initial analysis (Phase I) underlying the SEASP EIR found no Recognized Environmental Conditions, later Phase II analysis found highly significant soil contamination above regulatory screening levels. Total petroleum hydrocarbons (TPH) levels would preclude soil export for sites with unrestricted use. Soil vapor analytical results indicated that TPH (gasoline) and several volatile organic compounds exceeded screening levels, such as benzene and chloroform (across the project site), and isolated detections of bromodichloromethane, ethylbenzene, tetrachloroethene, and trichloroethene. Methane was detected in two locations (borings B-3 and B-4) above City action levels. (CEQA Checklist, p. 104).

Many of these chemicals of toxic and/or cancer-causing chemicals.

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).

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)

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 Checklist 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.

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. (CEQA Checklist, p. 106). 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.

On July 13, 2023, wildlife biologist Noriko Smallwood, MS, conducted a site visit at 6700 PCH. She positively identified five special status species: Monarch Butterfly, Allen's Hummingbird, Western Gull, Double-Breasted Cormorant, and California Brown Pelican. (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 25 of them are special-status species. (Ex. A, p. 10). 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 558 bird-window collision fatalities per year. (Ex. A, p.23). 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. 23-25).

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.

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.

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 comply with this requirement. The CEQA Checklist states that compliance is not required because the Project site is already developed. (CEQA Checklist, p. 61). However, BIO-1 applies to project that are "adjacent to undeveloped land and all land within the Coastal Habitat, Wetlands & Recreation land use." The Project site is adjacent to undeveloped land and the Los Cerritos Wetlands Complex (LCWC). Therefore, a biological analysis was required. The City violated the SEASP by failing to prepare the required 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. (Ex. A).

TRAF-2: The City has also eliminated a key requirement from SEASP traffic mitigation measures TRAF-2. This measure required, "The traffic study for the first development project to be considered under the SEASP shall include an analysis of signal timing of 2nd Street through Naples to identify timing adjustments needed to improve signal synchronization." The City simply has eliminated that requirement by striking it through. (CEQA Checklist, p. 157).

AQ-1: The SEASP EIR required installation of photocatalytic tiles on outdoor surfaces. Photocatalytic tiles break down air pollutants such as nitrogen oxides (NOx), which is a major smog-precursor chemical. The Project fails to implement this mitigation measure, which would reduce air quality impacts. (Checklist, p. 95).

EH-1: The SEASP EIR required 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. (Checklist, p. 95).

AQ-2: The SEASP EIR required projects to include community and private gardens. The Project fails to comply with this requirement, claiming that it is "not applicable." (Checklist, p. 96). 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: The SEASP EIR requires projects to use reclaimed/ recycled /or grey water, including "residential greywater systems, rainfall capture systems, and dual plumbing for recycled water. (Checklist, p. 97). The Project fails to comply with these mitigation measures. (Id.)

BE 4, 5: The SEASP EIR 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." (CEQA Checklist p. 91). In fact, the Project intends to use natural gas for water and pool heater, barbeques and firepits. (CEQA Checklist, p. 77). The City is failing to comply with this feasible mitigation measure. Electric and/or solar water heating is feasible and readily available.

BE-6: The SEASP EIR requires project to "install on-site renewable energy systems, such as rooftop solar PV." The City contends that this requirement is "not applicable." (CEQA Checklist p. 91). This makes no sense. The Project could easily place solar panels on the large rooftop, which would save energy and reduce greenhouse gas emissions.

Policy 5.20: SEASP Policy 5.20 requires a 100 foot buffer between new development and ESHA. (CEQA Checklist p. 127). However, the proposed Project is being located only 76 feet from the ESHA of the San Gabriel River. (Id. p. 124). As such, the Project is inconsistent with this policy.[1]

Policy 5.32: SEASP Policy 5.32 requires numerous measures to protect sensitive habitat when projects are located within 100 feet of ESHA, including minimize lighting, minimize rooftop antennae, prohibit amplified music, prohibit insecticides, and other measures. Despite this, the Project proposes only measures to minimize lighting. It does not prohibit amplified music or other measures. (CEQA Checklist p. 131).

Since the Project fails to comply with numerous feasible mitigation measures from the SEASP EIR, 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

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[1] Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4*; Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358).

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." (CEQA Checklist, p. 74). Thus, under the plain terms of Section 15183, this 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 says that the Project "could be" required to install solar panels, "which would further reduce the proposed project's electricity demand", but the City has imposed no actual binding requirement to install these feasible energy saving, and greenhouse gas reducing devices. (Checklist, p. 91). The Project intends to use natural gas for water and pool heater, barbeques and firepits. (CEQA Checklist, p. 77). 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. 43), cultural resources (Checklist, p. 67), greenhouse gas (Checklist, p. 86), noise impacts (Checklist, p. 133), transportation (Checklist, p. 148). In the Compliance Memo prepared for the Project ("Compliance Memo"), 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).) 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 8-stories and up to 105 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.

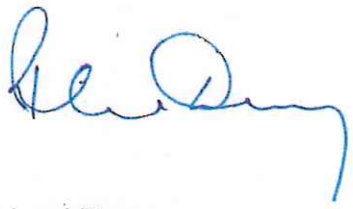
Biological Impacts: The impacts to special status species identified by Dr. Smallwood and discussed above and Exhibit A were not discussed in the SEASP EIR, and require subsequent CEQA review. Dr. Smallwood positively identified five special status species: Monarch Butterfly, Allen's Hummingbird, Western Gull, Double-Breasted Cormorant, and California Brown Pelican. (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 25 of them are special-status species. (Ex. A, p. 10). 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 558 bird-window collision fatalities per year. (Ex. A, p.23).

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.

H. 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,



Richard Drury
richard@lozeaudrury.com

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: 6700 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 6700 Pacific Coast Highway (Site Plan Review SPR22-093), which I understand would add 281 residential dwelling units and 3,100 square feet of commercial/retail space in a 6-story, 592,100 square-foot building along with 507 vehicular parking spaces in a parking structure on a 2.61-acre site. I am concerned that the project would cause significant impacts to biological resources that have not been analyzed in any form of CEQA review.

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 1.87 hours from 06:10 to 08:02 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 65–69° F. The site was composed of commercial buildings with ornamental landscaping and a parking lot (Photos 1–2). 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 6615 Pacific Coast Highway just across the street from the project site on the same morning from 08:02 to 10:00. She implemented the same methods as summarized above. The sky was sunny with west winds of 2 mph and temperatures of 69° F. That site was also composed of a commercial building with ornamental landscaping and a parking lot.

Photos 1 – 3. *Views of the project site on 13 July 2023. Photos by Noriko Smallwood.*

Noriko detected 22 species of vertebrate wildlife during her survey of the 6700 PCH project site (Table 1), and 4 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 6615 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 1.87 hours of survey at* 6700 Pacific Coast Highway *on 13 July 2023.*

Common name	***Species name***	**Status[1]**	**Notes**
Monarch	*Danaus plexippus*	FC	
Eurasian collared-dove	*Streptopelia decaocto*	Non-native	Harassed by Cassin's kingbird
Mourning dove	*Zenaida macroura*		
Allen's hummingbird	*Selasphorus sasin*	BCC	
Black-necked stilt	*Himantopus mexicanus*		
Western gull	*Larus occidentalis*	BCC	
Double-crested cormorant	*Nannopterum auritum*	TWL	
California brown pelican	*Pelicanus occidentalis californicus*	CFP	Just off site
Great blue heron	*Ardea herodias*		
Great egret	*Ardea alba*		
Snowy egret	*Egretta thula*		
Cassin's kingbird	*Tyrannus vociferans*		Harassed Eurasian collared-dove
Black phoebe	*Sayornis nigricans*		Juveniles on site
American crow	*Corvus brachyrhynchos*		
Barn swallow	*Hirundo rustica*		
Cliff swallow	*Petrochelidon pyrrhonota*		
European starling	*Sturnus vulgaris*	Non-native	
Western bluebird	*Sialia mexicana*		Juvenile on site
House sparrow	*Passer domesticus*	Non-native	Juveniles on site
House finch	*Haemorphous mexicanus*		
Hooded oriole	*Icterus cucullatus*		
Botta's pocket gopher	*Thomomys bottae*		Burrows on site
California ground squirrel	*Otospermophilus beecheyi*		1 individual just off site

[1] Listed as CFP = California Fully Protected (CFG Code 3511), 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).

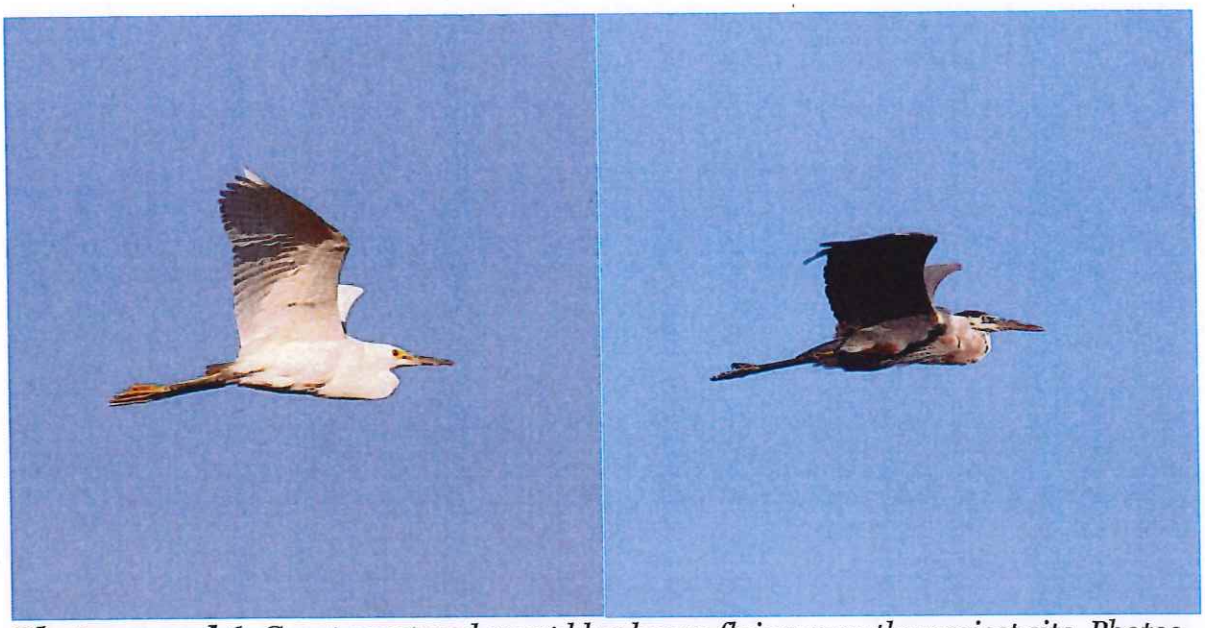
Table 2. *Additional species of wildlife Noriko observed during another 1.87 hours of survey at 6615 Pacific Coast Highway on 13 July 2023.*

Common name	***Species name***	**Status**[1]	**Notes**
American wigeon	Mareca americana		just off site, flew over
Black-crowned night-heron	Nycticorax nycticorax		flew over site
Anna's hummingbird	Calypte anna		perched in tree, calling
Cooper's hawk	Accipter cooperi	TWL, BOP	flew over site low and fast
Red-shouldered hawk	Buteo lineatus	BOP	just off site, with prey
Northern mockingbird	Mimus polyglottos		just off site
Great-tailed grackle	Quiscalus mexicanus		harassing GBHE

[1] TWL = Taxa to Watch List (Shuford and Gardali 2008), BOP = Birds of Prey (California Fish and Game Code 3503.5)

During her survey of 6700 Pacific Coast Highway, Noriko also saw California ground squirrels (Photo 4), great egret and great blue heron (Photos 5–7), western gull (Photo 8), black-necked stilts (Photo 9), mourning doves and Cassin's kingbirds (Photos 10 and 11), and western bluebirds and hooded oriole (Photos 12 and 13), among other species.

Photo 4. *California ground squirrel next to the project site. Photo by Noriko Smallwood, 13 July 2023.*



Photos 5 and 6. *Great egret and great blue heron flying over the project site. Photos by Noriko Smallwood, 13 July 2023.*

Photos 7 and 8. *Great egret landing on the project site and a western gull flying over. Photos by Noriko Smallwood, 13 July 2023.*

Photo 9. *Black-necked stilts flying over the project site. Photo by Noriko Smallwood, 13 July 2023.*

Photos 10 and 11. *Mourning doves and Cassin's kingbirds at the project site. Photos by Noriko Smallwood, 13 July 2023.*

Photos 12 and 13. *Western bluebird and hooded oriole at the project site. Photos by Noriko Smallwood, 13 July 2023.*

Reconnaissance surveys, such as the survey completed by Noriko, 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 km^2 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: $\hat{R} = \frac{1}{1/a+b\times(Hours)^c}$, 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 9.3 species over the first 1.87 hours of surveys at my research site in the Altamont Pass (1.87 hours to nearly match the 1.87 hours Noriko surveyed at the project site), which composed 16.3% 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 22 species Noriko detected after her nearly 1.87 hours of survey at the project site likely represented 16.3% 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 $^{22}/_{0.163} = 135$ 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 25 special-status species of vertebrate wildlife.

Again, however, my prediction of 135 species of vertebrate wildlife, including 25 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.

During her survey of the project site, Noriko also recorded flight attributes of 115 birds of 17 species engaged in 64 flights. The species she observed flying over the project site included Allen's hummingbird, American crow, barn swallow, black phoebe, Cassin's kingbird, cliff swallow, double-crested cormorant, Eurasian collared-dove, European starling, great blue heron, great egret, house finch, hooded oriole, house sparrow, mourning dove, snowy egret, and western gull. Of the flights, 25% headed south, 23% headed west, 27% headed north, 16% headed east, and another 6 flew back and forth or were of short distances. Flight heights ranged from 2 m to 90 m above ground. About 47% 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.

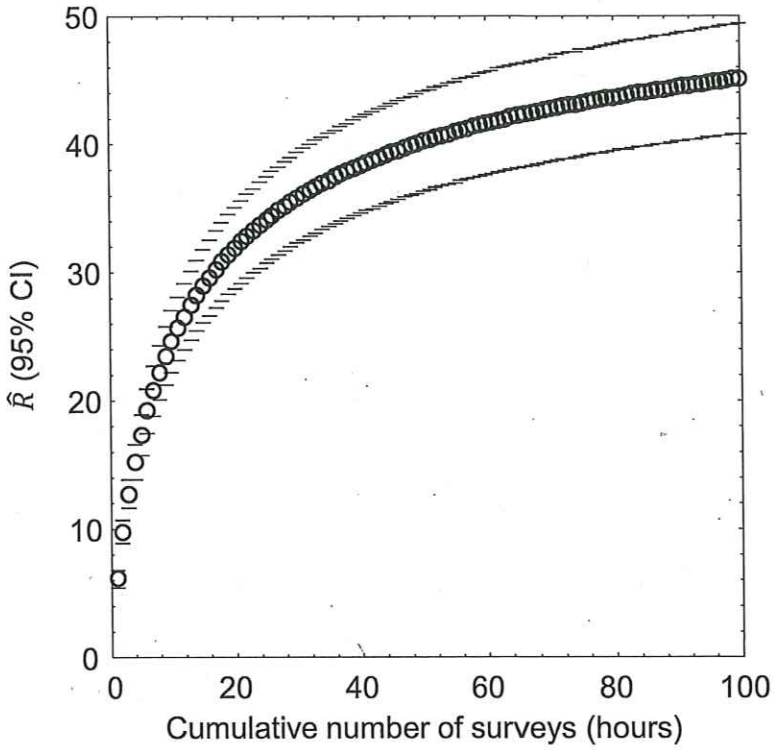


Figure 1. *Mean (95% CI) predicted wildlife species richness, $\hat{R}$, as a nonlinear function of hour-long survey increments across 46 visual-scan survey stations across the Altamont Pass Wind Resource Area, Alameda and Contra Costa Counties, 2015–2019. Note that the location of the study is largely 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.*

EXISTING ENVIRNMENTAL 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. In the case of the proposed project, these needed steps appear to have not been taken.

Environmental Setting informed by Field Surveys

No surveys for wildlife have been completed at the project site. The lack of surveys leaves the City of Long Beach blind to any potential project impacts to biological resources, because without a survey there is no sound basis for characterizing the existing environmental setting. It also leaves the City without having implemented the primary mitigation measure of the Southeast Area Specific Plan (SEASP). Therefore, the project is not in compliance with the SEASP. Finally, that a survey is necessary was

proven by Noriko Smallwood's survey that she completed on my behalf. She detected 22 species of vertebrate wildlife, including 4 special-status species and a fifth special-status species in her detection of Monarchs. Immediately next door at 6615 Pacific Coast Highway – another built site – Noriko's survey coupled with that of Glenn Lukos Associates (2023) found another 13 species of vertebrate wildlife for 34 in total, including 7 special-status species. The pattern in Noriko's data predict that at least 135 diurnally active species of vertebrate wildlife make use of the site, and at least 25 of them are special-status species. Going forward with the project without completing appropriate wildlife surveys would be indefensible and clearly inconsistent with the SEASP.

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 identity 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.

No desktop review has been completed for the proposed projects. The lack of a desktop review for special-status species likely to occur at the project site leaves the City of Long Beach uninformed of potential project impacts to biological resources.

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, 4 were confirmed on site by Noriko Smallwood. Another 78 (59%) have been documented within 1.5 miles of the site ('Very close'), and 21 of these were recent, 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 four special-status species of wildlife and carries the potential for supporting many more special-status species of wildlife based on proximity of recorded occurrences, and as I already noted, the pattern in Noriko's data.

A fair argument can be made for the need to prepare an EIR to analyze potential project impacts to biological resources and how to best mitigate those impacts. Adequate surveys and desktop review is needed to characterize the existing environmental setting in support of an EIR.

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]**	**Data base records, Site visits**
Monarch	*Danaus plexippus*	FC	**On site**
Crotch's bumble bee	*Bombus crotchii*	CCE	Nearby
Western pond turtle	*Emys marmorata*	SSC	In region
Coastal whiptail	*Aspidoscelis tigris stejnegeri*	SSC	In region
San Diegan legless lizard	*Anniella stebbinsi*	SSC	In region
Red-diamond rattlesnake	*Crotalus ruber*	SSC	Very close
Fulvous whistling-duck	*Dendrocygna bicolor*	SSC1	In region
Brant	*Branta bernicla*	SSC2	Very close
Cackling goose (Aleutian)	*Branta hutchinsii leucopareia*	WL	Very close
Redhead	*Aythya americana*	SSC2	Very close
Harlequin duck	*Histrionicus histrionicus*	SSC2	Nearby
Black storm-petrel	*Hydrobates melania*	SSC, BCC	In region
Western grebe	*Aechmophorus occidentalis*	BCC	Very close
Clark's grebe	*Aechmophorus clarkii*	BCC	Very close
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	FT, CE, BCC	In region
Black swift	*Cypseloides niger*	SSC3, BCC	Nearby
Vaux's swift	*Chaetura vauxi*	SSC2, BCC	Very close
Costa's hummingbird	*Calypte costae*	BCC	Very close
Rufous hummingbird	*Selasphorus rufus*	BCC	Very close
Allen's hummingbird	*Selasphorus sasin*	BCC	**On site**
Light-footed Ridgway's rail	*Rallus obsoletus levipes*	FE, CE, CFP	Very close
Mountain plover	*Charadrius montanus*	SSC2, BCC	Very close
Snowy plover	*Charadrius nivosus*	BCC	Very close
Western snowy plover	*Charadrius nivosus nivosus*	FT, SSC, BCC	Nearby

Common name	***Species name***	**Status[1]**	**Data base records, Site visits**
Whimbrel[4]	*Numenius phaeopus*	BCC	Very close
Long-billed curlew	*Numenius americanus*	WL	Very close, recent
Marbled godwit	*Limosa fedoa*	BCC	Very close
Red knot (Pacific)	*Calidris canutus*	BCC	Very close
Short-billed dowitcher	*Limnodromus griseus*	BCC	Very close
Willet	*Tringa semipalmata*	BCC	Very close
American avocet[4]	*Recurvirostra americana*	BCC	Very close, recent
Marbled murrelet	*Brachyramphus marmoratus*	FT, CE	In region
Rhinoceros auklet	*Cerorhinca monocerata*	WL	Very close
Cassin's auklet	*Ptychoramphus aleuticus*	SSC, BCC	Very close
Scripps' murrelet	*Synthliboramphus scrippsi*	CT, BCC	Very close
Laughing gull	*Leucophaeus atricilla*	WL	In region
Heermann's gull	*Larus heermanni*	BCC	Very close, recent
Western gull	*Larus occidentalis*	BCC	**On site**
California gull	*Larus californicus*	BCC, WL	Very close, recent
California least tern	*Sternula antillarum browni*	FE, CE, FP	Very close, recent
Gull-billed tern	*Gelochelidon nilotica*	BCC, SSC3	Very close
Black tern	*Chlidonias niger*	SSC2, BCC	Very close
Elegant tern	*Thalasseus elegans*	BCC, WL	Very close, recent
Black skimmer	*Rynchops niger*	BCC, SSC3	Very close
Common loon	*Gavia immer*	SSC	Very close
Brandt's cormorant	*Urile penicillatus*	BCC	Very close
Double-crested cormorant	*Phalacrocorax auritus*	WL	**On site**
American white pelican	*Pelacanus erythrorhynchos*	SSC1, BCC	Very close, recent
California brown pelican	*Pelecanus occidentalis californicus*	FP	**Very close**
Least bittern	*Ixobrychus exilis*	SSC2	Very close
White-faced ibis	*Plegadis chihi*	WL	Very close, recent

Common name	***Species name***	**Status[1]**	**Data base records, Site visits**
Turkey vulture	*Cathartes aura*	BOP	Very close, recent
Osprey	*Pandion haliaetus*	WL, BOP	Very close, recent
White-tailed kite	*Elanus luecurus*	CFP, BOP	Very close
Golden eagle	*Aquila chrysaetos*	BGEPA, CFP, BOP, WL	Very close
Northern harrier	*Circus cyaneus*	BCC, SSC3, BOP	Very close, recent
Sharp-shinned hawk	*Accipiter striatus*	WL, BOP	Very close
Cooper's hawk	*Accipiter cooperii*	WL, BOP	Very close
Bald eagle	*Haliaeetus leucocephalus*	CE, BGEPA, CFP	Very close
Red-shouldered hawk	*Buteo lineatus*	BOP	Very close, recent
Swainson's hawk	*Buteo swainsoni*	CT, BOP	Very close
Red-tailed hawk	*Buteo jamaicensis*	BOP	Very close, recent
Ferruginous hawk	*Buteo regalis*	WL, BOP	Very close
Zone-tailed hawk	*Buteo albonotatus*	BOP	Nearby
Harris' hawk	*Parabuteo unicinctus*	WL, BOP	In region
Rough-legged hawk	*Buteo lagopus*	BOP	Very close
Barn owl	*Tyto alba*	BOP	Very close, recent
Western screech-owl	*Megascops kennicotti*	BOP	In region
Great horned owl	*Bubo virginianus*	BOP	Very close
Burrowing owl	*Athene cunicularia*	BCC, SSC2, BOP	Very close
Long-eared owl	*Asio otus*	BCC, SSC3, BOP	In region
Short-eared owl	*Asia flammeus*	BCC, SSC3, BOP	Nearby
Lewis's woodpecker	*Melanerpes lewis*	BCC	In region
Nuttall's woodpecker	*Picoides nuttallii*	BCC	Very close, recent
American kestrel	*Falco sparverius*	BOP	Very close, recent
Merlin	*Falco columbarius*	WL, BOP	Very close
Peregrine falcon	*Falco peregrinus*	CFP, BOP	Very close
Prairie falcon	*Falco mexicanus*	WL, BOP	Very close

Common name	***Species name***	**Status[1]**	**Data base records, Site visits**
Olive-sided flycatcher	*Contopus cooperi*	BCC, SSC2	Very close
Willow flycatcher	*Empidonax trailii*	CE	Very close
Southwestern willow flycatcher	*Empidonax traillii extimus*	FE, CE	In region
Vermilion flycatcher	*Pyrocephalus rubinus*	SSC2	Very close
Least Bell's vireo	*Vireo bellii pusillus*	FE, CE	Very close, recent
Loggerhead shrike	*Lanius ludovicianus*	SSC2	Very close
Oak titmouse	*Baeolophus inornatus*	BCC	Nearby
California horned lark	*Eremophila alpestris actia*	WL	Very close, recent
Bank swallow	*Riparia riparia*	CT	Very close
Purple martin	*Progne subis*	SSC2	Very close
Wrentit	*Chamaea fasciata*	BCC	In region
California gnatcatcher	*Polioptila c. californica*	CT, SSC2	Very close
Clark's marsh wren[3]	*Cistothorus palustris clarkae*	SSC2	Very close
California thrasher	*Toxostoma redivivum*	BCC	Very close
Lawrence's goldfinch	*Spinus lawrencei*	BCC	Very close
Grasshopper sparrow	*Ammodramus savannarum*	SSC2	Nearby
Black-chinned sparrow	*Spizella atrogularis*	BCC	In region
Gray-headed junco	*Junco hyemalis caniceps*	WL	Nearby
Bell's sparrow	*Amphispiza b. belli*	WL	In region
Oregon vesper sparrow	*Pooecetes gramineus affinis*	SSC2, BCC	Very close
Belding's savannah sparrow[2]	*Passerculus sandwichensis beldingi*	CE, BCC	Very close, recent
Large-billed savannah sparrow[2]	*Passerculus sandwichensis rostratus*	SSC2	Very close
Southern California rufous-crowned sparrow	*Aimophila ruficeps canescens*	WL	Nearby
Yellow-breasted chat	*Icteria virens*	SSC3	Very close, recent
Yellow-headed blackbird	*Xanthocephalus xanthocephalus*	SSC3	Very close
Bullock's oriole	*Icterus bullockii*	BCC	Very close

Common name	***Species name***	**Status[1]**	**Data base records, Site visits**
Tricolored blackbird	*Agelaius tricolor*	CT, BCC, SSC1	Very close
Lucy's warbler	*Leiothlypis luciae*	SSC3, BCC	Nearby
Virginia's warbler	*Leiothlypis virginiae*	WL, BCC	Nearby
Yellow warbler	*Setophaga petechia*	SSC2	Very close, recent
Hepatic tanager	*Piranga flava*	WL	In region
Summer tanager	*Piranga rubra*	SSC1	Very close
Pallid bat	*Antrozous pallidus*	SSC, WBWG:H	In range
Townsend's big-eared bat	*Corynorhinus townsendii*	SSC, WBWG:H	In range
Canyon bat	*Parastrellus hesperus*	WBWG:L	In region
Big brown bat	*Episticus fuscus*	WBWG:L	In region
Silver-haired bat	*Lasionycteris noctivagans*	WBWG:M	In region
Spotted bat	*Euderma maculatum*	SSC, WBWG:H	In range
Western red bat	*Lasiurus blossevillii*	SSC, WBWG:H	In region
Hoary bat	*Lasiurus cinereus*	WBWG:M	In region
Western yellow bat	*Lasiurus xanthinus*	SSC, WBWG:H	In range
Western small-footed myotis	*Myotis cililabrum*	WBWG:M	In range
Miller's myotis	*Myotis evotis*	WBWG:M	In range
Little brown myotis	*Myotis lucifugus*	WBWG:M	In range
Fringed myotis	*Myotis thysanodes*	WBWG:H	In range
Long-legged myotis	*Myotis volans*	WBWG:H	In range
Yuma myotis	*Myotis yumanensis*	WBWG:LM	In region
California myotis	*Myotis californicus*	WBWG:L	In region
Western mastiff bat	*Eumops perotis*	SSC, WBWG:H	In range
Mexican free-tailed bat	*Tadarida brasiliensis*	WBWG:L	Very close
Southern California salt marsh shrew	*Sorex ornatus salicornicus*	SSC	In range
San Diego black-tailed jackrabbit	*Lepus californicus bennettii*	SSC	In region

Common name	*Species name*	Status[1]	Data base records, Site visits
Los Angeles pocket mouse	*Perognathus longimembris brevinasus*	SSC	In range
Pacific pocket mouse	*Perognathus longimembris pacificus*	FE, SSC	In range
South coast marsh vole	*Microtus californicus stephensi*	SSC	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.

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. No analysis has been completed to address this concern. Ample evidence is available that the site is important to wildlife movement in the region, such as Noriko Smallwood's detection of 22 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 64 flight paths by 115 birds of 17 species within only 1.87 hours of survey. On average, she saw more than one bird per minute flying through the airspace of the project site. The project would impose a barrier to the movement of volant wildlife. 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

The project would add a 6-story building with expansive windows on its facade. 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 at 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 m^2 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 m^2 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.

The Staff Report does not disclose the extent of glass windows and glass railings on the proposed new building. 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 m^2 of windows to ft^2 of floor space was 0.0129 (95% CI: 0.0071–0.0187). Glenn Lukos Associates (2023) discloses the total floorspace of the project as 592,100 sf. This amount of floor space multiplied by the ratio above would predict 7,638 m^2 (95% CI: 4,204–11,072 m^2) of glass in the project building's facades. Applying the mean fatality rate (above) to 7,638 m^2 of glass, I predict annual bird deaths of 558 (95% CI: 331–735).

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

The Staff Report 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 14–17), 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 14. *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.*

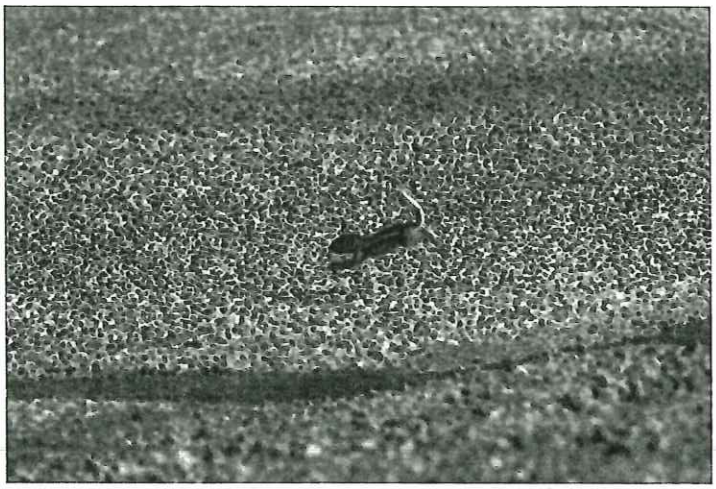


Photo 15. *A coyote uses the crosswalk to cross a road on 2 February 2023. Not all drivers stop, nor do all animals use the crosswalk. Too often, animals are injured or killed when they attempt to cross roads.*

Photos 16 and 17. *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

The Staff Report 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 ft^2 of floor space averaged 36.28. Applied to the project's 592,100 square feet of floor space, this ratio would predict 21,481,388 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 11,771 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 1,177 to 2,943, 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. The Staff Report 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 558 (95% CI: 331–735) bird-window collision fatalities per year, and would generate a predicted additional 21,481,388 annual VMT, which would contribute cumulatively to the wildlife-automobile collision mortality that is ongoing in the region. A cumulative impacts analysis needs to be completed.

MITIGATION MEASURES

A series of mitigation measures is supposed to be implemented to be consistent with the SEASP, starting with mitigation measure BIO-1. But the Staff Report fails to identify the special-status species of wildlife that occur on the project site, which is what measure BIO-1 requires. There has been no survey other than Noriko Smallwood's, whose results clearly proved the need of such surveys. Neither has there been a desktop review to identify the special-status species with potential to occur at the project site. SEASP mitigation measure BIO-1 has not been implemented as required.

Mitigation measures are also needed for potential project impacts that were not analyzed in the SEASP EIR, including for bird-window collision mortality and wildlife-automobile collision mortality. The Staff Report proposes no actions 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. Contrary to SEASP measure BIO-1, which specifies "the proposed development and project design avoids impacts to special status species," no data have been collected 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 safter building design that would minimize both interference to avian movement and risk of collision with the building.

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 threated 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

Shawn Smallwood, Ph.D.

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