Communication from Public

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Via LACouncilComment

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Re: Comment on Proposed CEQA Infill Exemption for Mission & Lincoln Apartments (CPC-2022-6189-CU-DB-ZAA-SPR-HCA)

Dear Honorable Members of the PLUM Committee:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), whose members live and work in the City of Los Angeles ("City"), regarding the appeal of the proposed Class 32 Categorical Exemption for the Mission & Lincoln Apartments Project (CPC-2022-6189-CU-DB-ZAA-SPR-HCA), including all actions related or referring to the proposed construction of a new 7-story apartment building with 184 residential units above 2 levels of automobile parking, to be located at 3601-3615 Mission Road/2010-2036 Lincoln Park Avenue, in the City of Los Angeles (the "Project").

On September 5, 2023 and December 4, 2023, SAFER submitted comments providing that the Class 32 Exemption, which exempts the Project from further review pursuant to the California Environmental Quality Act ("CEQA"), does not apply to the Project because (1) the Project will have significant adverse impacts on air quality and health risk impacts; (2) the City failed to present substantial evidence showing the Project will not have significant noise impacts; (3) the City has failed to present substantial evidence in concluding that the Project site will not have habitat value for rare, endangered, or threatened species while SAFER has provided substantial evidence to the contrary; and (4) the unusual circumstances exception to the Categorical Exemption applies. This supplemental comment incorporates all prior SAFER comments and includes additional expert comments from expert wildlife ecologist Dr. Shawn Smallwood, PhD.

After careful review, SAFER maintains its appeal that a Class 32 Categorical Exemption is improper and that further CEQA review, either through a Mitigated Negative Declaration ("MND") or an Environmental Impact Report ("EIR") is required to analyze these impacts and propose mitigation measures.

LEGAL BACKGROUND

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

The classes of projects which are exempt from the provisions of CEQA 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.' [Citations]." (*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. [Citations.] Thus, for example, interpreting the scope of a CEQA exemption presents 'a question of law, subject to de novo review by this court.' [Citations]."].) In addition, there are several exceptions to CEQA's categorical exemptions. (See, 14 CCR § 15300.2.)

As the California Supreme Court has held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20.) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Res. Code ("PRC") § 21068; see also, 14 CCR § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109.)

The Class 32 exemption provides:

> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
>
> (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
> *(c) The project site has no value, as habitat for endangered, rare or threatened species.*
> (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
> (e) The site can be adequately served by all required utilities and public services.

(14 CCR § 15332 [emph. added].)

In order to approve the Project based on the Class 32 Exemption, the City must make the above findings, and support those findings with substantial evidence. (*See*, *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal. App. 5th 951, 960.)

DISCUSSION

A. The City's Exemption Determination is Not Supported by Substantial Evidence.

The City does not rely on substantial evidence to conclude that the Project site does not have habitat value for rare, endangered, or threatened species. Substantial evidence is defined in the CEQA guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 CCR § 15384(a).) Substantial evidence does not include speculation or unsubstantiated opinion. (*Id.*) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (14 CCR § 15384(b).)

The City's Categorical Exemption is not supported by substantial evidence. In asserting that the site does not have substantive value as a habitat for endangered, rare or threatened species (Categorical Exemption, p.4), the City relies on a December 23, 2023 report prepared by South Environmental (South Report"). However, South Report's scope of analysis of the Project site was not for rare, endangered, or threatened species pursuant to the CEQA Categorical Exemption. Instead, the South Report that the City relies on narrowly focuses on the Project site's habitat value for special status species. (South Report, p. 3.) As the court in *Nassiri v. Lafayette* (2024) 103 Cal.App.5th 910, 323 Cal.Rptr.3d 168, 178 ("*Nassiri*") emphasized, the two terms are not interchangeable and each have their own meaning. In *Nassiri*, the applicant's expert testified before the City Council that, due in part to the species' geographic ranges, the identified species on the project site were not "rare." (*Id*.) Here, there is nothing in the South Report or expert

testimonies that the City can reference to make that conclusion. Therefore, the South Report does not provide or constitute substantial evidence regarding habitat value for rare, endangered, or threatened species. As such, there is no substantial evidence in the record that the City can rely on to reach its conclusion regarding the Project site's habitat value for rare, endangered, or threatened species.

For the foregoing reasons, the City's finding the Site has "no value for endangered, rare or threatened species" is not based on substantial evidence, and thus violates CEQA.

B. The City Cannot Rely on a Categorical Exemption Because the Project Site has Habitat Value for Endangered, Rare or Threatened Species.

The City cannot invoke the Categorical Exemption where there is substantial evidence that the Project site has habitat value for rare, endangered, or threatened species. (14 CCR § 15332.) Ms. Smallwood's surveys of the Project site identified species that preclude reliance on the Categorical Exemption. Ms. Smallwood first surveyed the Project site on October 27, 2023, where she identified rare, endangered, or threatened species on and near the Project site at Lincoln Park, which is located just south of the Site. (Ex. B, p. 9.) Then, on the evening of November 7, 2024, on behalf of Dr. Shawn Smallwood, Noriko Smallwood conducted a bat survey of the Project site (Id., p. 3.) Ms. Smallwood detected 2 distinct bat species, the Hoary bat (*Lasiurus cinereus*) and Mexican free-tailed bat (*Tadarida brasiliensis*). (Ex. A, p.1.) Notably, these species are listed on the Western Bat Working Group list, with the Hoary Bat as a medium priority. (Ex. B, p. 8.) These species were previously detected by residents of the Lincoln Park neighborhood and included in their previously submitted comments in the record. Altogether, substantial evidence in the record demonstrates the Project's habitat value for rare, endangered, or threatened species, thereby prohibiting the use of the Categorical Exemption.

In response, the South Report disputes the characterization of these species as special status, and that the Project site cannot have habitat value because it is not "native habitat." (South Report, pp. 3-4.) However, as Dr. Smallwood notes, the wildlife identified on the Project site are in fact properly characterized as rare, endangered, or threatened species. For instance, the BCC list is comprised of rare wildlife because the list was "intended to prevent species from having to be listed as Threatened or Endangered…" (Ex. A, p. 11):

> The BCC list includes those species with 1. Documented or apparent population declines; 2. Small or restricted populations, or 3. Dependence on restricted or vulnerable habitats. Note that these three qualifications for inclusion on the BCC list are consistent with the CEQA Guidelines definitions A and B of Rare species. Under definition B, a species "likely to become endangered within the foreseeable future" implies population decline, which is consistent with qualification 1 for inclusion on the BCC list. Under definition A, "existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens" implies small or restricted populations or dependence on restricted or vulnerable habitats, which are conditions that are consistent with qualifications 2 and 3 for inclusion on the BCC list.

(Ex. A, p. 11.) Furthermore, with regard to Birds of Prey, including those identified by Ms. Smallwood and the South Report, Dr. Smallwood explains that "[t]heir positions in the food chain naturally require large home ranges and relative rarity compared to most other species of birds." (*Id*., p. 10.) As such, Dr. Smallwood's identification and explanation of the identified species as rare, endangered, or threatened demonstrates the proper classification of wildlife on or around the Project site to bar the City from relying on a Categorical Exemption for the Project.

The City further disputes that the Project site has habitat value for rare, endangered, or threatened species because they are not "native habitat." (South Report, p. 3.) However, such assertion is incorrect and conflicts with existing case law. Not only is the term "native habitat" undefined in the South Report, but it is inconsistent with the CEQA Guidelines' plain language. Dr. Smallwood notes "it is unclear what South Environmental means by "native habitat." The term native habitat might apply to a species that has expanded its range, in which case native habitat might refer to the habitat of the species' original geographic range. Otherwise, habitat is defined as that part of the environment that is used for survival and reproduction by members of a species (Hall et al. 1997)." (Ex. A, p. 2.)

Here, the South Reports' response to Dr. Smallwood's findings and conclusions are limited to whether a species' ideal habitat features are included on the Project site. (South Report, pp. 4-5.) However, the absence of typical habitat features alone does not foreclose the possibility of the area possessing some habitat value for rare, endangered, or threatened species. Uncontested observations of wildlife foraging and socializing lend support to the idea that there is at least some habitat value. (*Nassiri*, 323 Cal.Rptr.3d at 178 [presence of species on a project site means that the parcel is assumed to have some value as habitat for those species]; see also, AR5791-5793.) In fact, even though South Environmental contends that there is no habitat value on the Project site for the Cooper's hawk because its "typical habitat" are riparian woodlands and forests (South Report, p. 5), South Environmental's survey also identified the Cooper's hawk, thereby substantiating Ms. Smallwood's first site visit and reinforcing Dr. Smallwood's conclusion of the Project site's habitat value for rare, endangered, or threatened species.

Since the Site has "value as habitat for endangered, rare or threatened species," the City may not exempt the Project from CEQA review pursuant to the CEQA infill exemption.

CONCLUSION

The City cannot rely on a Class 32 exemption because the Project does not meet the terms of the exemption. Accordingly, the City must prepare an initial study to determine the appropriate level of environmental review to undertake pursuant to CEQA.

Sincerely,

Richard Drury
LOZEAU DRURY LLP

Exhibit A

Shawn Smallwood, PhD
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City Planning Commission
City of Los Angeles
200 N. Spring Street, Room 525
Los Angeles, CA 90012-4801

22 November 2024

RE: ENV-2022-6190-CE (Categorical Exemption - Class 32)

Dear Planning Commissioners,

Following up on my letter of 28 November 2023, I write again to comment on potential impacts to biological resources that could result from the proposed CEQA Class 32 Categorical Exemption for a 7-story apartment building on 1.163 acres of wooded land adjacent to Lincoln Park. The project site is of considerable value as wildlife habitat. I am concerned that the project would cause significant impacts to wildlife, not just on the project site, but also to the wildlife of Lincoln Park. Herein I report on the findings of a survey for bats. My qualifications for preparing expert comments summarized in my letter of 28 November 2023.

SECOND 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 1.75 hours from 18:05 to 19:50 hours on 7 November 2024. She surveyed at the northwest corner of the project site by extending a pole-mounted Petterson M500 bat detector 20 feet above ground. She cabled the bat detector to her computer, on which she ran SonoBat Live to identify species of bats as they were detected real-time. Noriko recorded all species she detected. Animals of uncertain species identity were recorded to the Genus or higher taxonomic level.

Conditions were clear with no wind and the temperature declined from 66 to 60° F. The site was covered by overgrown ornamental trees and a small parking lot.

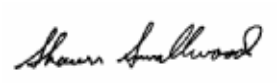
While setting up for her survey, Noriko detected Cassin's kingbird, Allen's hummingbird and mourning dove, all species of which she had detected during her survey one year ago. During her bat survey, she detected hoary bat (*Lasiurus cinereus*) and Mexican free-tailed bat (*Tadarida brasiliensis*), both species of which were known to be present the year before, as well. Noriko detected two passes of hoary bat during her survey, and seven passes of Mexican free-tailed bat. Bat activity was much slower than it would have been two months earlier, when bat activity peaks in California.

Noriko was able to confirm the presence of two bat species at the project site, even though it was late in the season for recording bat activity. The project would destroy bat habitat, including likely roost sites in the mature trees and forage in that portion of the

aerosphere that would be displaced by a building. In my opinion, as there is no plan to mitigate the project's impacts to bats, the impacts would be significant.

Hoary bat is being considered for listing under the federal Endangered Species Act, as it is included in the National Domestic Listing Workplan fiscal-years 2023-2027. Hoary bat was found to be in rapid, widespread decline (Frick et al. 2017, Rodhouse et al. 2019). If hoary bats are lost to the western USA, the costs would be enormous in terms of agriculture, insect pest control, and ecosystem function (Boyles et al. 2011).

Thank you for your consideration,



Shawn Smallwood, Ph.D.

LITERATURE CITED

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Frick, W.F.; Baerwald, E.F.; Pollock, J.F.; Barclay, R.M.R.; Szymanski, J.A.; Weller, T.J.; Russell, A.L.; Loeb, S.C.; Medellin, R.A.; McGuire, L.P. Fatalities at wind turbines may threaten population viability of a migratory bat. *Biol. Conserv.* **2017**, *209*, 172–177.

Rodhouse, T.J.; Rodriguez, R.M.; Banner, K.M.; Ormsbee, P.C.; Barnett, J.; Irvine, K.M. Evidence of regionwide bat population decline from long-term monitoring and Bayesian occupancy models with empirically informed priors. *Ecol. Evol.* **2019**, 1–11, doi:10.1002/ece3.5612.

Exhibit B

Shawn Smallwood, PhD
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City of Los Angeles
Planning and Land Use Management Committee
200 N. Spring Street
City Hall, Room 395
Los Angeles, CA 90012

2 December 2024

RE: ENV-2022-6190-CE (Categorical Exemption - Class 32)

Dear Planning and Land Use Management Committee Members,

I write to reply to responses to my 28 November 2023 comments on a proposed CEQA Class 32 Categorical Exemption for a 7-story apartment building on 1.163 acres of wooded land adjacent to Lincoln Park. I am concerned that the project site provides habitat to rare species of vertebrate wildlife. My qualifications for preparing replies were summarized and more details attached to my expert comment letter of 28 November 2023.

Desktop Review and Reconnaissance Survey of South Environmental

According to South Environmental, the City of Los Angeles requested a review of "California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDB) records of sensitive species, such as mountain lions, within a 0.25-mile radius of the project site." A 0.25-mile radius is unusually short for a review of occurrence records within such a database. The typical radius is 1.5 USGS Quadrangles or 5 miles. It is unclear why the City of Los Angeles requested such a short desktop-review radius, but its request assured an unrealistically narrow geographic area from which professional biologists might have surveyed in the past and subsequently reported findings to CNDDB. It is also the first time that I have seen a lead agency dictate the geographic scope of a professional biologist's desktop review.

The City of Los Angeles is also asking consultants to use CNDDB for the wrong purpose. As I commented in my letter of 28 November 2023, CNDDB is not designed to support absence determinations or to screen out species from characterization of a site's wildlife community. As noted by CNDDB, "*The CNDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present*." South Environmental (2023) misuses CNDDB, and the City of Los Angeles continues to misuse CNDDB.

Not surprisingly, South Environmental's restrictive desktop review turned up records of only two sensitive species of vertebrate wildlife – burrowing owl and bank swallow (Table 1). South Environmental dismisses the occurrence likelihoods of these and all

other sensitive species “due to the lack of native habitat and the high level of disturbance resulting from development and ornamental landscaping.” However, it is unclear what South Environmental means by “native habitat.” The term native habitat might apply to a species that has expanded its range, in which case native habitat might refer to the habitat of the species’ original geographic range. Otherwise, habitat is defined as that part of the environment that is used for survival and reproduction by members of a species (Hall et al. 1997). As for disturbance, again it is unclear what South Environmental means. Natural disturbances are constant, but South Environmental probably refers to anthropogenic disturbance. If the latter, then anthropogenic disturbances are widespread, and wildlife have been adapting to them as best they can. The urbanized landscape of Los Angeles includes the occurrences of many special-status species, including the vey species whose occurrence records were found by South Environmental (Table 1). Bank swallows have been recorded as close as 1,200 m from the project site, and a photo of one was taken only 6,400 m from the site.

South Environmental (2023) concludes that burrowing owls are unlikely to occur at the project site, but I cannot rule out the possibility of burrowing owls using the airspace of the project site as part of their habitat. The nearest record of burrowing owls is only 1,200 m from the project site, at Ascot Park. Burrowing owls migrate, and when they do, that portion of the aerosphere through which they migrate is habitat. One burrowing owl was recently found floating two miles offshore in the Pacific Ocean. The ocean certainly is not burrowing owl habitat, but the aerosphere above the ocean obviously is habitat. Some burrowing owls migrate through urban areas. It is not uncommon to find eBird photos of burrowing owls perched on fire hydrants, stoplights and “no parking” signs, and I have my own of burrowing owls perched on real estate signs and city park fencing. I recently learned of a burrowing owl that fatally collided with a window of a building in an urbanized area of Garden Grove on 31 October 2024. This was likely another migrant, and of relevance to the proposed project with its many new windows, this burrowing owl tried to fly through what it thought was a passage through the building on its way to its migratory destination. Photos of the setting reveal transparent unmarked windows on either side of a recessed hallway entrance to the building, and now one of the windows is damaged by the impact of a flying burrowing owl.

Had South Environmental searched CNDDB records farther from the project site than a quarter mile, and had it searched publicly available databases such as eBird and iNaturalist, it would have found 47 special-status species of wildlife on or very close to the project site, instead of only the two species it reported (Table 1). The desktop review of South Environmental is grossly inadequate, and it contributes to a misleading characterization of the wildlife community of the project site.

South Environmental (2023) reports that its biologist surveyed the project site on 31 October 2023. However, South Environmental fails to report what time the biologist’s survey started or how long it last. These two methodological details are essential for interpreting survey findings. It is well known among biologists that time of day affects the list of species that are likely to be detected, and survey duration imparts the largest effect of all. For example, I performed a reconnaissance survey of a wildlife refuge on 29 November 2024, during which I detected seven species over the first 6 minutes, but 69

species over the entire 3.25 hours. It would be important to know whether South Environmental's biologist spent only 6 minutes on her survey to detect the seven species reported, or whether she detected only seven species after several hours of survey.

Surveying on my behalf, Noriko Smallwood detected 25 species of vertebrate wildlife on or adjacent to the project site in 3.17 hours of her first survey, which was during daylight hours (she performed a second survey at night on 7 November 2024). Her first survey was completed only 4 days prior to the survey of South Environmental. Nonetheless, she detected 25 species, or 3.6 times the number detected by the biologist from South Environmental. Noriko detected all seven of the species that South Environmental did, plus counting the bat species during her nocturnal survey, 20 species that South Environmental did not. Applying the Sørenson $Index\ of\ Similarity = \frac{2c}{a+b}$ (Sørenson 1948), where a is the number of species found by South Environmental (2023), b is the number of species found by Noriko, and c is the number of species found by both South Environmental and Noriko, the Index of Similarity of the two samples of the wildlife communities is only 0.41. For comparison, the mean Index of Similarity among 40 comparisons of surveys I completed at a research site over the years 2020-2023 was 0.755 with a high value of 0.90. A value of 0.41 between South Environmental's survey and Noriko's surveys indicates the wildlife communities between these two sets of surveys were substantially dissimilar, even though the sampled wildlife community was obviously the same. South Environmental's survey was grossly deficient.

South Environmental concludes that the project site does not provide roosting opportunities for bats, and it dismisses reports of detected bat calls on site as insufficient evidence of the presence of bats. According to South Environmental (2023), "Hearing their [bats] calls near the site does not conclude that the site contains suitable bat habitat." Of course it does. Following up on the reports of bat calls near the site, Noriko surveyed at the northwest corner of the project site by extending a pole-mounted Petterson M500 bat detector 20 feet above ground (see my letter of 22 November 2024). She cabled the bat detector to her computer, on which she ran SonoBat Live to identify species of bats as they were detected real-time on 7 November 2024. Noriko detected two passes of hoary bat, and seven passes of Mexican free-tailed bat. These bats would not have occurred at the project site if there was no habitat. As for roosting opportunities, Kunz and Lumsden (2004) describe a wide variety of structural settings on which bats can roost, including on tree bark and in the curls of leaves. The project site provides habitat for bats, including at least one special-status species of bat – Hoary bat.

South Environmental (2023) reports that the "vegetation throughout the parcel is primarily disturbed ornamental trees." Left unclear is what qualifies as a disturbed tree. It would be helpful of South Environmental to explain how a disturbed tree might affect wildlife differently than an undisturbed tree.

South Environmental (2023) reports "Not only is the community not naturally occurring, but it is also dominated in the canopy by non-native species." However, left unexplained is how an unnaturally occurring community would affect the status of trees or the occurrence likelihoods of special-status species of wildlife.

Table 1. *Revised slightly from my letter of 28 November 2023, the 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. Entries in bold font identify species seen by Noriko Smallwood.*

Common name	***Species name***	**Status[1]**	**South Environmental occurrence potential**	**Data base records, Site visits**
Monarch	*Danaus plexippus*	FC		**Very close**
Crotch's bumble bee	*Bombus crotchii*	CCE		Nearby
Western pond turtle	*Emys marmorata*	SSC		In region
Blainville's horned lizard	*Phrynosoma blainvillii*	SSC		In region
Coastal whiptail	*Aspidoscelis tigris stejnegeri*	SSC		In region
San Diegan legless lizard	*Anniella stebbinsi*	SSC		Nearby
Coast patch-nosed snake	*Salvadora hexalepis virgultea*	SSC		In region
Two-striped gartersnake	*Thamnophis hammondii*	SSC		Nearby
South coast gartersnake	*Thamnophis sirtalis pop. 1*	SSC		In range
Fulvous whistling-duck	*Dendrocygna bicolor*	SSC1		In region
Brant	*Branta bernicla*	SSC2		In region
Cackling goose (Aleutian)	*Branta hutchinsii leucopareia*	WL		In region
Redhead	*Aythya americana*	SSC2		Nearby
Western grebe	*Aechmophorus occidentalis*	BCC		Nearby
Clark's grebe	*Aechmophorus clarkii*	BCC		Nearby
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	FT, CE, BCC		Nearby
Black swift	*Cypseloides niger*	SSC3, BCC		Very close
Vaux's swift	*Chaetura vauxi*	SSC2, BCC		Very close
Costa's hummingbird	*Calypte costae*	BCC		Nearby
Rufous hummingbird	*Selasphorus rufus*	BCC		Very close
Allen's hummingbird	*Selasphorus sasin*	BCC		**On site**
Snowy plover	*Charadrius nivosus*	BCC		In region
Whimbrel[2]	*Numenius phaeopus*	BCC		Very close
Long-billed curlew	*Numenius americanus*	WL		Nearby

Common name	***Species name***	**Status[1]**	**South Environmental occurrence potential**	**Data base records, Site visits**
Marbled godwit	*Limosa fedoa*	BCC		In region
Short-billed dowitcher	*Limnodromus griseus*	BCC		In region
Willet	*Tringa semipalmata*	BCC		Nearby
American avocet[2]	*Recurvirostra americana*	BCC		Nearby
Laughing gull	*Leucophaeus atricilla*	WL		In region
Heermann's gull	*Larus heermanni*	BCC		In region
Western gull	*Larus occidentalis*	BCC		Very close
California gull	*Larus californicus*	BCC, WL		**On site**
California least tern	*Sternula antillarum browni*	FE, CE, CFP		In region
Black tern	*Chlidonias niger*	SSC2, BCC		In region
Elegant tern	*Thalasseus elegans*	BCC, WL		Nearby
Common loon	*Gavia immer*	SSC		Nearby
Double-crested cormorant	*Phalacrocorax auritus*	WL		**On site**
American white pelican	*Pelacanus erythrorhynchos*	SSC1, BCC		Very close
California brown pelican	*Pelecanus occidentalis californicus*	CFP		Nearby
Least bittern	*Ixobrychus exilis*	SSC2		In region
White-faced ibis	*Plegadis chihi*	WL		Very close
Turkey vulture	*Cathartes aura*	BOP		**Very close**
Osprey	*Pandion haliaetus*	WL, BOP		Very close
White-tailed kite	*Elanus luecurus*	CFP, BOP		Very close
Golden eagle	*Aquila chrysaetos*	BGEPA, CFP, BOP, WL		Nearby
Northern harrier	*Circus cyaneus*	BCC, SSC3, BOP		Very close
Sharp-shinned hawk	*Accipiter striatus*	WL, BOP		Very close
Cooper's hawk	*Accipiter cooperii*	WL, BOP		**On site**
Bald eagle	*Haliaeetus leucocephalus*	CE, BGEPA, CFP		Nearby
Red-shouldered hawk	*Buteo lineatus*	BOP		Very close
Swainson's hawk	*Buteo swainsoni*	CT, BOP		Very close
Red-tailed hawk	*Buteo jamaicensis*	BOP		**On site**

Common name	***Species name***	**Status[1]**	**South Environmental occurrence potential**	**Data base records, Site visits**
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		In region
Barn owl	*Tyto alba*	BOP		Very close
Western screech-owl	*Megascops kennicotti*	BOP		Nearby
Great horned owl	*Bubo virginianus*	BOP		Very close
Burrowing owl	*Athene cunicularia*	BCC, CCE, SSC2, BOP	None	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		Nearby
Nuttall's woodpecker	*Picoides nuttallii*	BCC		**Very close**
American kestrel	*Falco sparverius*	BOP		Very close
Merlin	*Falco columbarius*	WL, BOP		Very close
Peregrine falcon	*Falco peregrinus*	BOP		Very close
Prairie falcon	*Falco mexicanus*	WL, BOP		Nearby
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		Nearby
Loggerhead shrike	*Lanius ludovicianus*	SSC2		Very close
Oak titmouse	*Baeolophus inornatus*	BCC		Very close
California horned lark	*Eremophila alpestris actia*	WL		Very close
Bank swallow	*Riparia riparia*	CT	None	Very close
Purple martin	*Progne subis*	SSC2		Nearby
Wrentit	*Chamaea fasciata*	BCC		Very close
California gnatcatcher	*Polioptila c. californica*	FT, SSC2		In region

Common name	***Species name***	**Status[1]**	**South Environmental occurrence potential**	**Data base records, Site visits**
California thrasher	*Toxostoma redivivum*	BCC		Very close
Cassin's finch	*Haemorhous cassinii*	BCC		In region
Lawrence's goldfinch	*Spinus lawrencei*	BCC		Very close
Grasshopper sparrow	*Ammodramus savannarum*	SSC2		In region
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
Southern California rufous-crowned sparrow	*Aimophila ruficeps canescens*	WL		Very close
Yellow-breasted chat	*Icteria virens*	SSC3		Very close
Yellow-headed blackbird	*Xanthocephalus xanthocephalus*	SSC3		Nearby
Bullock's oriole	*Icterus bullockii*	BCC		Very close
Tricolored blackbird	*Agelaius tricolor*	CT, BCC, SSC1		Nearby
Lucy's warbler	*Leiothlypis luciae*	SSC3, BCC		Nearby
Virginia's warbler	*Leiothlypis virginiae*	WL, BCC		Nearby
Yellow warbler	*Setophaga petechia*	SSC2		Very close
Summer tanager	*Piranga rubra*	SSC1		Very close
Pallid bat	*Antrozous pallidus*	SSC, WBWG:H		In region
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		Nearby
Spotted bat	*Euderma maculatum*	SSC, WBWG:H		In range
Hoary bat	*Lasiurus cinereus*	WBWG:M		**On site**
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 region
Little brown myotis	*Myotis lucifugus*	WBWG:M		In region
Fringed myotis	*Myotis thysanodes*	WBWG:H		In range

Common name	*Species name*	Status[1]	South Environmental occurrence potential	Data base records, Site visits
Long-legged myotis	*Myotis volans*	WBWG:H		In range
Yuma myotis	*Myotis yumanensis*	WBWG:LM		Nearby
California myotis	*Myotis californicus*	WBWG:L		In region
Western mastiff bat	*Eumops perotis*	SSC, WBWG:H		Nearby
Mexican free-tailed bat	*Tadarida brasiliensis*	WBWG:L		**On site**
Pocketed free-tailed bat	*Nyctinomops femorosaccus*	SSC, WBWG:M		On site
Big free-tailed bat	*Nyctinomops macrotis*	SSC, WBWG:MH		On site
Los Angeles pocket mouse	*Perognathus longimembris brevinasus*	SSC		In range
Southern grasshopper mouse	*Onychomys torridus ramona*	SSC		In range

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 if BCC based on 2021 Bird of Conservation Concern list.

29 December 2023 Responses from South Environmental

My replies follow responses to my 28 November 2023 comments in the order in which the responses appeared in South Environmental' s 29 December 2023 letter to Lincoln Park Holdings. However, I broke up the responses in order to coherently and directly reply to specific issues. Most responses included multiple issues, which were hitched together in one or more paragraphs, and sometimes within the same sentence.

Response by South Environmental: *Special-status species rely on native habitat for foraging and nesting and as a result, no special-status species are expected to be able to survive on the site due to lack of native habitat and level of disturbance and development. The trees on the site, including the western sycamore trees, are not naturally occurring habitat but are landscaped species that lack the typical habitat dynamics of a native plant community where special-status species would occur.*

Reply: Regardless of how the response characterizes the project site, Noriko Smallwood detected 27 species of wildlife within only a few hours of survey. Six of these species are special-status species. The pattern in Noriko's data indicates she would have found 45 species on the morning of her first survey had she help from other biologists or had she surveyed longer. As I commented, these findings are not surprising because Noriko and I have many times found large numbers of species in patches of open space on landscapes undergoing habitat fragmentation. Wildlife strive to survive in the face of anthropogenic activities, and they will make use of whatever is left available to them. Based on the response, South Environmental obviously expects the project site to be void of wildlife, but members of many species are there. The same pattern of concentration of wildlife can be found in the City's urban parks (Vasquez and Wood 2022).

South Environmental implies that special-status species of wildlife require "native habitat" and a lower level of disturbance than occurs on the project site. However, South Environmental cites no supporting evidence of such a requirement, and in fact the evidence readily refutes the implication. Seven special-status species of wildlife have been documented on or adjacent to the project site. South Environmental detected one of them – Cooper's hawk, which was also seen by Noriko.

Response by South Environmental: *Specifically, the letter states that four special-status species were observed by a wildlife biologist during a survey conducted on October 27, 2023, in the vicinity of the project: monarch butterfly (Danaus plexippus plexippus pop. 1, California overwintering population), California gull (Larus californicus), double-crested cormorant (Nannopterum auritum), and Cooper's hawk (Accipiter cooperii).*

Reply: The number was actually five special-status species, including Allen's hummingbird. A sixth special-status species – Hoary bat – was detected by Noriko during a second survey.

Response by South Environmental: *The letter states that other species occurs but the remaining 34 species observed do not occur on the CDFW Special Animals List (last updated October 2023) and would not be considered special status as a result despite some of them being listed with a special status.*

Reply: I cannot understand this part of the response. Which 34 species are said to occur?

Response by South Environmental: *Specifically, birds with the status of BOP (Birds of Prey, California Fish and Game Code 3503.5) or BCC (Bird of Conservation Concern, U.S. Fish and Wildlife Service) are not considered special-status species as described in the report from October 27, 2023.*

Reply: The response expresses an opinion, but the opinion is at odds with the spirit and intent of the CEQA. Section 15380 of the CEQA Guidelines defines special-status species as Endangered, Rare, or Threatened, and it further defines each of these terms. Rare is defined as "(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act." Appendix G of the CEQA Guidelines requires that the proposed project be evaluated for whether it may have a substantial adverse effect on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by California Department of Fish and Wildlife and US Fish and Wildlife Service. Thus, the Guidelines group candidate and sensitive species with special-status species as already defined, and the Guidelines provide a list of provenances of special-status species, as repeated above.

As noted above, two provenances of special-status species are policies and regulations, of which the California Code of Regulations qualifies. Raptors are protected by California Fish and Game Code §3503.5, otherwise known as the Birds of Prey Code. Raptors are protected by this Code because as top predators, raptors are important ecological and economic resources wherever they live in California. Their positions in the food chain naturally require large home ranges and relative rarity compared to most other species of birds. The rarity of raptors makes them sensitive to habitat loss and habitat fragmentation, and some raptors are known to be sensitive to human activities and even to human presence. But regardless of their rarity or sensitivity, it is policy in California, as expressed in regulations, to protect raptors; therefore, raptors are special-status species.

Another provenance of special-status species is the identification of species by the agencies. Appendix G of the CEQA Guidelines specifically names the US Fish and Wildlife Service as one of the agencies that can identify species that are rare, sensitive or of special status. In response to the Fish and Wildlife Conservation Act of 1980 and the 1988 Amendments to the Act, the USFWS assembled a list of Birds of Conservation

Concern (BCC) in 1995. This list has since been updated every few years. The BCC list includes those species with 1. Documented or apparent population declines; 2. Small or restricted populations, or 3. Dependence on restricted or vulnerable habitats. Note that these three qualifications for inclusion on the BCC list are consistent with the CEQA Guidelines definitions A and B of Rare species. Under definition B, a species "likely to become endangered within the foreseeable future" implies population decline, which is consistent with qualification 1 for inclusion on the BCC list. Under definition A, "existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens" implies small or restricted populations or dependence on restricted or vulnerable habitats, which are conditions that are consistent with qualifications 2 and 3 for inclusion on the BCC list.

The BCC list was intended to prevent species from having to be listed as Threatened or Endangered under the federal Endangered Species Act by recognizing those species in need of management actions. This intention is consistent with the CEQA's intention of identifying rare and sensitive species as special-status species. After all, the CEQA already identifies as special-status species those species that are listed as threatened or endangered under the California and federal Endangered Species Acts. The purpose of designating species as rare or sensitive, and hence of special status, is to prevent these species from being listed as threatened or endangered. The purpose of the USFWS's BCC list is consistent with the purpose of qualifying rare and sensitive species as special-status species.

To assemble the BCC list, the USFWS undertook a five-step process beginning with deliberations among species' experts, then examining trend data of several sources – Christmas Bird Counts (CBC), Breeding Bird Surveys (BBS), Partners in Flight regional data -- and lastly a review of species previously designated by the USFWS as either Candidate 1 or Candidate 2 species. Selection criteria were established ahead of each step. For example, more than 50% of the experts interviewed in step 1 scored their concern as high or moderate in order to designate a species as a candidate for consideration. In other examples, the trends in CBC or BBS data in steps 2 and 3 needed to exceed declines of 2.5% per year with a P-value < 0.05. In summary, the USFWS adopted an analytical process to identify candidate, rare and sensitive species, or those species in need of management actions to prevent them from having to be listed as threatened or endangered. The species included on the BCC list meet CEQA's definitions A and B of Rare species, and their identification by the USFWS meets the provenance standard of special-status species established in App. G of the CEQA Guidelines. Birds listed by the USFWS as Birds of Conservation Concern are Rare species, and therefore are special-status species per the definitions of the CEQA Guidelines.

Response by South Environmental: *It should be noted that ruderal and landscaped vegetation is not habitat for any special-status species, including those listed, because they use native habitats. … To suggest that ruderal areas with high disturbance is habitat for special-status species because species were observed flying over or in an adjacent park is not correct.*

Reply: The response is incorrect. Many thousands of occurrence records of scientists, naturalists and enthusiasts refute the response. eBird, iNaturalist and CNDDB include many occurrence records in settings that refute the response. South Environmental cites no evidence of the veracity of its assertion that ruderal area with high disturbance cannot support special-status species.

Response by South Environmental: *Monarch butterfly (Federal candidate species) is a species often observed flying through suburban neighborhoods and was observed in Lincoln Park, but not on the project site. The project site has landscaping and ruderal vegetation that is not the overwintering habitat that the species requires for survival. CDFW protects overwintering habitat such as stands of wind-protected eucalyptus trees within one mile of the ocean. The project site is not coastal and does not contain coastal overwintering habitat. Ruderal plants such as those on the project site also do not include the foraging species that support the monarch during breeding such as milkweed. Therefore, there is no habitat on the site for monarch butterflies, and observing a single butterfly in the park adjacent to the site does not indicate that the project site is an essential habitat for the species. The site lacks all of the necessary habitat characteristics to support this species during its life cycle.*

Reply: Every assertion made in this response is inaccurate. Over-wintering habitat is not the only Monarch habitat that would be significant. The conservation strategy of the Western Monarch Butterfly Conservation Plan 2016-2069 says otherwise. According to this Plan, the strategy is to "Protect and restore overwintering groves, including development of site-specific grove management plans; and conserve monarch breeding and migratory habitats in natural lands, urban and industrial, rights-of-way, and agricultural habitat sectors." Migratory habitats are no less important to the conservation of monarchs than are overwintering groves, and the Plan identifies urban areas as contributive to migratory habitat. The observation of a Monarch next to the project site is evidence that at minimum the site serves as part of a migration route to and from over-wintering sites.

Whereas Monarchs lay their eggs on milkweed, these butterflies rely on many species of flowering plants for food (https://www.fws.gov/story/spreading-milkweed-not-myths). Even Monarch caterpillars eat more than just milkweed. Whereas the presence of milkweed would indicate a higher likelihood of occurrence of Monarch, any given site can provide habitat to Monarchs with or without milkweed.

Response by South Environmental: *California gulls (CDFW watchlist species) were observed flying over the site and not using the site. There is nothing on the site that would attract California gulls as the breeding habitat for this species includes vegetated islands and levees in inland lakes and rivers, which would include Lincoln Park but not the project site itself. In addition, these are opportunistic foragers that can find food at garbage dumps, scrublands, pastures, orchards, meadows, and farms. However, ruderal disturbed areas are not foraging habitat and the project site lacks any habitat for this species.*

Reply: In addition to its membership on the CDFW Taxa to Watch List, California gull is a USFWS Bird of Conservation Concern. It is a special-status species (see my comments above on the BCC list). And it is not true that there is nothing on the site that would attract California gulls; after all, Noriko Smallwood observed and photographed California gulls flying over the site. Where were these gulls flying? Over the site, which means within the airspace of the site – the same airspace the project would eliminate with a seven-story building. A major portion of habitat of most birds is the aerosphere, and those portions of the aerosphere gulls usually select for travel correspond with underlying open spaces such as the open space of the project site.

It is true that California gulls are opportunistic foragers and forage for food on garbage dumps, but so too are humans opportunistic foragers and so too do humans forage on garbage dumps. My point is that there is no point to South Environmental's attempt to disparage California gulls. California gulls have been included on CDFW's Taxa to Watch List and on the USFWS's BCC list out of concern for the rarity of the species; its range is contracting and its numbers declining.

South Environmental adds that there is no breeding habitat on the project site, but this is a misleading distinction because no animal can breed successfully without first surviving through the non-breeding seasons and across foraging areas where the animal does not breed. Many ecologists argue that all habitat is effectively breeding habitat.

Response by South Environmental: *Double-crested cormorants (CDFW watchlist species) were observed flying over the project site. Cormorants are pelagic species that are found near aquatic bodies with an ample supply of fish and perching areas, such as coastal regions, lagoons, and ponds. The project site does not have any bodies of water for feeding and only contains landscaped trees, which are not considered habitat. It is possible that these cormorants were stopping in Lincoln Park, which contains an ample water body and surrounding trees that could support double-crested cormorants. However, this project would not have an impact on this park, and the observation of this bird flying over the project site does not indicate that the site is an essential habitat for this species. No nests of this species were observed on the project site.*

Reply: The response is flawed in the same ways as is the response to Noriko's sightings of California gulls over the project site. However, double-crested cormorants often breed and roost in groups of trees farther from bodies of water. The project site could very well be used for roosting or breeding by double-crested cormorants.

Response by South Environmental: *Cooper's hawk (CDFW watchlist species) is a small raptor that is often found in suburban areas and is a common predator of birds on home feeders. Typical habitat is riparian woodlands and forests. The project site does have trees that this bird was observed perching on during the South Environmental survey on October 31, 2023, but these are landscaped trees and not the preferred nesting habitat. Ornamental landscape trees on the site are not essential for the species to persist in the area. Landscaping is not considered habitat and ruderal ground cover provides no habitat or benefit for Cooper's hawk. The observation of this*

bird flying over the project site does not indicate that the site is an essential habitat for this species.

Reply: In addition to its membership on the CDFW Taxa to Watch List, Cooper's hawk is protected by California Fish and Game Code §3503.5. South Environmental is not an authority on Cooper's hawk's preferred nesting habitat, and cites no authority on habitat selection by this species. Asserting that landscaping is not habitat of Cooper's hawk is absurd considering the observations of Cooper's hawk on the project site by both South Environmental's biologist and by Noriko Smallwood. If the species is present -- which it is -- then the site provides it habitat.

Response by South Environmental: *The suggestion that the project would result in loss of habitat for special status species is false. The loss of landscaped trees and a ruderal and disturbed understory would not be considered significant loss of habitat for the reasons stated above.*

Reply: Noriko and I have surveyed hundreds of sites similar to the project site in support of comments on CEQA review documents. We found special-status species on all but perhaps one or two of them. We also returned to 80 of these sites to measure the impacts of habitat loss on wildlife caused by development projects, nearly all having been mitigated for predicted impacts to wildlife (Smallwood and Smallwood 2023). We revisited the sites to repeat the survey methods at the same time of year, the same start time in the day, and the same methods and survey duration in order to measure the effects of mitigated development on wildlife. We structured the experiment in a before-after, control-impact experimental design, as some of the sites had been developed since our initial survey and some had remained undeveloped. We found that mitigated development resulted in a 66% loss of species on site, and 48% loss of species in the project area. Counts of vertebrate animals declined 90%. "Development impacts measured by the mean number of species detected per survey were greatest for amphibians (-100%), followed by mammals (-86%), grassland birds (-75%), raptors (-53%), special-status species (-49%), all birds as a group (-48%), non-native birds (-44%), and synanthropic birds (-28%). Our results indicated that urban development substantially reduced vertebrate species richness and numerical abundance, even after richness and abundance had likely already been depleted by the cumulative effects of loss, fragmentation, and degradation of habitat in the urbanizing environment." We also specifically tested for the effects of projects to wildlife in neighboring habitats, and found significant decreases in species richness and overall abundance in those areas as well. The project would result in loss of habitat of special-status species. We have measured it, and we have reported it in a peer-reviewed scientific journal. South Environmental fails to support its conclusion to the contrary with any form of evidence.

Response by South Environmental: *…the arborist report notes the project's proposed plant palette includes the addition of [a list of native plant species ensues] … The addition of these native species has the potential to promote regional biodiversity and increase the ecological value of the currently disturbed site.*

Reply: I support the planting of native trees and shrubs should the project go forward, as I commented in my letter of 28 November 2023. However, the building would take most of the open space and would destroy the existing vegetation that is used by wildlife as habitat. The costs to wildlife would far outweigh the benefits of planting native vegetation as landscaping around the building. I also note that many of the developed projects Noriko and I re-surveyed (Smallwood and Smallwood 2023) included native vegetation as landscaping to mitigate project impacts to wildlife. We noticed some use of the vegetation at some project sites, particularly one project site where Allen's hummingbirds and Costa's hummingbirds appeared to fare well with the newly planted native vegetation. However, the native landscaping at most of the developed projects could not possibly support wildlife in the same capacities as existed prior to development, and we in fact measured large declines in wildlife.

Response by South Environmental: *…wildlife movement is not expected to be impacted by this project due to the heavy development and roads surrounding the site. Lincoln Park, which lies just to the south of the project site across Mission Rd., contains resources and viable habitat that is suitable for hosting special-status species. However, Mission Rd. creates a major barrier for terrestrial animal movement to and from this park, especially between the project site and the park. Animal movement between the project site and the park would be primarily limited to flying species.*

Reply: Wildlife already exist in Lincoln Park, and they exist there at carrying capacity. Therefore, there is no habitat space at Lincoln Park into which wildlife from the project site could move without generating conflicts and an eventual diminishing of the carrying capacities between the project site and Lincoln Park.

Response by South Environmental: *Every building has the potential for bird collisions into windows, …*

Reply: True, but the potential varies greatly by window area, by the types of glass used, by building design attributes and by multiple other factors, some of which I discussed in my comment letter of 28 November 2023.

Response by South Environmental: *…but the project impacts would be minimal and would not rise to the level of significance according to CEQA. Because a non-significant number of birds would be impacted by this development and no nests would be impacted, it would not result in the reduction of bird populations enough to jeopardize their future existence. The site itself would replace many of the lost landscaping and trees with new landscaping and trees that would support nesting birds in the landscaping similar to the current condition. Also, the building is set within an area that is already densely developed and would not be considered a migratory pathway. The existing setting of the project site within a developed area limits the risk to birds as the birds in the region are acclimated to living in a urban setting.*

Reply: The same could have been said of many of the buildings where scientific fatality monitoring revealed high levels of collision mortality (see my comments of 28

November 2023). By pure happenstance, I encountered a building in the middle of an urban area of eastern Washington where I predicted that avian collision mortality was likely high. It turned out that that building had been the focus of a multi-year fatality monitoring study in the 1960s-1970s, which documented that, indeed, collision mortality was very high (Johnson and Hudson 1976). My point is that factors of bird-window collision mortality are much better understood than they had been decades ago, and the impacts have turned out to be much larger than anyone could have known before scientists began searching for evidence of fatalities. Bird-window collisions happen where birds are traveling through, which is at locations often unknown to us until we initiate programs of observation to characterize movement patterns. South Environmental merely speculates that impacts would be minimal; the available scientific evidence does not comport with South Environmental's speculations.

SUMMARY

The project site provides habitat value to wildlife, and habitat value specifically to multiple special-status species of wildlife that have been detected on site. One of the special-status species detected on site was detected by both Noriko Smallwood and South Environmental, the latter of whom subsequently attempts to downplay the species' occurrence on the site as somehow impossible due to the site's "disturbed" trees and lack of" natural habitat." South Environmental's responses to my earlier comments are speculative opinions, as none of the responses are founded in evidence, and many rely on terminology that is not found in the scientific literature or which makes little sense. There is just no getting around the fact that the open space of the site provides one of the last patches of open space in Los Angeles where wildlife can stopover or stage during migration, where wildlife can find cover and refuge, and where some can find opportunities for roosting, foraging and reproduction.

Thank you for your consideration,

Shawn Smallwood, Ph.D.

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