



Salk Avenue Apartments Project

Comment Letters and Responses to Comments

SCH No. 2026030432

May 2026

Lead Agency:

City of Carlsbad
Community Development Department
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1.0 INTRODUCTION

The City of Carlsbad (City) prepared a Focused Initial Study/Mitigated Negative Declaration (IS/MND) for the Salk Avenue Apartments Project (proposed project). Pursuant to Sections 15072 and 15073 of the California Environmental Quality Act (CEQA) Guidelines, the IS/MND and Notice of Intent (NOI) to adopt the MND were circulated for a 31-day public review period that began on February 25, 2026, and ended on March 27, 2026.

The NOI was filed with the County of San Diego County Clerk on February 25, 2026. Additionally, the IS/MND and NOI were posted on the City's website throughout the duration of the public review period and hard copies were made available for public review at the City's Planning Division Counter.

A total of two comment letters were received during the public review period. The letters are included herein in their entirety and are followed by the City's written responses. Refer to Section 2.0, Comment Letters Received and Responses to Comments.

Pursuant to Section 15074(b) of the CEQA Guidelines, the lead agency (City) is required to consider the MND along with any comments received during the public review period. While written responses to comments submitted on MNDs are not required, responses are provided herein to each written comment received for the record, with particular regard for environmental concerns related to CEQA issues.

Based on the whole of the record, the City finds that the comments received do not raise any new potentially significant impacts, do not identify an increase to the severity of any impacts disclosed in the IS/MND, and do not require substantial revision of the IS/MND. Pursuant to Section 15073.5 of the CEQA Guidelines, recirculation of the IS/MND is not required. Further, preparation of an Environmental Impact Report is not required as all potentially significant environmental impacts that may result from the proposed project have been mitigated to less than significant levels.

2.0 COMMENT LETTERS RECEIVED AND RESPONSES TO COMMENTS

Letter 1

Re: Comment on Focused Initial Study/Mitigated Negative Declaration for the Salk Avenue Apartments Project (SCH No. 2026030432); AB 130/SB 131 CEQA Exemption Evaluation (Appendices A and B)

Dear Mr. Van Leeuwen:

I am submitting the following comments on the Focused Initial Study/Mitigated Negative Declaration (“Focused IS/MND”) and the associated AB 130 Housing Development Project CEQA Exemption Evaluation Checklist (Appendix A) and SB 131 Exclusions of Certain Types of Housing Development Projects CEQA Exemption Evaluation (Appendix B) prepared for the Salk Avenue Apartments Project (“Project”) in the City of Carlsbad (“City”). The Project proposes 397 multi-family residential dwelling units in a five-story building on an approximately 9.78-acre site located on Salk Avenue within the Fenton Carlsbad Center Specific Plan area.

The Project claims entitlement to a 35 percent density bonus under Government Code Section 65915 and relies on the SB 131 near-miss pathway under Public Resources Code Section 21080.1 to limit CEQA review to biological resources, asserting that habitat for protected species under Government Code Section 65913.4(a)(6)(J) is the sole disqualifying condition preventing full AB 130 exemption. Under CEQA Guidelines Section 15064(f)(2) and Public Resources Code Section 21082.2, an Environmental Impact Report is required whenever substantial evidence supports a fair argument that a project may have a significant effect on the environment, regardless of whether other substantial evidence supports a contrary conclusion. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.)

As detailed below, the administrative record raises two independent grounds for challenge: (1) the Project does not qualify for SB 131 near-miss treatment because it fails the AB 130 statutory exemption due to multiple disqualifying conditions, not a single condition; and (2) even accepting the City’s single-condition framework *arguendo*, the Focused IS/MND’s biological resources analysis is substantively inadequate because it fails to analyze well-documented impact pathways identified by the U.S. Fish and Wildlife Service as threats to the survival and recovery of species confirmed on-site. Each ground independently requires preparation of an Environmental Impact Report.

I. THE SB 131 NEAR-MISS PATHWAY IS UNAVAILABLE BECAUSE THE RECORD IDENTIFIES MULTIPLE DISQUALIFYING CONDITIONS

The Project’s entire CEQA compliance strategy depends on a single premise: that habitat for protected species under Section 65913.4(a)(6)(J) is the only condition disqualifying the Project from the AB 130 statutory exemption. PRC Section 21080.1(4)(B) expressly provides that SB 131’s streamlined review does not apply to “[a] proposed housing development

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project that is ineligible for the statutory exemption or categorical exemption due to two or more conditions.” The administrative record identifies multiple disqualifying conditions through two independent analytical pathways.

A. Three Species Under Three Regulatory Frameworks Constitute Multiple Conditions Under Section 21080.66(a)(6)(J)

Section 21080.66(a)(6)(J) disqualifies sites containing “[h]abitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 . . . , the California Endangered Species Act . . . , or the Native Plant Protection Act.” The statute does not treat these as synonyms. It enumerates distinct legal categories with distinct regulatory consequences.

The Project’s own biological consultant identifies habitat or confirmed presence for three distinct species operating under at least three separate regulatory frameworks:

Coastal California gnatcatcher (*Polioptila californica californica*): Federally listed as threatened under the ESA; California Species of Special Concern. Confirmed **present on-site** during the January 24, 2025 biological survey. The site includes USFWS-designated critical habitat. This species has its own recovery plan, recovery implementation strategy, and critical habitat designation rule, all administered by the Carlsbad Fish and Wildlife Office, the same USFWS office with jurisdiction over this Project site. The gnatcatcher triggers federal Section 7 consultation requirements.

Crotch’s bumble bee (*Bombus crotchii*): State candidate endangered under CESA, with protections equivalent to a fully listed species under Fish and Game Code Section 2085. The Focused IS/MND acknowledges “moderate potential” for occurrence and identifies CDFW as a trustee agency that may need to issue an Incidental Take Permit, a separate discretionary action under an entirely different statutory framework than the ESA.

Thread-leaved brodiaea (*Brodiaea filifolia*): Federally threatened under the ESA; state endangered under CESA; California Rare Plant Rank 1B.1; additionally protected under the Native Plant Protection Act. USFWS has designated critical habitat on the Project site. This single species is subject to protection under three separate statutory frameworks - the ESA, CESA, and NPPA - each independently referenced in Section 21080.66(a)(6)(J).

PRC Section 21080.1 defines “condition” as “a physical or regulatory feature of the project or its setting or effect on the environment caused by the project.” Each of these three species involves distinct physical and regulatory features. The gnatcatcher is an obligate coastal sage scrub species with specific territory requirements, noise sensitivity thresholds, and vulnerability to predation and brood parasitism. Crotch’s bumble bee is a

ground-nesting pollinator with entirely different habitat use patterns requiring nectaring sources and specific soil conditions for nesting and overwintering, triggering a separate CESA regulatory pathway. Thread-leaved brodiaea is an edaphic specialist dependent on specific clay soil moisture regimes, with different sensitivity to altered hydrology; a distinct impact pathway not shared with the other two species.

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The presence of three biologically distinct species, three separate listing statutes, three independent regulatory pathways, and three different impact mechanisms constitutes multiple “physical or regulatory feature[s]” of the Project’s setting. The City’s conflation of these into a single “condition” is inconsistent with the statutory text.

B. The HMP Special Resource Area Designation Creates an Independent Second Disqualifying Condition

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The Project’s own biological technical report states that the site is “not within a . . . Special Resource Area.” In the same section, the report quotes the Carlsbad Habitat Management Plan description of Special Resource Area 1 as lying “between El Camino Real, Faraday Avenue, and College Boulevard within Zone 5.” The Project site is located south of Salk Avenue, west of El Camino Real, east of College Boulevard, and north of Faraday Avenue, within the geographic boundaries the HMP describes for SRA 1. The document quotes the description and then denies the site falls within it, without explanation or reconciliation.

The HMP describes SRA 1 as supporting “a major population of a Narrow Endemic plant species (*Brodiaea filifolia*)” and states that “conservation of Narrow Endemic plant populations within the SRA is considered important for species conservation.” This language, “identified” in an adopted NCCP as “important for species conservation” maps directly onto the disqualifying condition in Section 65913.4(a)(6)(I): lands identified for conservation in an adopted natural community conservation plan.

This reading is reinforced by SB 158, signed October 11, 2025, which revised the definition of “natural and protected lands” in PRC Section 21067.5 to expressly include lands identified for conservation in an adopted NCCP. The Carlsbad HMP is an NCCP. The SRA designation, which the HMP itself describes as important for species conservation, constitutes identification for conservation under the post-SB 158 framework.

If SRA 1 constitutes land identified for conservation under Section 65913.4(a)(6)(I), the Project has at minimum two disqualifying conditions: (a)(6)(J) for protected species habitat and (a)(6)(I) for NCCP conservation lands. Two conditions defeat the near-miss pathway under Section 21080.1(4)(B). The consequence is the collapse of the focused IS/MND framework, requiring full CEQA review of all environmental topics.

C. The Two Analytical Pathways Are Independent and Cumulative

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The multi-species argument (Section I.A) and the SRA 1 argument (Section I.B) are independent. Either alone establishes multiple disqualifying conditions. Together, they demonstrate that the Project's claimed single condition is, at minimum, two conditions and potentially several more. The City must prevail on both arguments to sustain the near-miss pathway. If either succeeds, full CEQA review is required for all environmental topics including the disciplines the SB 131 framework currently excludes: air quality, traffic, noise, hydrology, geology, aesthetics, greenhouse gas emissions, and land use.

II. EVEN IF THE NEAR-MISS PATHWAY IS AVAILABLE, THE FOCUSED BIOLOGICAL ANALYSIS IS INDEPENDENTLY INADEQUATE

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Independent of whether the Project satisfies the statutory criteria for the SB 131 near-miss pathway, the IS/MND contains significant analytical deficiencies that independently require preparation of an EIR. Under the SB 131 framework, the biological analysis is the only environmental analysis required. The adequacy of that analysis is therefore the central question for the entire environmental document. The deficiencies identified below demonstrate that the analysis does not satisfy CEQA's requirements.

A. Deferred Baseline Investigations for Listed and Candidate Species

The IS/MND adopts less-than-significant findings for two listed or candidate species without first establishing whether those species are present on the project site. The significance determinations are contingent on information that does not yet exist in the record.

Crotch's bumble bee. *MM BIO-2* defers the presence/absence determination to preconstruction focused surveys conducted after project approval. If the species is detected, avoidance buffers are required; if avoidance is not feasible, an ITP must be obtained from CDFW. The IS/MND concludes less than significant with mitigation without knowing whether the species is present, what the extent of use is, or whether avoidance is feasible. The focused surveys required by *MM BIO-2* are the analysis necessary to determine significance and should have been conducted during CEQA review. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

The deferral is compounded by a facial inconsistency. The biological technical report states that the 0.33-acre CSS patch "supports nectaring sources that may be used by foraging Crotch's bumble bee and soils that could provide nesting and overwintering habitat." The IS/MND then states that "no direct impacts to CBB individuals or nests are expected from the project due to lack of suitable nectaring sources for foraging and lack of nesting habitat." The document identifies suitable habitat as the basis for a moderate occurrence

potential and then denies the existence of that same habitat to support a less-than-significant determination. This internal contradiction undermines the reliability of the significance conclusion.

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Thread-leaved brodiaea

The IS/MND concludes no impact based on focused surveys conducted in 2001 and 2003 - twenty-two to twenty-four years before the current document - and a January 2025 survey conducted outside the species' March-through-June blooming period. Thread-leaved brodiaea is a geophyte reliably detectable only during bloom. The 0.33-acre CSS patch overlapping USFWS-designated critical habitat was not graded in 2007 and remains intact. The document's own Attachment D assigns "Moderate" potential. No current-year focused botanical survey during the blooming period has been conducted. The CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations require floristic surveys timed to the blooming period of target species.

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Foundational baseline deficiency

Both species-specific failures are symptomatic of a broader problem. The entire biological resources analysis rests on a single two-hour habitat assessment conducted on January 24, 2025, from 8:15 a.m. to 10:15 a.m. January is outside the primary blooming period for most special-status plant species in coastal San Diego County, outside the breeding season for gnatcatcher, and outside the colony active season for Crotch's bumble bee. The document uses this single winter visit to inform the dismissal of 64 special-status wildlife species and 67 of 68 special-status plant species as "not expected to occur." Where the SB 131 framework concentrates the entire CEQA document on biological resources, the adequacy of the biological baseline is paramount.

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B. Confirmed Federally Threatened Species: Inadequate Analysis and Unenforceable Mitigation

A coastal California gnatcatcher was confirmed present on the project site during the January 2025 survey. The IS/MND's treatment of this species is deficient in four independent respects.

1. No Protocol Survey

No protocol-level focused survey was conducted. The USFWS Coastal California Gnatcatcher Presence/Absence Survey Protocol requires a minimum of six breeding-season visits between March 15 and June 30 with taped vocalization playback. Without protocol data on territory boundaries, pair status, and nesting locations, the document cannot evaluate whether the 100-foot buffer between the CSS patch and the development

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footprint is adequate. USFWS guidance recommends a minimum 500-foot buffer from active nests or demonstration that construction noise will not exceed 60 dB(A) Leq at the nest. The IS/MND evaluates the project against neither standard.

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2. Unenforceable Mitigation

MM BIO-1 defers the determination of avoidance buffer width to the discretion of a qualified biologist “in coordination with the City” without establishing minimum buffer distances or noise thresholds. While discretionary buffer determination is accepted practice for common nesting birds, it is insufficient for a federally threatened species with established noise sensitivity thresholds. A mitigation measure that defers the critical protective determination for a federally listed species to post-approval discretion without minimum enforceable criteria does not constitute enforceable mitigation under CEQA Guidelines Section 15126.4.

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3. Omission of Indirect Impact Analysis

The IS/MND concludes “No Impact” to sensitive natural communities under threshold (b) based solely on avoidance of direct impacts to the 0.33-acre CSS patch. This determination fails to analyze indirect impacts from a 397-unit, five-story residential complex approximately 100 feet away. The document’s own analysis under threshold (f) acknowledges the need for HMP Adjacency Standards to address lighting, erosion, invasive species, and predator control - the same categories of indirect effects that must be analyzed under threshold (b). The document cannot simultaneously acknowledge indirect effects under one threshold and deny them under another.

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4. Failure to Address Federal Recovery Framework

The IS/MND’s indirect impact analysis and mitigation measures are inconsistent with the federal recovery planning framework for the species confirmed on-site. The USFWS completed the Recovery Implementation Strategy for the Coastal California Gnatcatcher in July 2025, prepared by the same Carlsbad Fish and Wildlife Office with jurisdiction over the Project site. The USFWS also published the Draft Recovery Plan for the species in 2025. These documents identify specific threats and recovery priorities that the IS/MND fails to address:

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Predation. The USFWS critical habitat designation rule (68 Fed. Reg. 20228, April 24, 2003) identifies predation as the most common cause of nest failure, accounting for 30 to 60 percent of nest failures in some areas, and specifically identifies domestic or feral cat as a recognized predator of gnatcatcher eggs and nestlings. (Citing Atwood 1990; Braden et al. 1997; Grishaver et al. 1998.) The 1993 listing rule recognized the “synergistic effects” of predation in combination with habitat loss, fragmentation, and cowbird parasitism.

Gnatcatchers nest at approximately three feet above ground in coastal sage scrub, well within reach of domestic cats. The Project will introduce potentially hundreds of domestic cats within 100 feet of confirmed gnatcatcher habitat. The IS/MND's sole response is "educational brochures" to future residents, characterized as an HMP adjacency standard rather than analyzed as a species impact. Educational brochures are not an enforceable mitigation measure and would not satisfy requirements under ESA Section 7 or Section 10.

Brown-headed cowbird brood parasitism. The Focused IS/MND contains no analysis of cowbird brood parasitism despite the fact that cowbird parasitism was identified in the 1993 listing rule as a contributing threat. The July 2025 Recovery Implementation Strategy makes cowbird control a Priority 3 recovery action (Action 7), including monitoring occupied areas for cowbird presence and trapping where necessary. A 397-unit residential complex will generate food subsidies - trash, pet food, bird feeders, landscaping with seed-producing ornamentals - that attract cowbirds into adjacent habitat. The complete absence of cowbird analysis is a significant deficiency.

Habitat connectivity and fragmentation. The IS/MND makes a "No Impact" finding on wildlife movement, asserting that the site does not support wildlife corridors. This finding is directly contradicted by the federal recovery framework. The Draft Recovery Plan states that gnatcatchers require "connected habitat patches of adequate area and quality" for population viability. The Recovery Implementation Strategy identifies restoring areas to "enhance connectivity of areas occupied by coastal California gnatcatcher" as a Priority 2 action (Activity 4-6), noting this is "particularly important where open areas may be fragmented by development." Activity 4-7 specifically targets the gnatcatcher corridor identified in the MHCP, the conservation planning framework under which Carlsbad's HMP operates. The USFWS 2024 five-year status review notes the gnatcatcher "is likely to be sensitive to further increases in fragmentation and isolation of habitat within the northern portion of its range." The 0.33-acre CSS patch with a confirmed gnatcatcher is likely functioning as stepping-stone habitat within the broader HMP preserve network. A five-story building with perimeter retaining walls will permanently sever any connectivity function.

Artificial lighting. The IS/MND addresses lighting only as an HMP adjacency design standard (low-pressure sodium, directed downward, shielded). It entirely ignores the aggregate lighting from a five-story, 397-unit residential building with windows, balconies, common areas, a swimming pool, a five-level parking structure with rooftop parking, and 27,000 square feet of outdoor open space. The building itself is a massive permanent light source that will alter the light environment of adjacent CSS habitat, affecting avian

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<p>behavior, predator-prey dynamics, and insect foraging patterns relevant to both gnatcatcher prey availability and bumble bee foraging.</p>	<p>1-11 (cont.)</p>
<p>Invasive species. The Recovery Implementation Strategy identifies control of nonnative vegetation as a Priority 2 recovery action (Action 5). The IS/MND addresses invasive species solely through a landscape plan review commitment. It does not analyze the invasive species introduction pathway from a 397-unit development: irrigation overspray, garden escapees, ornamental seed dispersal, and nutrient inputs via fertilizer runoff. These are standard impact pathways at the urban-wildland interface.</p>	<p>1-12</p>
<p>Altered hydrology and thread-leaved brodiaea critical habitat. The Project will convert approximately 9.78 acres to largely impervious surface, including a 416,152-square-foot building and 107,300-square-foot parking structure. Thread-leaved brodiaea is an edaphic specialist dependent on specific soil moisture conditions in clay soils. USFWS designated critical habitat on-site because the physical and biological features essential for the species’ conservation are present. The IS/MND contains no analysis of whether altered drainage patterns, infiltration rates, or soil moisture regimes from the Project will affect designated critical habitat 100 feet away. The stormwater discussion is limited to construction-phase erosion BMPs.</p>	<p>1-13</p>
<p>C. Internal Inconsistencies Undermine Significance Determinations</p> <p>The IS/MND contains internal inconsistencies where the document simultaneously identifies and denies the existence of habitat conditions.</p> <p>As discussed above, the Crotch’s bumble bee habitat characterization is facially contradictory: suitable habitat is identified as the basis for moderate occurrence potential and then denied to support a less-than-significant determination.</p>	<p>1-14</p>
<p>The SRA 1 geographic inconsistency is similarly irreconcilable: the report quotes an HMP description that places the site within SRA 1 and then denies the site is within an SRA. If the site is within SRA 1, the HMP consistency analysis must address SRA-specific conservation objectives, including the protection of narrow endemic plant populations—specifically thread-leaved brodiaea.</p>	<p>1-15</p>
<p>D. The 0.33-Acre CSS Patch: Convergence of Analytical Deficiencies</p> <p>The deficiencies identified above converge on a single feature: the 0.33-acre patch of Diegan Coastal Sage Scrub in the northwest corner of the site. This patch was not graded in 2007 and remains intact. It overlaps USFWS-designated critical habitat for thread-leaved brodiaea. It falls within the geographic boundaries described for HMP Special Resource Area 1. A coastal California gnatcatcher was confirmed present. The biological technical</p>	<p>1-16</p>

report identifies it as supporting nectaring sources and soils suitable for Crotch’s bumble bee. The HMP describes SRA 1 as designated specifically to protect the narrow endemic plant species that this critical habitat was designated to conserve.

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The document’s treatment of this feature exhibits the full range of analytical deficiencies: baseline characterization based on a single out-of-season survey and decades-old focused studies; no protocol survey for a confirmed federally listed bird; a significance determination for a candidate species that contradicts the document’s own habitat characterization; a “No Impact” finding for indirect effects to a sensitive natural community that the document elsewhere acknowledges will experience indirect effects; denial of SRA status contradicted by the document’s own quoted HMP description; mitigation measures lacking enforceable performance standards; and complete omission of impact pathways identified by the species’ own federal recovery framework. The systematic minimization of this feature’s significance across multiple analytical dimensions is not the product of independent professional judgments reaching consistent conclusions.

III. THE CDFW INCIDENTAL TAKE PERMIT ISSUE IS UNRESOLVED

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The Focused IS/MND identifies CDFW as a trustee agency that may need to issue an Incidental Take Permit for Crotch’s bumble bee. MM BIO-2 provides that if the Project “cannot avoid the established no-disturbance buffer(s),” the applicant “shall consult with CDFW on appropriate avoidance actions and obtain an Incidental Take Permit if necessary.”

If an ITP is required, CDFW must make its own CEQA findings as a responsible agency before issuing the permit. The Focused IS/MND does not address whether this document - limited by SB 131 to the environmental effects of a single condition - provides adequate CEQA coverage for CDFW’s independent responsible agency obligations. This procedural gap creates uncertainty about whether the document can serve its intended function if CDFW determines that a discretionary ITP action is required.

IV. SYSTEMATIC PATTERN OF MINIMIZATION

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The individual deficiencies documented above are not isolated analytical errors. They form a unidirectional pattern. Across the biological resources analysis—the sole discipline reviewed under the SB 131 framework, every analytical choice trends toward a less-than-significant determination and in favor of project approval:

Reliance on a single two-hour winter survey as the sole current field effort; use of twenty-two-year-old focused surveys in lieu of current blooming-period surveys for a federally listed plant with critical habitat on-site; failure to conduct protocol surveys for a federally listed bird confirmed present; internal inconsistency in habitat characterization for a state

candidate endangered species; deferral of species presence/absence determinations to post-approval mitigation; omission of indirect impact analysis for a sensitive natural community that the document elsewhere acknowledges will experience indirect effects; complete omission of predation, cowbird parasitism, habitat connectivity, altered hydrology, and invasive species impact pathways identified in the species' own federal recovery framework; denial of SRA status contradicted by the document's own quoted HMP description; and mitigation measures lacking enforceable performance standards for listed species.

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(cont.)**

No counterdirectional finding was identified. No instance was found where the document overstated an impact, applied a more protective standard than warranted, or erred in a direction that disfavored the project.

This unidirectional pattern is independently significant under *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515–516, as it demonstrates that the IS/MND does not serve CEQA's informational purpose. The pattern is particularly consequential here because the SB 131 near-miss framework concentrates the entire CEQA analysis on biological resources, the single discipline where the pattern of minimization is most pronounced. The document that was supposed to provide rigorous, focused biological analysis as the tradeoff for exempting every other environmental topic from review has instead produced the least reliable analysis in the record.

V. CONCLUSION AND REQUESTED ACTIONS

The administrative record contains substantial evidence supporting a *fair argument* that the Project may have significant effects on biological resources. The record also demonstrates that the Project does not satisfy the statutory eligibility criteria for the SB 131 near-miss pathway, given (a) the presence of three species under three regulatory frameworks constituting multiple conditions under Section 21080.66(a)(6)(J), and (b) the potential second disqualifying condition of NCCP conservation lands under Section 65913.4(a)(6)(I).

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I respectfully requests that the City:

1. Withdraw the Focused IS/MND and conduct full CEQA review through a comprehensive Initial Study or Environmental Impact Report addressing all environmental topics, on the grounds that the Project fails the AB 130 exemption due to multiple conditions and does not qualify for SB 131 near-miss treatment;

2. In the alternative, if the City maintains the single-condition framework, substantially revise the Focused IS/MND to include: (a) protocol-level gnatcatcher surveys per the USFWS protocol; (b) current blooming-period surveys for thread-leaved brodiaea within the designated critical habitat; (c) pre-approval focused surveys for Crotch’s bumble bee; (d) analysis of all indirect impact pathways identified in this letter, including predation, cowbird parasitism, artificial lighting, altered hydrology, invasive species, and habitat connectivity, with reference to the USFWS Recovery Implementation Strategy and Draft Recovery Plan; and (e) enforceable mitigation measures with minimum performance standards for all listed and candidate species; and

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3. Refrain from adopting the Focused IS/MND until all tribal consultations under AB 52 are complete and CDFW has confirmed whether an Incidental Take Permit will be required for Crotch’s bumble bee.

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This letter is submitted for inclusion in the administrative record for the Project.

Respectfully submitted,

Jim

jkmiller7@proton.me

Responses to Comments from Jim Miller

Response to Comment 1-1

The City acknowledges that the project site contains, or could support, three special-status species or habitats, all of which have been thoroughly evaluated in the IS/MND. According to CEQA exemption criteria, these are considered collectively as “habitat for protected species,” which is a single disqualifying factor under Government Code Section 65913.4(a)(6)(J). Pursuant to AB 130, the City evaluated whether these biological conditions constitute more than one disqualifying factor. The City does not agree that these three special-status species/habitats should be viewed as “multiple conditions” within the law; instead, it is a single environmental topic (biological resources) with several components included, each fully addressed. Therefore, the AB 130/SB 131 Focused IS/MND remains valid, and the project’s biological impacts have been avoided or minimized to less than significant levels with implementation of the identified mitigation measures.

Response to Comment 1-2

The City’s HMP designates three Special Resource Areas (SRAs) citywide, and the project site is located in SRA 1. Importantly, SRA 1 is not a hardline preserve or conservation easement designated for permanent conservation; rather, it is an area recognized for biological importance but largely comprised of private lands where development can occur as a covered activity under the HMP, subject to certain requirements. The Biological Resources Technical Report explicitly states, “The project site is a covered activity under the City of Carlsbad HMP and is located in SRA 1. However, the project site is not within a HMP Hardline Conservation Area or HMP Proposed Hardline Conservation Area.” This is also illustrated on Figure 5, Existing Hardline Conservation Areas, and Figure 6, Proposed Hardline Conservation Areas, of Section D, Conservation Strategy, of the City HMP. Further, as illustrated on HMP Figure 28, Habitat Management Plan, the project site is designated as a “Development Area,” not a “Conservation Area.”¹ This means that while the general area is known to have high biological value, the project site, as well as areas located east, south, and west of the project site, were not set aside solely for conservation under the HMP. In fact, the site is anticipated for development by the City (it was previously graded in 2007 for a prior project and is also identified for residential development as Site 7 in the City’s Housing Element; see also HMP Figure 28), and thus it is included as part of the HMP’s “covered projects” with specific mitigation obligations. Moreover, as stated in the City HMP Appendix B, Section 2, Definitions, “Proposed Hardline Areas” is defined as, “Properties whose conservation and development areas have been planned as part of the HMP, as depicted on Figure 6... These areas have been agreed-upon in coordination with the landowners, the City, U.S. Fish and Wildlife Service, and the California Department of Fish and Game [now known as the California Department of Fish and Wildlife or CDFW].” In summary, the project site is not identified in the HMP as a Core Area, Linkage Area, or Hardline Conservation Area and is not proposed for preservation by the City.

Therefore, the City does not consider the presence of an SRA designation – absent inclusion in a preserve – to be equivalent to “lands identified for conservation” in the context of SB 131,

¹ City of Carlsbad. *Habitat Management Plan for Natural Communities in the City of Carlsbad*. Final approved December 1999; as amended and approved November 2004.
<https://www.carlsbadca.gov/home/showpublisheddocument/1600/638366818940500000>.

especially since development within SRAs is allowed with mitigation. Since the project site is not designated for conservation in the HMP, the near-miss eligibility condition under Government Code Section 65913.4(a)(6)(I) is not triggered.

Response to Comment 1-3

As stated above, the City does not concur with the assertion that there are two (or more) separate disqualifying conditions. Both the presence of multiple special-status species and the HMP SRA context fall under the singular “biological resources” category for SB 131 purposes. Each of the commenter’s concerns has been addressed through the focused biological analysis.

Neither the multi-species presence nor the SRA context creates a scenario where the project would cause unmitigated significant impacts or where an Environmental Impact Report (EIR) would be required for biological resources. As stated in Response to Comment 1-2, a property within an SRA does not automatically equate to a property being within a hardline preserve or conservation easement designated for permanent conservation; rather, an SRA is an area comprised of private lands where development can occur as a covered activity under the HMP, subject to certain requirements. As stated in the project-specific Biological Resources Technical Report, “The project site is a covered activity under the City of Carlsbad HMP and is located in SRA 1. However, the project site is not within a HMP Hardline Conservation Area or HMP Proposed Hardline Conservation Area.”

As such, the SB 131 near-miss approach is appropriate for this project, given that all other CEQA exemption criteria are met and the biological resources impacts have been reduced to a less than significant level with mitigation.

Response to Comment 1-4

The IS/MND baseline was established through multiple steps: comprehensive literature and database review, field habitat assessment, and analysis of focused surveys from previous projects. The IS/MND did not “conclude no significant impact” simply due to lack of data; rather, it used all available data (including historical surveys and current habitat conditions) to inform its significance determinations. In cases of uncertainty, the analysis erred on the side of caution by assuming presence and built in appropriate mitigation measures accordingly. The City does not consider this an inappropriate deferral, but a CEQA-compliant strategy to deal with potential species presence.

Regarding Crotch’s bumble bee, a site-specific three-survey protocol design was approved by CDFW in April 2026. The three subsequent surveys were conducted in April and May 2026. Crotch’s bumble bee was not detected in any of the three surveys and the negative findings were reported to CDFW.

Response to Comment 1-5

The IS/MND’s determination of no significant impact regarding thread-leaved brodiaea is supported by substantial evidence: (a) focused surveys conducted during the species’ bloom period in 2001 and 2003 yielded negative results on what is now the project site; (b) the only potential habitat—the 0.33-acre Diegan coastal sage scrub area—remains undeveloped and would not be subject to grading; and (c) regional mitigation for brodiaea impacts under the Fox Miller project has already been implemented. The City, however, acknowledges that the January 2025 survey was conducted outside the March-through-June blooming period and therefore

cannot be solely relied upon for presence/absence determination. However, comprehensive surveys from 2001 and 2003 did not detect thread-leaved brodiaea on what is now the project site.

Moreover, grading and fill activities on site in 2007 likely removed or buried any suitable clay soils required by this edaphic specialist species. According to the Biological Resources Technical Report, the current site soils primarily consist of imported fill and loam, rather than the native clay subsoil necessary for brodiaea viability.

Although the IS/MND considered the potential for occurrence as high within the Diegan coastal sage scrub patch due to habitat characteristics and historical records, no significant impacts to thread-leaved brodiaea was concluded based on the absence of documented individuals, the age of the critical habitat record, and preservation of the Diegan coastal sage scrub patch from project disturbance. The current project does not affect areas known to host or conserve thread-leaved brodiaea under the HMP.

Response to Comment 1-6

The commenter's concern about the two-hour January 2025 survey is acknowledged. A single survey would not typically show the use in all seasons; however, the City's biologists relied on evidence from current conditions, historical data, habitat suitability, and professional judgment. Most special-status species were excluded from further review in the IS/MND because the site lacks suitable habitat or is outside their range—not just due to absence during one survey. The Biological Resources Technical Report appendix lists these species with reasons for their expected absence or low likelihood. The SB 131 review focused on resources likely present: coastal California gnatcatcher, Crotch's bumble bee, thread-leaved brodiaea, and the Diegan coastal sage scrub habitat. The baseline characterization is considered sufficient as it highlights the key issues addressed by mitigation and further study. As noted above in Response to Comment 1-4, subsequent protocol surveys for Crotch's bumble bee were negative.

Response to Comment 1-7

A protocol survey was not conducted prior to finalizing the IS/MND. The January 2025 habitat assessment confirmed the presence of at least one gnatcatcher on site, which established the need for protective measures regardless of the precise number of individuals or nests. The City acknowledges the USFWS Coastal California Gnatcatcher Presence/Absence Survey Protocol, which generally recommends a minimum of six breeding-season survey visits between March 15 and June 30 to document territory boundaries, pair status, and nesting activity. However, it is important to note that Carlsbad is within an area covered by a Natural Communities Conservation Program (i.e., the City HMP) that covers coastal California gnatcatcher, and as such, only three breeding-season survey visits would be required, rather than six. While protocol surveys provide valuable data on territory boundaries, pair status, and nesting locations, confirmation of species presence is sufficient to trigger protective mitigation under CEQA. Accordingly, the City is assuming presence of coastal California gnatcatcher on-site. As stated in revised MM BIO-1 (refer to Response to Comment 1-8), site-specific measures shall be implemented to avoid and minimize impacts.

MM BIO-1 establishes clear performance standards to avoid and minimize indirect impacts to gnatcatchers, including protection of active nests and limitation of construction-related disturbance. The mitigation measure requires installation of a 500-foot no-disturbance buffer

around any active coastal California gnatcatcher nest identified by a qualified biologist and implementation of construction controls to ensure disturbance levels remain below thresholds that could adversely affect nesting behavior. Consistent with USFWS guidance, these performance standards are intended to meet or exceed commonly recommended buffers and construction noise limits during the breeding season, unless a qualified biologist determines that site-specific conditions support an alternative protective distance or additional measures. The City acknowledges that USFWS guidance commonly recommends a minimum 500-foot buffer around active gnatcatcher nests and includes construction noise thresholds intended to limit disturbance during the breeding season. USFWS guidance also allows these buffers and noise controls to be refined based on site-specific conditions, nest location, topography, intervening screening, and the nature of construction activities. In no circumstances shall a buffer of less than 100 feet be used even with noise attenuation measures. Any reduction in the 500-foot no-disturbance buffer must be supported by site-specific analysis by the qualified biologist and approved by the City in consultation with USFWS. As a result, MM BIO-1 ensures that protective measures consistent with USFWS recovery objectives will be implemented, and the absence of a pre-approval protocol survey will not result in any unmitigated significant impact. Because the coastal California gnatcatcher is a covered species by the City HMP, the HMP holistically addresses species concerns on a broader ecosystem scale. By establishing a citywide preserve system with core areas interconnected with wildlife movement corridors, the City is protecting the gnatcatcher at buildout and in perpetuity, while allowing development in appropriate places.

For other nesting bird species (other than the coastal California gnatcatcher), if active nests are observed during the pre-construction nesting bird survey, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the project site.

Response to Comment 1-8

MM BIO-1 was originally formulated to be flexible, recognizing that appropriate buffer distances can depend on factors such as avian behavior, location of the nest, existing ambient noise, and the nature of construction activity.

To directly address the concern raised, the City has updated MM BIO-1 (Pre-Construction Nesting Bird Surveys, Avoidance, and Notification) to require that, if a gnatcatcher nest is found during pre-construction surveys, a minimum 500-foot wide no-disturbance buffer be established around the nest and maintained until a qualified biologist confirms that the young have fledged, the nest is no longer active, or that construction noise levels can be maintained below 60 dBA L_{eq} at the nest site with a smaller buffer. For purposes of this mitigation measure, a “qualified biologist” is defined as a professional biologist with demonstrated experience conducting nesting bird surveys in southern California coastal habitats and familiarity with the identification, behavior, and nesting ecology of avian species known to occur in the region, including federally listed species such as the coastal California gnatcatcher. By incorporating these specifics – a numeric distance, noise criteria, and biologist qualifications—MM BIO-1 would have clear performance standards. Specifically, MM BIO-1 from the public review IS/MND stated:

MM BIO-1 Pre-Construction Bird Surveys, Avoidance, and Notification. If construction activities are initiated during the bird nesting season (February 1–August 31) involving removal of vegetation or other nesting bird habitat, including abandoned

structures and other man-made features, a pre-construction nesting bird survey shall be conducted no more than 14 days prior to initiation of ground disturbance and vegetation removal activities. The nesting bird pre-construction survey shall be conducted on foot and shall include a 300-foot survey buffer around the construction site. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in southern California coastal communities (i.e., qualified biologist). If active nests are found, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, which shall be demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to demarcate the boundary. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. No ground-disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist on the basis that the encroachment will not be detrimental to an active nest. A report summarizing the pre-construction survey(s) shall be prepared by a qualified biologist and shall be submitted to the City prior to the commencement of construction activities.

Note: To mitigate the potential impact to California gnatcatcher or other nesting birds, this mitigation measure shall be applied to land use and activities occurring at the project site. No Pre-Construction Bird Surveys, Avoidance, and Notification mitigation is required to implement the Study Area-Off-Site Sewer Line portion of the project.

MM BIO-1 has been revised as follows (the preconstruction survey window has been modified to no sooner than three days prior to ground disturbance, and the second paragraph is newly added text):

MM BIO-1 Pre-Construction Nesting Bird Surveys, Avoidance, and Notification. If construction activities are initiated during the bird nesting season (February 1–August 31) involving removal of vegetation or other nesting bird habitat, including abandoned structures and other man-made features, a pre-construction nesting bird survey shall be conducted no more than three days prior to initiation of ground disturbance and vegetation removal activities. The nesting bird pre-construction survey shall be conducted on foot and shall include a 300-foot survey buffer around the construction site. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in southern California coastal communities (i.e., qualified biologist). If active nests are found, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, which shall be demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to demarcate the boundary. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. No ground-disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting

is completed, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist on the basis that the encroachment will not be detrimental to an active nest. A report summarizing the pre-construction survey(s) shall be prepared by a qualified biologist and shall be submitted to the City prior to the commencement of construction activities.

If an active coastal California gnatcatcher nest is found during pre-construction surveys, a minimum 500-foot no-disturbance buffer shall be established around the nest. The buffer shall be clearly marked (e.g., with fencing or flagging) and maintained until a qualified biologist confirms that the young have fledged, the nest is no longer active, or that construction noise levels can be maintained below 60 dBA L_{eq} at the nest site with a smaller buffer. In no circumstances shall a buffer of less than 100 feet be used even with noise attenuation measures. Any reduction in the 500-foot buffer must be supported by site-specific analysis by the qualified biologist and approved by the City in consultation with the US Fish and Wildlife Service.

Note: To mitigate the potential impact to California gnatcatcher or other nesting birds, this mitigation measure shall be applied to land use and activities occurring at the project site. No Pre-Construction Nesting Bird Surveys, Avoidance, and Notification mitigation is required to implement the Study Area-Off-Site Sewer Line portion of the project.

It is also noted that such clarification to MM BIO-1 does not represent “significant new information” as defined in CEQA Guidelines Section 15088.5. The revised MM BIO-1 is more effective than that presented in the Draft IS/MND. Therefore, recirculation of the IS/MND prior to adoption is not required (CEQA Guidelines Sections 15073.5[c][1] and 15074.1).

Response to Comment 1-9

The 0.33-acre Diegan coastal sage scrub patch located in the northwest corner of the site is classified as a sensitive natural community. The IS/MND determined there was no impact on this community because the project avoids any direct removal or disturbance of this Diegan coastal sage scrub patch. Indirect impacts addressed in Threshold (f) included potential edge effects on adjacent habitats according to the Carlsbad HMP Adjacency Standards. These standards apply to any project next to a preserve or sensitive area and require actions to limit indirect effects like lighting, invasive species, noise, human activity, predator management, erosion, and hydrology. These measures were built into the project’s design pursuant to the City’s HMP, Objective Design Standards, and Landscape Manual and are detailed in the IS/MND, especially in the analysis of HMP policy compliance and standard features. As a result, indirect impacts were not ignored—rather, they were managed through commitments to protective measures.

To further clarify this issue, the City has updated the IS/MND so that Threshold (b) references the HMP Adjacency Standards and related protective measures. Because these protections are part of the project and would be enforced, the “no significant impact” finding remains valid: the project would not significantly harm the nearby Diegan coastal sage scrub habitat, either directly or indirectly. The habitat would be preserved, with adjacency protective measures guarding against edge effects and preventing major degradation of this sensitive community.

Response to Comment 1-10

Refer to Response to Comment 1-7. The City has carefully reviewed each of the commenter's cited potential indirect impacts to the gnatcatcher. One coastal California gnatcatcher was observed in 2025 in the 0.33-acre Diegan coastal sage scrub patch located in the northwest corner of the site, which would be avoided by the project. The consulting biologist concluded that the individual was transient, most likely residing in the more abundant and established habitat opposite Salk Avenue and using the patch for foraging.

It is important to note that the coastal California gnatcatcher is a covered species by the City HMP, and the HMP holistically addresses species concerns on a broader ecosystem scale. By establishing a citywide preserve system with core areas interconnected with wildlife movement corridors, the City is protecting the gnatcatcher at buildout and in perpetuity, while allowing development in appropriate places.

We provide responses to each point below:

- **Predation by Domestic Cats:** The risk of pet (particularly cat) predation on wildlife, including to birds, is a known issue in urban-wildland interfaces. Coastal California gnatcatchers primarily occupy coastal sage scrub characterized by dense, low-growing shrub cover, where nests are typically placed several feet above ground within intact vegetation, limiting exposure to urban predators. Predation pressure documented for the species is primarily associated with avian predators and habitat fragmentation, and domestic cats are not identified by USFWS as a common or significant source of gnatcatcher mortality.² Additionally, predation by domestic cats on birds and other wildlife is a recognized issue primarily associated with single-family residential development, where cats can freely exit homes and roam yards and adjacent open space. In contrast, a multi-level apartment building is inherently not conducive to free-roaming cats, as pets cannot independently open doors or access elevators to enter or exit units. As a result, cats residing in multi-family developments are predominantly, if not entirely, indoor pets, substantially reducing the likelihood of access to adjacent habitat. Moreover, the HMP Adjacency Standards explicitly require that projects adjacent to preserves implement measures to manage pets and potential predators of developments adjacent to preserve area. Consistent with these requirements, the project would include provisions to further minimize any already low potential for pets entering the adjacent habitat, including the following:
 - **Resident Education:** In compliance with the City's HMP Adjacency standards, the project applicant would provide educational materials (e.g., brochures or handbook provisions) to all new residents informing them of the nearby sensitive habitat and requiring cats be kept indoors, with outdoor access permitted only if leashed and under direct supervision.
 - **Landscape Management:** The project's landscape plan would avoid planting features that might inadvertently attract domestic animals to the habitat edge (e.g., no litter boxes near open space, no features that encourage house pets to roam

² US Fish and Wildlife Service (USFWS). *Coastal California Gnatcatcher Species Profile*. <https://www.fws.gov/story/coastal-california-gnatcatcher>.

near the preserve boundary). Additionally, it is noted that the habitat patch is relatively small and bordered on two sides by existing development or roads. While the City can manage pet-related risks through project design and adherence to the City's HMP, the project's incremental contribution to domestic cat presence near the preserve would be negligible.

- **Brown-Headed Cowbird Brood Parasitism:** Cowbirds (*Molothrus ater*) are known brood parasites that can affect songbirds like the gnatcatcher by laying eggs in their nests. The City acknowledges that the USFWS 1993 listing rule for the gnatcatcher identified cowbird parasitism as a contributing threat, and the July 2025 Recovery Implementation Strategy, which serves as an adaptable, action-oriented document under the USFWS's three-part framework, focusing on specific implementation actions to recover listed threatened or endangered species, includes cowbird control as a Priority 3 recovery action (Action 7). However, no substantial evidence supports the assertion that construction of an apartment complex in the urbanized Carlsbad environment would measurably increase brown-headed cowbird brood parasitism on species (and specifically, the coastal California gnatcatcher) in the on-site Diegan coastal sage scrub habitat. Neither the City's HMP nor the North County Multiple Habitat Conservation Program identifies cowbird predation as a significant threat to gnatcatcher populations in this region. In fact, the HMP only mentions cowbird control as a general preserve-wide management guideline alongside broader edge-effect provisions—not as a species-specific threat for gnatcatcher in the plan area. The commenter has provided no site-specific data—no cowbird abundance counts, nest parasitism rates, or monitoring results—to substantiate a causal link between the project and a “substantial increase” in cowbird parasitism. Cowbird concentrations require large-scale food subsidies (e.g., livestock feed, open agriculture, extensive lawns, etc.). Per project design, the proposed apartment complex in an urbanized area with fully enclosed trash rooms, regularly scheduled trash removal, and no dumpsters accessible from the outside would not create these conditions. As such, potential impacts under Threshold (f) would remain less than significant.
- **Habitat Connectivity and Fragmentation:** The Focused IS/MND concluded that the project would have no impact on wildlife movement or migration corridors. This conclusion was based on site-specific conditions: the project site is isolated by existing development and roads, and is not part of any large, continuous wildlife corridor. The City acknowledges the commenter's citation to the USFWS Draft Recovery Plan for the Coastal California Gnatcatcher (2025) and the Recovery Implementation Strategy. However, the HMP describes SRA 1 (which includes the site) as “too small, edge-effected, or isolated to be considered biological cores or linkage areas,” which supports the conclusion that the area is not a critical transit corridor for wildlife. The Draft Recovery Plan (2025) emphasizes maintaining connectivity between habitat patches for long-term species viability. The City agrees that habitat connectivity is important at a landscape scale. However, in this case the on-site habitat is extremely limited (0.33 acres) and bordered by existing urban development. It is not part of a larger open space continuum; to the north is Salk Avenue and a designated Hardline Preserve (from which it is separated by the road), and to the south and east are developed parcels. To the west lies a golf course (maintained turf is not suitable gnatcatcher habitat). In essence, the project site's Diegan coastal sage scrub patch is an isolated “island” of habitat. As noted in the Biological Resources Technical Report, “there are no landscape features or vegetative cover that would support wildlife

movement... the site does not serve as a habitat linkage or wildlife corridor.” Further, as previously stated in Responses to Comments 1-2 and 1-3, the project site is not identified in the HMP as a Core Area, Linkage Area, or Hardline Conservation Area and is not proposed for preservation by the City.

Additionally, the project would not introduce new barriers such as wide roads or fencing across any natural habitat that would impede wildlife movement. The building and hardscape would be largely confined to the already graded pad. A final point of clarification is that the broad north-south corridor identified in the MHCP regional framework is associated with larger patches of habitat in the vicinity (e.g., around Lake Calavera, riparian corridors, etc.), not with the SRA 1 patch at the project site. The USFWS Recovery Implementation Strategy Priority 2 actions that address enhancing connectivity in North County are aimed at regional planning (connecting larger preserves), rather than maintaining every minor fragment. By complying with the HMP, the City is contributing to that larger connectivity goal through established preserves and mitigation banks.

Therefore, the IS/MND’s finding remains sound: the project would not significantly interfere with wildlife movement or fragment an existing corridor. The on-site habitat patch will maintain any limited role it has in connectivity. No additional mitigation is necessary because the project’s footprint does not intersect any identified corridor and because standard HMP adjacency requirements (fencing, sensitive lighting, etc.) would ensure the new development does not create undue edge effects that could exacerbate regional fragmentation.

Response to Comment 1-11

The IS/MND addressed lighting through design commitments pursuant to the City’s Objective Design Standards: all project outdoor light fixtures will be fully shielded, downward-facing, and directed away from the adjacent habitat, consistent with HMP requirements. Energy-efficient fixtures incorporating light emitting diode (LED) lamps or equivalent energy-efficient fixtures would be used for outdoor lights near the habitat. The project site is located within an urbanized area of the City where existing nighttime conditions already include nighttime lighting associated with nearby roadways and commercial/industrial development. As such, a five-story building with windows and traditional light sources would not introduce lighting in an undisturbed natural environment. With respect to building-related lighting and window glow, illumination would be consistent with other residential developments in the City. Lighting would be shielded, directed downward, and limited to the minimum necessary for safety and security, reducing light spill and skyglow. Vehicle headlights within the parking structure would be intermittent, contained within the structure, and similar to conditions already present in other multi-story residential and mixed-use developments. Given the urban context of the site, the absence of adjacent conserved habitat, and compliance with applicable City development standards consistent with the HMP, project lighting would not substantially alter existing nighttime conditions or result in adverse effects to wildlife. Accordingly, lighting impacts would be less than significant.

Response to Comment 1-12

The prevention of invasive non-native plant and animal introduction is another aspect of the HMP Adjacency Standards that the project must follow. The project’s landscape plans will be reviewed and approved by the City to ensure the plans meet the requirements set forth in the City’s

Landscape Manual. No invasive plant species (as listed by California Invasive Plant Council or the Carlsbad HMP) would be planted adjacent to the on-site open space. The project would use only native or drought-tolerant, non-invasive landscaping for the areas near the habitat. The comment mentions irrigation overspray and fertilizer runoff as potential issues; the City's standard Storm Water Best Management Practices will address those concerns, requiring efficient irrigation design (preventing overspray) and integrated pest management to avoid chemical runoff. Additionally, the on-site 0.33-acre habitat patch would be buffered from the development by open space and any necessary physical barriers, which reduces the chance of direct encroachment by invasive plants.

Response to Comment 1-13

The project avoids direct impacts to the 0.33-acre patch of Diegan coastal sage scrub that overlaps designated critical habitat for thread-leaved brodiaea, and no individuals of the species have been observed on-site in past or current surveys. Additionally, the State Water Resources Control Board has adopted General Permit No. CAS000002 – Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (General Permit) for California, which applies to most construction-related stormwater discharges within California. The General Permit requires that projects disturbing greater than one acre develop and implement a Stormwater Pollution Prevention Plan that specifies best management practices (BMPs) to be used during project construction. Implementation of the BMPs would ensure runoff and discharges during the project construction phase would not violate any water quality standards. Additionally, the project would be required to implement a project-specific Water Quality Management Plan that identifies BMPs for the management of urban stormwater runoff, including design criteria for treatment control. Compliance with the project-specific Stormwater Pollution Prevention Plan and Water Quality Management Plan would ensure that construction-related and operational impacts on water quality would be less than significant.

Response to Comment 1-14

With regard to Crotch's bumble bee habitat, the 0.33-acre area located in the northwest corner of the site is the only place with any potential bumble bee habitat present, and that small area is not being developed as part of the project. When the IS/MND refers to "lack of suitable nectaring and nesting habitat" in the context of direct impacts, it is referring to the fact that within the project's construction footprint (i.e., the areas to be graded or built upon), there are no high-quality nectar sources or intact soils for bumble bees. All such resources are in the small 0.33-acre area to be left untouched. Thus, no direct mortality or physical destruction of a bumble bee nest is anticipated from construction, supporting the statement that direct impacts are not expected. Additionally, as noted in Response to Comment 1-4, CDFW-approved protocol surveys were conducted in April and May 2026 and Crotch's bumble bee was not detected.

Response to Comment 1-15

The IS/MND and Biological Resources Technical Report are consistent in stating that the project site lies within the geographical boundaries of SRA 1 but that the property itself is not an HMP conservation area. The IS/MND and the Biological Resources Technical Report have been revised to clarify this point. Refer also to Response to Comment 1-2. These changes would not result in a new significant impact and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5. Therefore, recirculation of the IS/MND prior to adoption is not required (CEQA Guidelines Section 15073.5[c][1]).

Response to Comment 1-16

The 0.33-acre Diegan coastal sage scrub patch is indeed a central feature in the project's biological considerations. Far from minimizing its importance, the City's analysis recognized it as environmentally sensitive and made it the cornerstone of the mitigation strategy through avoidance and protective measures. The following points highlight how the IS/MND addressed the resources associated with this limited area:

- The site plan was deliberately designed to exclude the 0.33-acre Diegan coastal sage scrub habitat from development. By not building on this area, the project would avoid direct impacts to Diegan coastal sage scrub, gnatcatcher habitat, and any species using that habitat. Avoidance is the most effective mitigation, and it was the first measure applied.
- One coastal California gnatcatcher was observed in 2025 in the 0.33-acre Diegan coastal sage scrub patch located in the northwest corner of the site, which would be avoided by the project. The consulting biologist concluded that the individual was transient, most likely residing in the more abundant and established habitat opposite Salk Avenue and using the patch for foraging. The IS/MND requires seasonal avoidance of the area if nesting is observed during preconstruction nesting bird surveys and buffering it from construction disturbance (refer to MM BIO-1). The adequacy of the buffer and mitigation has been addressed above in Response to Comment 1-7.
- The Diegan coastal sage scrub patch's role as potential Crotch's bumble bee habitat and thread-leaved brodiaea critical habitat has been addressed in Responses to Comments 1-4, 1-5, and 1-14. The patch would not be disturbed. CDFW-approved protocol surveys were conducted in April and May 2026 and Crotch's bumble bee was not detected.
- The patch is within SRA 1; however, it is not designated in the City HMP as a permanent conservation site. As illustrated on HMP Figure 28, Habitat Management Plan, the project site is designated as a "Development Area," not a "Conservation Area." The HMP specifically calls out the importance of conserving *Brodiaea filifolia* in SRA 1; however, no thread-leaved brodiaea populations are known to exist in the patch. Nevertheless, the project's avoidance would keep the habitat available.
- The presumed "no impact" finding for indirect effects on the patch is not a dismissal of those effects, but rather a reflection that, with standard project design features in place and adherence to the City's development requirements, including the City HMP, City Objective Design Standards, and City Landscape Manual, indirect effects would be rendered less than significant (see above). Responses to Comments 1-9 through 1-13 above detail how issues like lighting, noise, pets, and runoff are being managed for this patch. The key protective City requirements built into project design include buffering, shielding (for light), controlling human and pet access, and monitoring.

In summary, the City does not agree that there was a "systematic minimization" of this feature's importance. On the contrary, a primary focus of the analysis relates to the 0.33-acre patch and the species it may support. Further, the mitigation measures (MM BIO-1 and MM BIO-2) are aimed at protecting the resources in or adjacent to this area. The project's avoidance of the patch is a strong protective step.

Response to Comment 1-17

The City acknowledges CDFW's role as a responsible agency with regard to a potential ITP for Crotch's bumble bee (which is currently a candidate species under the California Endangered Species Act). CDFW approved of a site-specific Crotch's bumble bee survey protocol consisting of three surveys spaced at least two weeks apart. The surveys were conducted in April and May 2026 with no bees detected.

Response to Comment 1-18

The City does not concur that there was a "systematic bias" in the analysis. On the contrary, the approach was science-based and precautionary. When in doubt, the analysis presumed the resource may be present or impacted and required mitigation accordingly. Additionally, as stated in Response to Comment 1-2, the site was previously graded in 2007 for a prior project and is also identified for residential development as Site 7 in the City's Housing Element (see also HMP Figure 28), and thus was analyzed for environmental affects in the City's Housing Element Implementation and Public Safety Element Update Supplemental EIR. Further, the project site is included as part of the HMP "covered projects" with specific mitigation obligations. The absence of identified significant impacts in the project-specific IS/MND is a result of effective project design and mitigation, not a failure to look for impacts. The City would carry forward all commitments made in the IS/MND and in these responses into the final project approval and monitoring requirements. Therefore, an EIR is not warranted for biological resources, as the IS/MND provides a complete and adequate analysis of potential impacts and mitigation measures for the site's biological issues.

Response to Comment 1-19

The City believes that a fully informed, good-faith revised analysis of the project's biological resources has been achieved without the need for an EIR. After implementing the avoidance and mitigation measures – many of which are built into the project by design and adhere to the City's development requirements, including the City HMP, City Objective Design Standards, and City Landscape Manual – impacts on biological resources are not significant. For instance, no sensitive habitat would be removed; listed species are either absent or would be protected in place if present; and indirect effects from the new development on adjacent habitat are avoided or reduced through proven measures (lighting controls, noise reduction, invasive species management, etc.). Refer also to Responses to Comments 1-1 through 1-3.

Response to Comment 1-20

Please refer to Response to Comment 1-7 above for reasoning why protocol-level gnatcatcher surveys are not required for the project. Refer to Response to Comment 1-5 for the explanation why current blooming-period surveys for thread-leaved brodiaea within the designated critical habitat is not necessary. See Response to Comment 1-4 regarding the comment about requiring pre-approval focused surveys for Crotch's bumble bee. Refer to Responses to Comments 1-9 through 1-13 regarding the analysis of indirect impacts related to predation, cowbird parasitism, artificial lighting, altered hydrology, invasive species, and habitat connectivity. See Response to Comment 1-8 regarding the commenter's previous comment on enforceable mitigation measures.

Response to Comment 1-21

Tribal Consultation was initiated with all tribes consulting with the City under AB 52 on January 5, 2026. Consultation was requested by the Rincon Band of Luiseño Indians and conducted through a series of letters and meetings. The City coordinated with the tribe, and an agreement was made that the tribe will provide tribal cultural monitoring during ground-disturbing construction activities associated with the project. As such, AB 52 consultation has concluded. Refer to Response to Comment 1-4 regarding Crotch's bumble bee concerns.

Letter 2



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March 27, 2026

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Re: Comment on the Focused Initial Study/Mitigated Negative Declaration for the Salk Avenue Apartments Project (SDP No. 2025-0004; DEV No. 2025-0001)

Dear Mr. Van Leeuwen and Mr. Strong:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) regarding the Focused Initial Study/Mitigated Negative Declaration (“MND”) prepared for the Salk Avenue Apartments Project (SDP No. 2025-0004; DEV No. 2025-0001), located on Salk Avenue, east of College Boulevard and west of El Camino Real in Carlsbad, California (“Project”).

As discussed below, there is a fair argument that the Project may result in significant adverse biological impacts. Therefore, SAFER respectfully requests that the City of Carlsbad (“City”) prepare an environmental impact report (“EIR”) before approving the Project to properly analyze and mitigate these impacts in accordance with the California Environmental Quality Act (“CEQA”).

SAFER’s review of the MND was assisted by expert wildlife ecologist Dr. Shawn Smallwood, Ph.D. Dr. Smallwood’s written comments and CV are attached hereto as Exhibit A and are incorporated herein by reference in their entirety.

PROJECT DESCRIPTION

The Project involves the construction of a new, five-story, 59-foot-tall, 416,512-square-foot Salk Avenue Apartments Project

foot residential development, including 397 multifamily dwelling units and 27,000 square feet of outdoor open space, as well as an above-ground, five-level, 107,300-square-foot parking structure with 541 parking spaces. The Project site covers about 9.8 acres of vacant and undeveloped land. The site is located on Salk Avenue, east of College Boulevard and west of El Camino Real, in the City of Carlsbad. Surrounding land uses include industrial buildings to the east and south, a private driving range and golf facility to the west, and a medical office building to the north. The site is located within the Faraday Carlsbad Center Specific Plan area, designated as Residential under the General Plan, and zoned Residential Density Multiple (RD-M).

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(cont.)

LEGAL STANDARD

As the California Supreme Court 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 California Code of Regulations [“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 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, supra*, 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 903, 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) An MND instead of an EIR is proper only if project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331 [quoting PRC §§ 21064.5, 21080(c)(2)].) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th

at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-05.)

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(cont.)

An EIR must be prepared rather than an MND “whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors, supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

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

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, § 6.29, pp. 273-74.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

DISCUSSION

I. There is substantial evidence of a fair argument that the Project may have significant adverse impacts on biological resources.

2-2

Expert wildlife ecologist, Shawn Smallwood, Ph.D., has reviewed the Project, the MND, the MND’s biological analysis prepared by Michael Baker International (“MBI”), and other relevant documents regarding the Project. As discussed below, Dr. Smallwood found that the Project will significantly impact biological resources because: (1) the MND underestimated the diversity of species present on the Project site, including multiple special-status species; (2) there is substantial evidence of a fair argument that the Project will adversely affect biological resources; and (3) the MND’s proposed mitigation measures are inadequate to sufficiently reduce

the Project's biological impacts.

A. The MND failed to account fully for the diversity of species present on the Project site, including multiple special-status species.

Dr. Smallwood's associate, biologist Noriko Smallwood, M.S., visited the Project site for a 3-hour diurnal survey on March 11, 2026. (Ex. A at 2.) During her visit, Ms. Smallwood detected 37 species of vertebrate wildlife at the Project site, including seven special-status species. (*Id.* at 3.) These special-status species included: (1) the Allen's Hummingbird and (2) the Wrentit, both Birds of Conservation Concern under the US Fish & Wildlife Service; (3) the Cooper's Hawk, a species on the California Department of Fish & Wildlife's ("CDFW") Taxa to Watch List ("WL"), a Bird of Prey protected by California Fish & Game Code § 3503.5 ("BOP"), and a Group 1 species on the San Diego County Sensitive Animal List ("CSD"); (4) the Double-Crested Cormorant, a WL and Group 2 CSD species; (5) the Red-Shouldered Hawk, a BOP and Group 1 CSD species; (6) the Red-Tailed Hawk, a BOP; and (7) the California Gnatcatcher, a Group 1 CSD species, a federally threatened species on the CDFW's Special Animal List, and a Priority 2 California Species of Special Concern. (*Id.* at 10.)

In contrast to Ms. Smallwood's site visit, the City's consultant biologist, MBI, detected 21 species of wildlife at the Project site from its wildlife survey. (*Id.* at 14.) Whereas MBI detected seven species that Ms. Smallwood did not, Ms. Smallwood detected 23 vertebrate species that MBI did not. (*Id.*) With these two surveys, the total number of vertebrate wildlife species detected at the site increases to 44, more than twice the number of species that MBI's biologists detected. (*Id.*) Ms. Smallwood's additional detections suggest that the site supports many more species yet to be detected. (*Id.*)

Dr. Smallwood found other deficiencies in the MBI's survey findings as well. For example, he found that MBI conducted no breeding-season detection surveys for burrowing owls, nor did the MBI conduct any detection surveys for the Crotch's Bumble Bee, a candidate species for listing under the California Endangered Species Act ("CESA"), or for rare plants, conflicting with the CDFW's recommendations. (*Id.* at 18.) Additionally, MBI reported its findings without any comparative context to aid in interpretation. (*Id.*) The City must prepare an EIR so that a sufficient survey effort can be completed. (*Id.*)

Furthermore, Dr. Smallwood concluded that MBI's desktop review was inadequate and incomplete. (*Id.* at 19.) Desktop review includes literature and database reviews and consultation with local experts to inform field surveys, identify which other species could occur at the Project site, and interpret a project's impacts on wildlife. (*Id.*) Dr. Smallwood found that MBI's desktop review was distorted to minimize the likelihood of the occurrence of special-status species. (*Id.*) In addition, MBI relied on only one database in its desktop review, the California Natural Diversity Data Base ("CNDDDB") and failed to consult other available databases to augment its interpretation of its findings. (*Id.*) CNDDDB is a "positive sighting database" that "does not predict where something may be found." (*Id.*) Dr. Smallwood noted that, by relying only on CNDDDB, MBI misused CNDDDB and screened out many special-status species from further consideration in characterizing the Project site's wildlife community. (*Id.*) From his own

assessment based on database reviews and Ms. Smallwood’s site visits, Dr. Smallwood estimated that 143 special-status wildlife species are known to occur close enough to the Project site to warrant analysis of their occurrence potential. (*Id.* at 20.)

CEQA requires government agencies to describe the “environmental setting” of the Project. (CEQA Guidelines § 15063(d)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322.) The “environmental setting” is defined as “the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (CEQA Guidelines § 15360; see CEQA Guidelines § 21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1192.) By failing to provide any comparative context to interpret its survey results and relying on an insufficient desktop review, MBI inadequately described the Project’s “environmental setting” and thereby insufficiently analyzed the Project’s biological impacts. Dr. Smallwood stated that “without a more accurate characterization of the wildlife community, the basis is inadequate for predicting impacts and formulating appropriate mitigation strategies.” (Ex A. at 20.) The City therefore must prepare an EIR to properly characterize the wildlife community of the Project site. (*Id.*)

Given Ms. Smallwood’s identification of at least seven special-status species on the Project site, as well as the records of the occurrence of multiple other special-status species near the site, Dr. Smallwood deemed the site as habitat for special-status species. (*Id.* at 11.) Further CEQA review through an EIR is needed to appropriately assess and reduce the Project’s adverse impacts on the wildlife community.

B. There is substantial evidence of a fair argument that the Project will have significant adverse impacts on biological resources.

Dr. Smallwood concluded that the Project will have significant adverse impacts on biological resources, including: (a) habitat loss; (b) interference with wildlife movement; (c) wildlife depredation by house cats; (d) bird-window collision mortality; (e) traffic mortality; and (f) cumulative impacts.

1. The Project will have a significant adverse impact on the reproductive capacity of the Project site as a result of habitat loss.

Dr. Smallwood calculated that the loss of habitat from the Project would cause the loss of 61 bird nesting sites and 85 nesting attempts per year, a loss that “would qualify as significant impacts that have not been analyzed” in the MND. (*Id.* at 29.) However, these impacts would not end with the immediate numerical loss of nesting sites, for the reproductive capacity of the Project site would also be permanently lost. Dr. Smallwood estimated that the Project would additionally prevent the production of 247 fledglings and 278 birds per year. (*Id.*) He concluded that “the loss of 278 birds per year would be a loss of significant habitat value that is currently provided by the project site.” (*Id.*) Moreover, most of these birds are protected by the federal Migratory Bird Treaty Act and California’s Migratory Bird Protection Act, so the loss of these birds “would easily qualify as an unmitigated significant impact.” (*Id.*) This is thus a significant adverse impact that must be analyzed and mitigated in an EIR.

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2. The Project will have a significant adverse impact on wildlife as a result of interference with wildlife movement.

2-4

Without any supporting evidence, the MND summarily concludes that the Project site does not support wildlife movement because the site is isolated and lacks vegetative cover. (*Id.* at 30.) However, Ms. Smallwood observed in her survey that the site is covered with ornamental vegetation, scattered coyote brush, grassland plants, and Diegan sage scrub. (*Id.*) Her surveys also clearly show that wildlife use the site for foraging and collecting nest materials. (*Id.*) Moreover, the site is important to wildlife movement in the region because its isolated nature increases its value to migratory wildlife by providing stopover opportunities for forage, rest, and cover. (*Id.*) The Project would thus deprive wildlife of all such opportunities. Dr. Smallwood further found that MBI reported no survey objective and implemented no study designs to detect patterns of wildlife movement or roosting. Thus, MBI collected no data that would have supported the MND’s conclusions regarding the site’s value to wildlife movement. An EIR is needed to adequately address the Project’s impacts on wildlife movement.

3. The Project will have a significant adverse impact on wildlife as a result of housecat predation.

2-5

Dr. Smallwood found that the Project may significantly impact local wildlife as a result of housecat predation. (*Id.*) The MND does not estimate the number of new residents that would live in the Project. However, based on the 397-units, Dr. Smallwood calculates that there will be approximately 52 new free-roaming cats that are predicted to kill 6,344 vertebrate wildlife per year. (*Id.*) He also noted that free-roaming housecats contribute to downstream loading of the parasite *Toxoplasma gondii*. (*Id.*) Dr. Smallwood concluded that “[i]mpacts to wildlife from the introduction of house cats into the environment would be highly significant, and yet these impacts were not considered in the IS/MND.” (*Id.* at 31.)

4. The Project will have a significant adverse impact on wildlife as a result of bird-window collisions.

2-6

According to Dr. Smallwood, the Project will have a significant impact on birds as a result of window collisions. The MND did not address or mitigate these potential impacts to special-species birds. (*Id.* at 31.) Analyzing the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” (*Id.*)

The Project would introduce glass windows to open airspace that is an essential portion of bird habitat. (*Id.*) The MND does not disclose any surface area window measurements for the Project. However, Dr. Smallwood predicts 4,819 square meters of exterior glass windows in the Project. (*Id.* at 33.) Based on this estimate, Dr. Smallwood calculates that the Project will cause 352 bird deaths per year from window collisions. (*Id.*) Most of the predicted collision fatalities would be birds protected by the Migratory Bird Treaty Act and the California Migratory Bird

Protection Act, “thus causing significant unmitigated impacts that were not addressed in the IS/MND.” (*Id.* at 34.)

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5. The Project will have a significant adverse impact on wildlife as a result of collisions with the additional traffic generated by the Project.

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Dr. Smallwood found that the MND failed to address the Project’s potential impacts to wildlife from road collision mortality as a result of increased traffic generated by the Project. (*Id.*) As Dr. Smallwood explained, 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. (*Id.*) Dr. Smallwood provided several studies demonstrating significant animal deaths due to traffic collisions in the thousands annually per 100 kilometers of road. (*Id.* at 34-36.) The MND did not analyze whether increased traffic generated by the Project would result in significant impacts to wildlife.

The MND does not report the annual vehicle miles traveled (“VMT”) that the Project would generate. (*Id.* at 36.) However, Dr. Smallwood predicted that the Project would generate 10,819,952 annual VMT. (*Id.*) He calculated that the Project would cause approximately 1,882 to 4,602 vertebrate wildlife fatalities per year due to collisions with Project-generated traffic. (*Id.* at 36-37) He therefore concluded that “the project-generated traffic would cause substantial, significant impacts to wildlife,” a potential impact the MND did not address. (*Id.* at 37.) Dr. Smallwood’s calculations constitute substantial evidence supporting a fair argument that “the proposed project would result in potentially significant adverse biological impacts. . .” (*Id.* at 38.) An EIR is required to properly analyze and mitigate this impact.

6. There is a fair argument that the Project may have significant cumulative impacts that the MND failed to adequately analyze.

2-8

CEQA documents, such as the MND, must discuss cumulative impacts and mitigate significant cumulative impacts. (14 CCR § 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.

(PRC § 21083(b)(2).) A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

Dr. Smallwood found that the MND failed to assess the Project’s contributions to cumulative impacts on biological resources. (Ex. A at 38.) MBI provided no list of past, ongoing,

and future projects in the area and no actual analysis of cumulative impacts. Accordingly, there is no evidence to support a conclusion that the Project will not have significant cumulative impacts on biological resources. An EIR should be prepared to analyze the Project's potentially significant cumulative impacts on biological resources. (*Id.* at 39.)

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C. The MND's proposed mitigation measures are inadequate to sufficiently reduce the Project's adverse impacts on biological resources.

2-9

To reduce the Project's adverse impacts on biological resources, the MND offers two mitigation measures. However, Dr. Smallwood found that these mitigation measures are flawed. The first measure, MM BIO-1, involves pre-construction bird surveys and determination of avoidance buffers for nesting birds. (*Id.*) Dr. Smallwood agreed with the need to perform pre-construction surveys but noted that this measure would not avoid the permanent loss of habitat caused by the Project, nor the mortality from Project-generated traffic. (*Id.* at 39-40.) Additionally, the language of this measure allows a single individual to make subjective decisions, outside the public's view, to determine the buffer area and timing for any given species. (*Id.* at 40.) Furthermore, the measure fails to define what constitutes a "qualified biologist" to conduct the pre-construction surveys. (*Id.*) Dr. Smallwood concluded that this measure lacks objective criteria and is therefore unenforceable. (*Id.*)

The second measure, MM BIO-2, involves avoidance and clearance surveys for the Crotch's Bumble Bee. This species is a candidate species for listing under the CESA, so it is essential to implement the appropriate detection survey pursuant to the CDFW. (*Id.* at 41.) Dr. Smallwood found that this mitigation measure is flawed because it improperly defers performance of the detection survey until after public circulation of the CEQA review document. (*Id.*) The survey instead must be completed before public circulation of the CEQA review document to ensure proper analysis of potential impacts and formulation of appropriate mitigation. (*Id.*) Dr. Smallwood also found no evidence in the MND that any efforts have been made to obtain an incidental take permit for the Project. (*Id.*) Thus, this measure is inadequate.

Dr. Smallwood instead offers several other mitigation measures that the City should implement to reduce the Project's significant adverse impacts on biological resources more effectively, should the Project proceed. Potential mitigation measures include compensatory habitat protection, bird-safe glass and window treatments, native plant landscaping, and compensatory mitigation for traffic mortality, including donations to wildlife rehabilitation facilities. (*Id.* at 41-43.)

CONCLUSION

As discussed above, there is substantial evidence supporting a fair argument that the Project may have significant adverse impacts on biological resources. An EIR is therefore required to analyze and mitigate the Project's potentially significant impacts. Thus, SAFER respectfully requests that the City not rely on the MND and instead prepare and circulate an EIR before further consideration of the Project.

2-10

Sincerely,



Rebecca Davis
LOZEAU DRURY LLP

EXHIBIT A

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Attn: Kyle Van Leeuwen, Senior Planner
City of Carlsbad
Community Development Department
1635 Faraday Avenue
Carlsbad, California 92008

20 March 2026

RE: Salk Avenue Apartments Project

Dear Mr. Van Leeuwen,

I write to comment on potential impacts to biological resources that would result from development of the proposed Salk Avenue Apartments Project. The project would add 397 apartment units within a 59-foot-tall, five-story building grossing 416,152 square feet and 541 parking spaces on 9.8 acres on the south side of Salk Avenue in between College Blvd and El Camino Real in Carlsbad, California. My comments that follow address my concerns that the Focused Initial Study/Mitigated Negative Declaration (IS/MND) supported by Michael Baker International (MBI 2026), mischaracterizes the existing environmental setting, and that its impacts analysis is flawed and its mitigation measures are inadequate.

My qualifications for preparing expert comments are the following. I hold a Ph.D. degree in Ecology from University of California at Davis, where I also worked as a post-graduate researcher in the Department of Agronomy and Range Sciences. My research has been on animal density and distribution, habitat selection, wildlife interactions with the anthrosphere, and conservation of rare and endangered species. I authored many papers on these and other topics. I served as Chair of the Conservation Affairs Committee for The Wildlife Society – Western Section. I am a member of The Wildlife Society, and 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.

THE WILDLIFE COMMUNITY AS A BIOLOGICAL RESOURCE

Most environmental reviews pursuant to the California Environmental Quality Act (CEQA) focus on special-status species because CEQA's Checklist Evaluation of Environmental Impacts specifies that such evaluation should prioritize potential impacts to special-status species. However, an important policy of CEQA is "to prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the

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major periods of California history.” Pub. Res. Code § 21001(c). Seemingly at odds with the Checklist Evaluation’s specification, this policy is not restricted to special-status species; it also applies to wildlife populations and plant and animal communities. In fact, the CEQA Guidelines Section 21155.1 defines wildlife habitat as “the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.” This definition is consistent with the scientific definition of habitat, which is that portion of the environment that is used by members of a species for survival and reproduction (Hall et al. 1997). An essential portion of the environment used by any special-status species is composed of the collection of other species of plants and wildlife, because these species provide for special-status species their forage, refugia and nest substrates, and some serve as ecological mutualists; no special-status species can exist in a vacuum of other wildlife. The CEQA Checklist Evaluation assigns priority to special-status species to balance information and cost, but it does not exclude the need to evaluate environmental impacts to other species, which, after all, are members of the very communities within which special-status species inter-depend for survival and reproduction.

All wildlife species should be of concern in a CEQA review, but with priority directed to special-status species. The species I consider to be special-status species are those listed in California’s Special Animals List inclusive of threatened and endangered species under the California and federal Endangered Species Acts, candidates for listing under CESA and FESA, California’s Fully Protected Species, California species of special concern, and California’s Taxa to Watch List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>), continental and region-specific US Fish and Wildlife Service Birds of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>), and naturally rare species such as raptors protected by California’s Birds of Prey laws, Fish and Game Code Sections 3503, 3503.5, 3505 and 3513 (see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

What follows is a summary of a site visit to detect as many of the species of wildlife as possible within the short time available. The survey was also intended to detect as many of the special-status species as possible, but with the understanding that most special-status species are less readily detectable due to rarity and crypticity. Nonetheless, the species detected can indicate the ecological integrity of the site and thus the likelihood of occurrence of special-status species not yet detected.

SITE VISIT

On my behalf, Noriko Smallwood, a wildlife biologist with a Master of Science Degree from California State University Los Angeles, visited the site of the proposed project for 3 hours of survey from 07:00 to 09:00 hours on 11 March 2026. Noriko walked the site’s perimeter where accessible, stopping to scan for wildlife with use of binoculars. Noriko recorded all species of vertebrate wildlife she detected, including those whose members flew over the site or were seen just off the site. Animals of uncertain species identity were either recorded to the Genus or higher taxonomic level.

Conditions were sunny with 4 MPH north wind and temperatures of 51-64° F. The site has been previously graded and contains annual grassland, coastal sage scrub, and riparian vegetation (Photos 1 and 2)

Noriko saw Allen’s hummingbird and Anna’s hummingbird (Photos 3 and 4), red-shouldered hawk and red-tailed hawk (Photos 5 and 6), double-crested cormorant and ring-billed gull (Photos 7 and 8), American crow and Cassin’s kingbird (Photos 9 and 10), northern mockingbird (Photo 11), California scrub-jay and cedar waxwing (Photos 12 and 13), California towhee and spotted towhee (Photos 14 and 15), orange-crowned warbler and house wren (Photos 16 and 17), wrentit and white-crowned sparrow (Photos 18 and 19), song sparrow (Photo 20), and lesser goldfinch and hooded oriole (Photos 21 and 22). Noriko detected 37 species of vertebrate wildlife at or adjacent to the project site, including seven species with special status (Table 1).



Photos 1 and 2. Views of the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 3 and 4. Allen's hummingbird (left), and Anna's hummingbird (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 5 and 6. Red-shouldered hawk eating a prey item (left), and red-tailed hawk (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 7 and 8. Double-crested cormorant (left), and ring-billed gull (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 9 and 10. American crow with nest material (left), and Cassin's kingbird (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



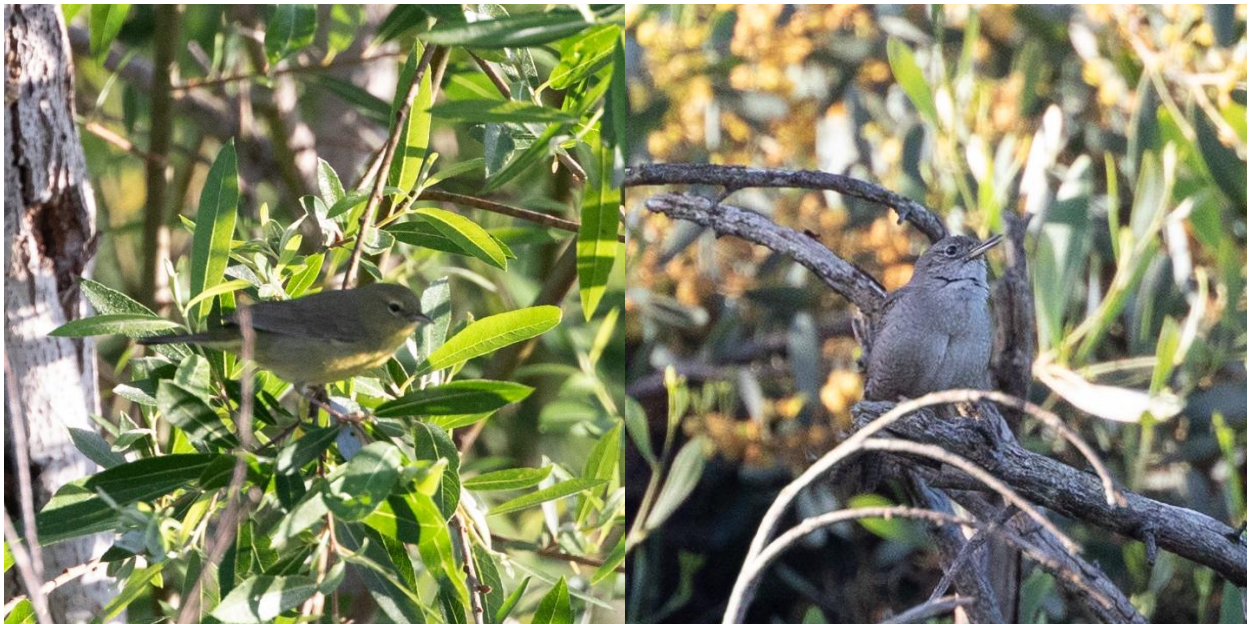
Photo 11. Northern mockingbird on the project site, 11 March 2026. Photo by Noriko Smallwood.



Photos 12 and 13. California scrub-jay (left), and cedar waxwings (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 14 and 15. California towhees (left), and spotted towhee (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 16 and 17. Orange-crowned warbler (left), and house wren (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photos 18 and 19. Wren tit (left), and white-crowned sparrow (right) on the project site, 11 March 2026. Photos by Noriko Smallwood.



Photo 20. Song sparrow with a caterpillar on the project site, 11 March 2026. Photo by Noriko Smallwood.



Photos 21 and 22. Lesser goldfinch with nest material (top), and hooded oriole (bottom) on the project site, 11 March 2026. Photos by Noriko Smallwood.

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

Noriko Smallwood
Noriko Smallwood

Table 1. Wildlife that Noriko observed in 3 hours of survey on the project site, 11 March 2026.

Common name	Species name	Status ¹	Notes
Great Basin fence lizard	<i>Sceloporus occidentalis longipes</i>		
Eurasian collared-dove	<i>Streptopelia decaocto</i>	Non-native	
Mourning dove	<i>Zenaida macroura</i>		
White-throated swift	<i>Aeronautes saxatalis</i>		Flock
Anna’s hummingbird	<i>Calypte anna</i>		
Allen’s hummingbird	<i>Selasphorus sasin</i>	BCC	Foraged, displayed
Killdeer	<i>Charadrius vociferus</i>		
Ring-billed gull	<i>Larus delawarensis</i>		Flew over
Double-crested cormorant	<i>Nannopterum auritum</i>	WL, CSD2	Flew over
Great egret	<i>Ardea alba</i>		Flew over
Cooper’s hawk	<i>Accipiter cooperii</i>	WL, BOP, CSD1	Flew over just off site
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP, CSD1	Ate prey item
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP	
Cassin’s kingbird	<i>Tyrannus vociferans</i>		
Swinhoe’s white eye	<i>Zosterops simplex</i>	Non-native	
California scrub-jay	<i>Aphelocoma californica</i>		
American crow	<i>Corvus brachyrhynchos</i>		Gathered nest material
Tree swallow	<i>Tachycineta bicolor</i>		Just off site
Bushtit	<i>Psaltriparus minimus</i>		Foraged
Wrentit	<i>Chamaea fasciata</i>	BCC	Sang, foraged
Cedar waxwing	<i>Bombycilla cedrorum</i>		Many
California gnatcatcher	<i>Polioptila c. californica</i>	FT, SSC2, CSD1	Just off site
Bewick’s wren	<i>Thryomanes bewickii</i>		
Northern house wren	<i>Troglodytes aedon</i>		
Northern mockingbird	<i>Mimus polyglottos</i>		
House finch	<i>Haemorphous mexicanus</i>		
Lesser goldfinch	<i>Spinus psaltria</i>		Gathered nest material
Dark-eyed junco	<i>Junco hyemalis</i>		
White-crowned sparrow	<i>Zonotrichia leucophrys</i>		Foraged
Song sparrow	<i>Melospiza melodia</i>		Foraged
California towhee	<i>Melozone crissalis</i>		Copulated
Spotted towhee	<i>Pipilo maculatus</i>		Foraged
Hooded oriole	<i>Icterus cucullatus</i>		Foraged
Brown-headed cowbird	<i>Molothrus ater</i>		Flew over
Orange-crowned warbler	<i>Oreothlypis celata</i>		Just off site
Yellow-rumped warbler	<i>Setophaga coronata</i>		
Botta’s pocket gopher	<i>Thomomys bottae</i>		Burrows

2-11
(cont.)

¹ Listed on CDFW’s Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as FT = federal threatened; SSC_i = California Species of Special Concern with i = priorities 1, 2 and 3; WL = CDFW’s Taxa to Watch List; BCC = U.S. Fish and Wildlife Service’s Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); and BOP = protected by Birds of Prey (California Fish and

Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>); CSD1 = Group 1 species on County of San Diego Sensitive Animal List (County of San Diego 2010).

2-11
(cont.)

ANALYSIS OF RECONNAISSANCE SURVEY DATA

Noriko detected 37 species of vertebrate wildlife, which was a large number for the brevity of her survey effort. All the species in Table 1 would lose habitat as the result of the project and its replacement of natural ground covers with impervious surfaces. Smallwood and Smallwood (2023) confirmed this habitat loss by measuring the impacts of similar developments on species richness and the abundances of wildlife. Smallwood and Smallwood (2023) directly compared the species and the numbers of animals observed prior to development to the those observed after development, while they did the same at control sites. The measured losses of these species resulting from development is indicative of habitat loss, because habitat is defined as that portion of the environment that is used for survival and reproduction by members of a species (Hall et al. 1997), and this use is inferred by observations of the presence of a species (Smallwood 2002).

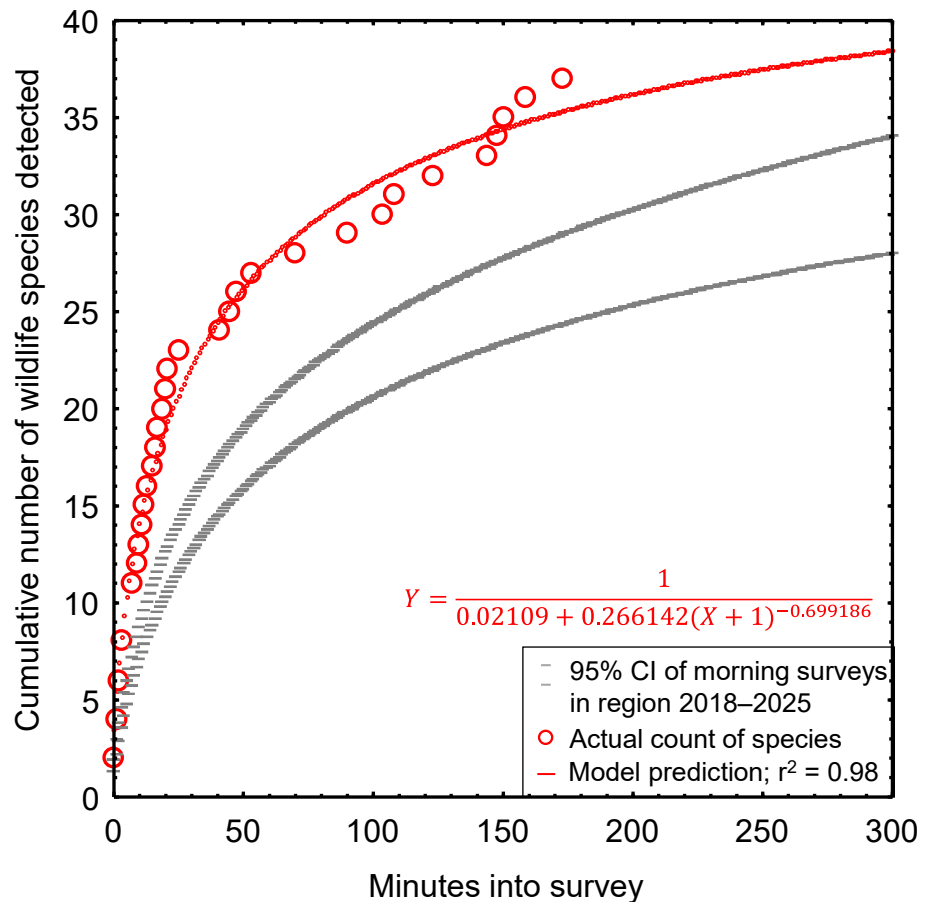
2-12

However, the species of wildlife Noriko detected at the project site were not the only species that were present during her survey, as there are always species that are not detected. To demonstrate this, I fit nonlinear regression models to Noriko's accumulation of first detections of vertebrate wildlife species with time into her daytime surveys to predict the number of species that she would have detected with longer surveys or perhaps with additional biologists available to assist her. The type of model is a logistic growth model, which reaches an asymptote that corresponds with the theoretical maximum number of vertebrate wildlife species that could have been detected during the survey. The model fit to Noriko's survey data from the morning of 11 March predicts 48 species of vertebrate wildlife were available to be detected, or 11 more species than she detected that morning (Figure 1). Noriko's rate of species detections exceeded the upper bound of the 95% confidence interval estimated from many other morning surveys we have completed in southcoast California environments.

Unknown are the identities of the species Noriko missed, but the species that Noriko did and did not detect on composed only a fraction of the species that would occur at the project site over the period of a year or longer. This is because many species are seasonal in their occurrence, some require more survey effort because they are highly cryptic, and the members of other species would visit the site only periodically while patrolling large home ranges. Surveys on only two days cannot possibly detect all of the species of the local wildlife community.

At least a year's worth of surveys would be needed to more accurately report the number of vertebrate species that occur at the project site, but I only have Noriko's one survey. However, 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. This analytical bridge draws inference from the pattern of species detections more than it does from the research site, and I note that the pattern, i.e., rate, of species detections is consistent from site to site.

Figure 1. Actual and predicted relationships between the numbers of vertebrate wildlife species detected and the elapsed survey time based on Noriko’s visual-scan surveys on 11 March 2026. Note the confidence interval (orange) applies only to the morning survey (red line).



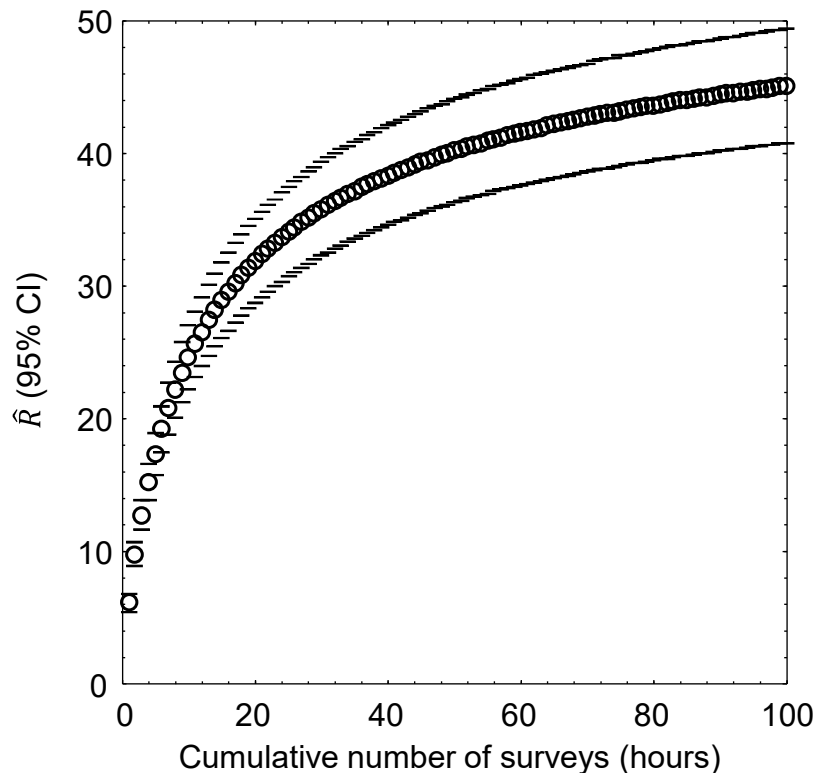
As part of my research, I completed a much larger survey effort across 167 km² of annual grasslands of the Altamont Pass Wind Resource Area, where from 2015 through 2019 I performed 721 1-hour visual-scan surveys, or 721 hours of surveys, at 46 stations. I used binoculars and otherwise the methods were the same as the methods I and other consulting biologists use for surveys at proposed project sites. At each of the 46 survey stations, I tallied new species detected with each sequential survey at that station, and then related the cumulative species detected to the hours (number of surveys, as each survey lasted 1 hour) used to accumulate my counts of species detected. I used combined quadratic and simplex methods of estimation in Statistica to estimate least-squares, best-fit nonlinear models of the number of cumulative species detected regressed on hours of survey (number of surveys) at the station: $\hat{R} = \frac{1}{1/a + b \times (\text{Hours})^c}$, where \hat{R} represented cumulative species richness detected. The coefficients of determination, r^2 , of the models ranged 0.88 to 1.00, with a mean of 0.97 (95% CI: 0.96, 0.98); or in other words, the models were excellent fits to the data.

I projected the predictions of each model to thousands of hours to find predicted asymptotes of wildlife species richness. The mean model-predicted asymptote of species richness was 57 after 11,857 hours of visual-scan surveys among the 46 stations of my research site. I also averaged model predictions of species richness at each incremental increase of number of surveys, i.e., number of hours (Figure 2). On average I would have

detected 12.7 species over my first 3 hours of diurnal surveys at my research site in the Altamont Pass (3 hours to match the 3 hours Noriko surveyed during daylight hours at the project site), which composed 22.3% 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 2, the 37 diurnally active species Noriko detected after her 3 hours of daylight survey at the project site likely represented 22.3% 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, Noriko would likely detect $37/0.223 = 166$ species of vertebrate wildlife in daylight surveys at the site. Assuming Noriko's ratio of special-status to non-special-status species was to hold through the detections of all 166 predicted species, then continued daylight surveys would eventually detect 31 special-status species of vertebrate wildlife.

Because my prediction of 166 species of vertebrate wildlife, including 31 special-status species, is derived from daytime visual-scan surveys, and would detect few nocturnal mammals such as bats, the true number of species composing the wildlife community of the site must be larger. Noriko's reconnaissance survey should serve only as a starting point toward characterization of the site's wildlife community, but it certainly cannot alone inform of the inventory of species that use the site. More surveys are needed than her one survey to produce an inventory the project site's wildlife community. Nevertheless, the large number of species I predict at the project site is indicative of a relatively species-rich wildlife community that warrants a serious survey effort.

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

The first step in analysis of potential project impacts to biological resources is to accurately characterize the existing environmental setting, including the wildlife community and any key ecological relationships and known and ongoing threats to special-status species. A reasonably accurate characterization of the environmental setting can provide the baseline from which to analyze potential project impacts. For these reasons, characterization of the environmental setting, including the project site's regional setting, is one of the 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, occurrence databases and local experts to help predict the occurrences of special-status species. In the case of the proposed project, these steps were taken, though not with sufficient rigor, and not interpreted in furtherance of an accurate characterization of the wildlife community.

Environmental Setting informed by Field Surveys

To CEQA's primary objective to disclose potential environmental impacts of a proposed project, the analysis should be informed of which biological species are known to occur at the proposed project site, which special-status species are likely to occur, and the limitations of the survey effort directed to the site. Analysts need this information to characterize the environmental setting as a basis for opining on, or predicting, potential project impacts to biological resources. In the case of this project, however, more surveys were needed, as were more appropriate interpretations of the survey findings.

MBI (2026) conducted a reconnaissance survey on 24 January 2026 "to document existing conditions, conduct a habitat assessment for special-status plant and wildlife species and sensitive natural communities, and determine the presence of aquatic resources within the project site." MBI (2026) deployed two biologists who committed 4 person-hours starting at 08:30, and they detected 21 species of vertebrate wildlife.

In comparison to MBI's 21 species detected in 4 person-hours, Noriko detected 37 species of vertebrate wildlife at or immediately adjacent to the project site in 3 hours. MBI detected seven species that Noriko did not, and Noriko detected 23 species that MBI did not. With Noriko Smallwood's survey, the total number of vertebrate wildlife species detected on the project site increases to 44, or more than twice the number MBI's biologists detected. Noriko's additional species detections suggest that the project site supports many more species yet to be detected. The accumulation of species detections remains in the early growth phase.

MBI's vertebrate wildlife species tally was slightly fewer than the average from among consultants who survey for wildlife at project sites, whereas Noriko detected 7 more than we average at project sites (Figure 3). MBI's tally of special-status species of vertebrate wildlife equaled the average among consultant surveys, whereas Noriko detected one more than we average (Figure 3). This type of comparative analysis is missing from MBI (2026), but it is needed to understand the meaning of the survey results.

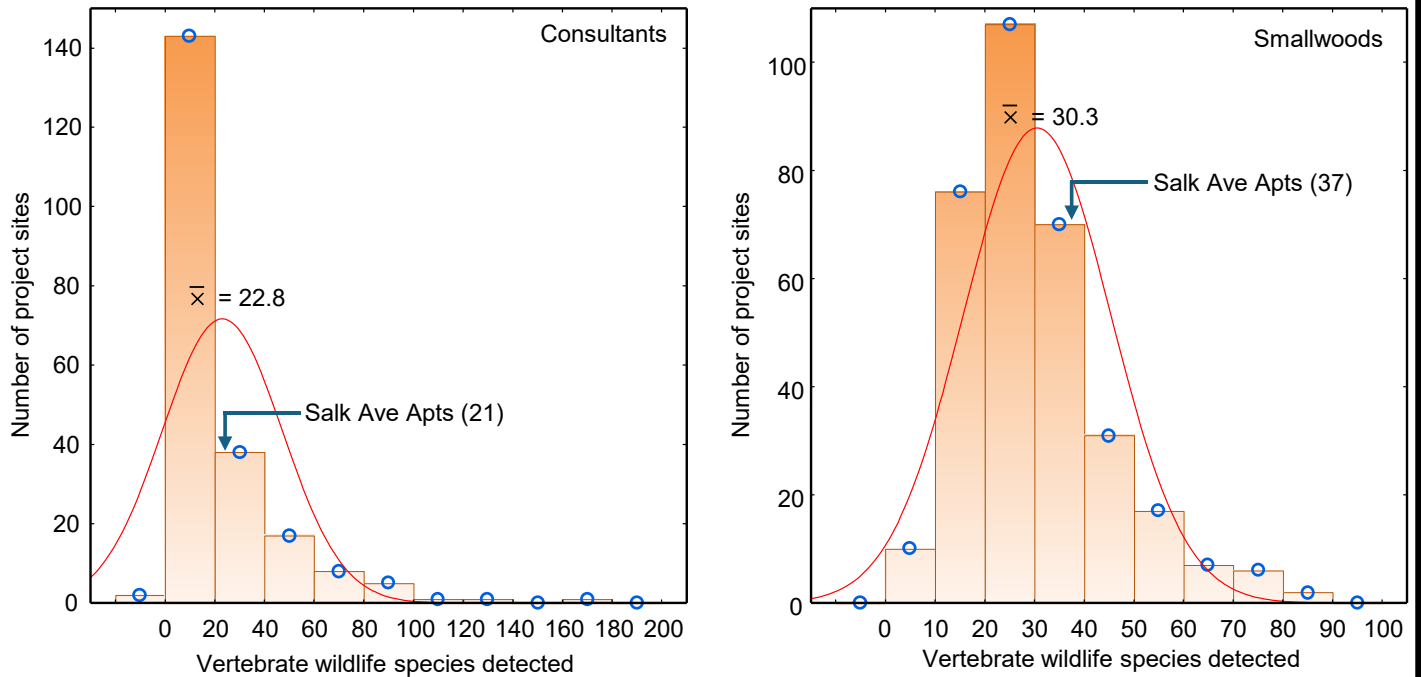


Figure 3. Frequency distribution of the number of vertebrate wildlife species detected by consulting biologists (left graph) and by me and Noriko (right graph) among project sites that were surveyed in support of environmental reviews in California.

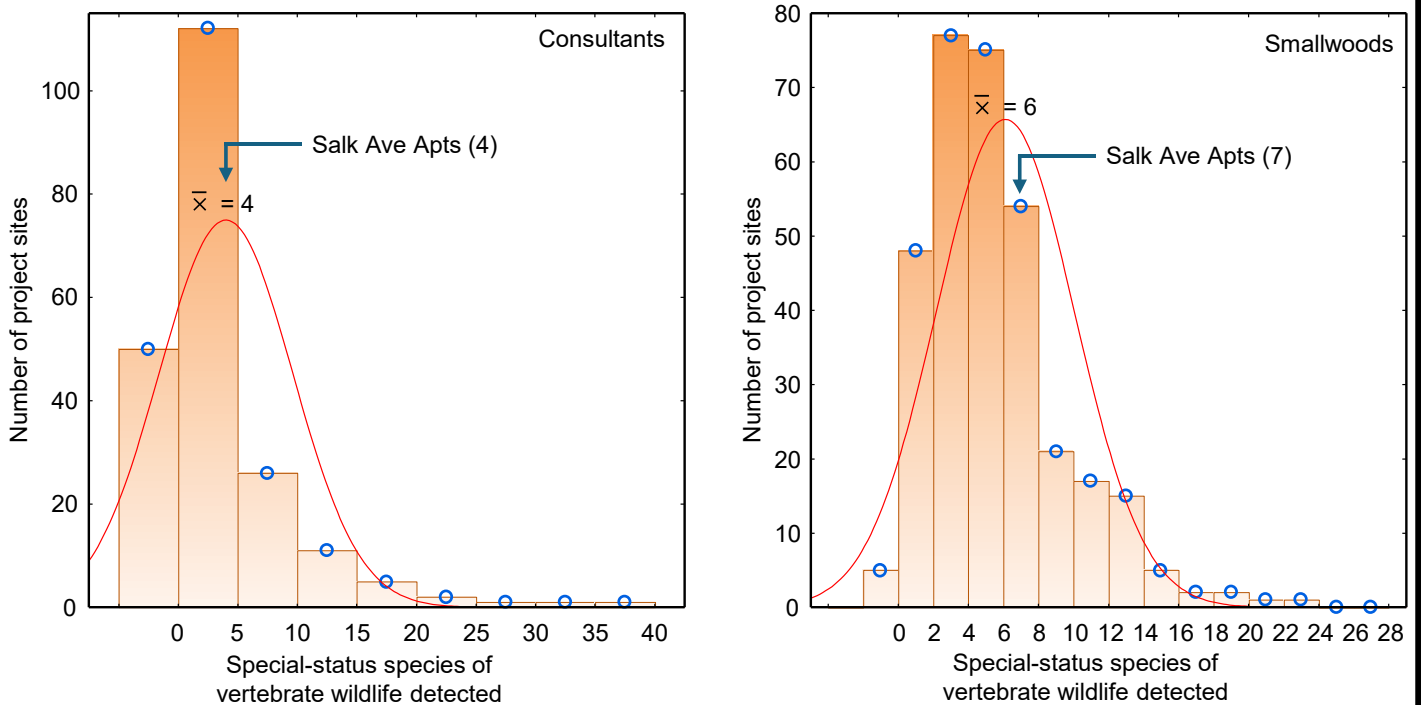


Figure 4. Frequency distribution of the number of special-status species of wildlife detected by consulting biologists (left graph) and by me and Noriko (right graph) among project sites that were surveyed in support of environmental reviews.

Three comparative contexts are needed to fully disclose the meanings of survey findings in the IS/MND. The first is to contextualize the survey findings relative to the survey effort, because otherwise it is misleading to insinuate that the species detected were definitive of the wildlife community. As Figures 1 and 2 demonstrate, additional surveys contribute to greater accuracy in the characterization of the wildlife community, eventually obtaining the species inventory. (An inventory may not be necessary, but it helps to disclose the approximate number of species yet to be detected.) That Noriko could survey briefly and still more than double the number of vertebrate wildlife species from MBI's 21 species means that there are many more species yet to be detected. As I commented above, by analytically bridging Noriko's survey data to a more extensive research survey effort, I predict 166 species of vertebrate wildlife, inclusive of 31 special-status species, and these are the tallies expected of only diurnal surveys. Adding nocturnal surveys would increase these numbers substantially, as many mammals, reptiles and amphibians and some birds are active mostly at night.

The second comparative context is to compare the survey findings on the project site to survey findings from other sites of proposed projects or at sites that can serve as reference sites. Figures 3 and 4 exemplify this comparative context, as do the confidence intervals in Figures 1 and 2. Another example can be found in Figure 5, which compares Noriko's findings to hundreds of other survey results at other proposed project sites, developed sites, and at relatively intact "reference sites," but it does so relative to the survey effort. This approach is more informative than the other comparative contexts because it factors in survey effort.

The third comparative context is to assess the probabilities of detection considering the survey effort of each special-status species, whether detected or not. MBI (2026) reports having failed to detect most special-status species that could conceivably occur on the project site, but what do these failures to detect species really mean? Each species presents survey personnel with a unique range of detection probabilities, but the IS/MND fails to discuss this, and instead gives the false impression that field surveys are equal in their likelihoods to detect any and all species of vertebrate wildlife. For any given species, the likelihood it would be detected varies with survey effort and distance from known activity areas, among other factors. Many animals maintain home ranges that are larger than most project sites, and they periodically shift their foraging activities to various parts of their home range, hence occurring on a particular site only periodically. To detect these species, survey personnel must be at the site on the same date and time as the one or more members of the species. Therefore, the probability of detection during any given survey is less than 100%.

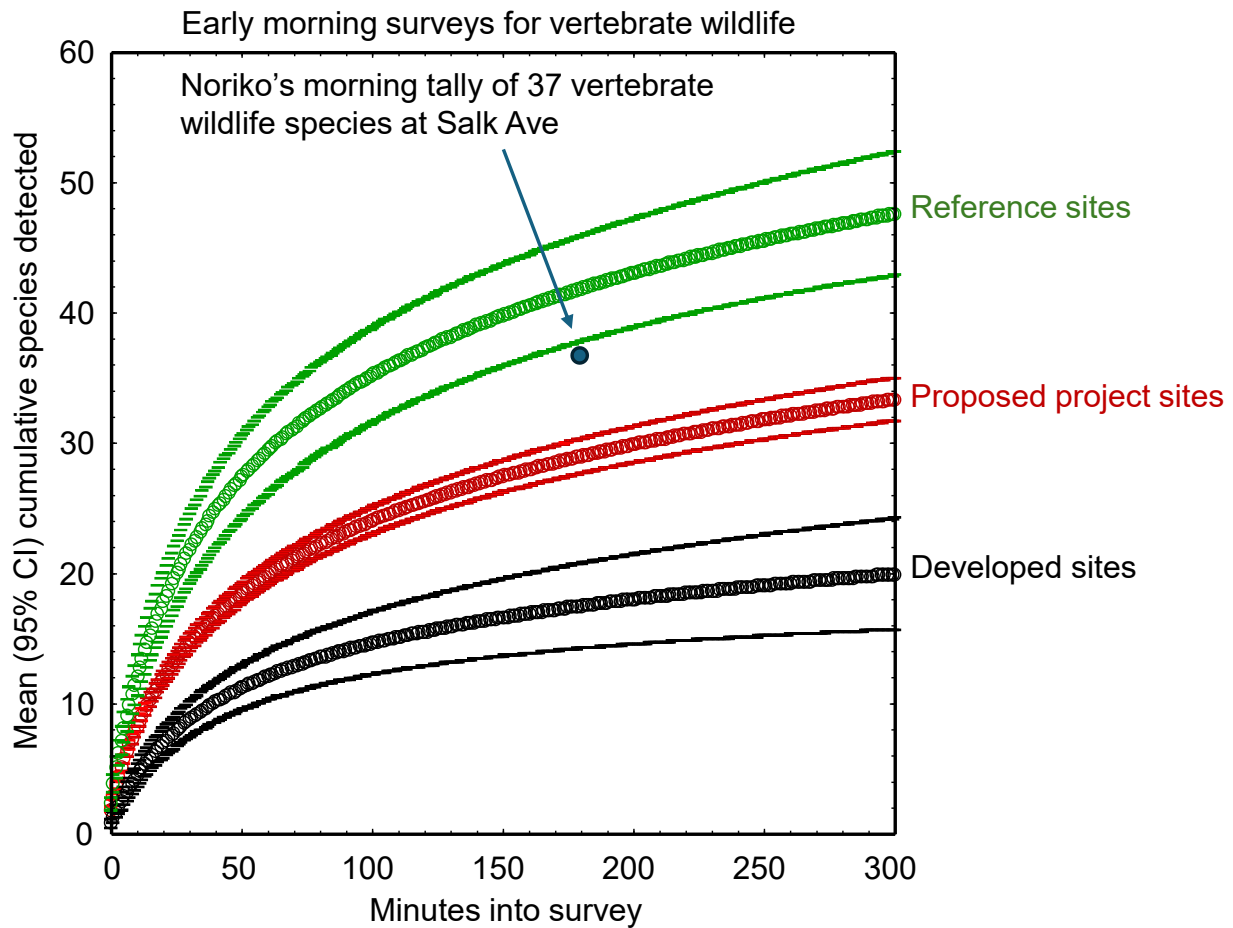
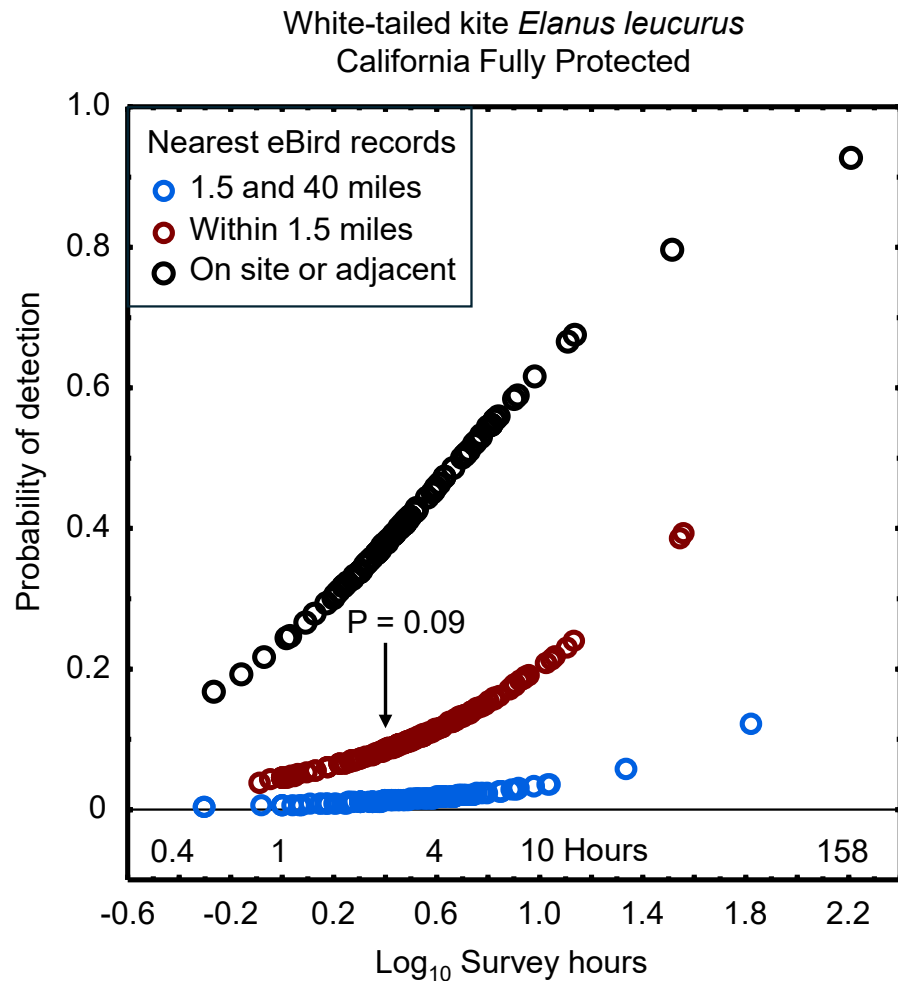


Figure 5. *Noriko Smallwood’s survey findings at the Salk Ave Apartments Project site relative to our survey findings at other project sites (red), at developed sites (black), and at more pristine sites that we survey as reference sites (green). Noriko’s findings exceed the upper bound of the 95% confidence interval based on the results of hundreds of surveys at project sites, and they almost reach the lower bound of the 95% CI from many surveys at reference sites.*

For example, knowing that the nearest eBird occurrence record of white-tailed kite was within 1.5 miles from the project site, Noriko’s survey effort of 3 hours afforded her a 9% likelihood of detection of white-tailed kite (Figure 6). Noriko would have needed to conduct another 9 surveys to accumulate a reasonable likelihood of detecting white-tailed kite, but the model fit to the data indicates that with more surveys she would eventually detect white-tailed kite on the project site. Assuming for the sake of argument that the skills of MBI’s biologists were equal to Noriko’s, then the model predicts MBI’s likelihood of detection of white-tailed kite is 11%, or not much greater than Noriko’s detection probability. Both Noriko and MBI stood a low likelihood of detection of white-tailed kite, but this does not mean that white-tailed kites are unlikely to occur on the site. There is a fundamental difference between detection likelihood and occurrence likelihood, but this difference is not mentioned or discussed in MBI (2026).

Figure 6.
Probability of detection of white-tailed kite as a function of survey effort and proximity of occurrence records to a project site, based on hundreds of reconnaissance surveys we completed 2019–2024.



2-12
(cont.)

This third comparative context is very important because it is the basis for the formulation of detection survey protocols. Experienced biologists are aware of survey limitations due to ranges of variation in the activity periods, levels of crypticity, and periodic movement patterns of wildlife species, and due to variation in the skill and commitment of survey personnel. This third comparative context acknowledges that the occurrence likelihood of a species on a particular site is rarely if ever zero, so long as the site is within the species' geographic range and it provides habitat. This third comparative context reveals that a determination of zero likelihood of occurrence is typically indicative of insufficient survey effort. A common goal of detection survey protocols is to support absence determinations with a survey effort that should have resulted in a detection if the species had been present at the time of the surveys, but it does not prove that the species is always absent from the site. This third comparative context and its implications should not be neglected in CEQA review, but in the case of the IS/MND prepared for this Project, it is entirely neglected.

As for detection surveys, none were implemented on the project site. No breeding-season detection surveys were implemented for burrowing owl as recommended by CDFW (2012), none were implemented for candidate species of bumble bee as recommended by CDFW (2023), and none were implemented for rare plants as

recommended by CDFW (2018). A meandering 2-hour walk by two biologists could not have effectively substituted for protocol-level detection surveys.

2-12
(cont.)

In summary, MBI detected the usual number of wildlife species that consultants detect in surveys conducted in support of CEQA review, but Noriko's survey brings the species tally to 44 species of vertebrate wildlife, and it indicates many more occur there but have yet to be documented. It is delinquent of MBI (2026) to have reported its findings without any comparative context to aid in interpretation. At least a fair argument can be made for the need to prepare an EIR so that a sufficient survey effort can be completed and its results appropriately interpreted and reported.

Environmental Setting informed by Desktop Review

2-13

The purpose of literature and database reviews and of consulting with local experts is to inform the field survey, and to augment interpretation of its outcome. 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 migration flight paths. In the case of this project, the desktop review was incomplete, and the review that was completed was distorted to minimize the likelihoods of occurrence of special-status species.

To establish its pool of special-status species for assessment of occurrence likelihoods, MBI (2026) queried the California Natural Diversity Data Base (CNDDDB) for occurrence records within eight USGS 7.5' Quadrangles. However, the CNDDDB is a volunteer positive-sightings database, and as such it is useful for confirming presence but not for confirming absence of species because such databases are not designed for this purpose. As noted by the CNDDDB, *"The CNDDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present."* MBI (2026) and hence the IS/MND misuse the CNDDDB.

The CNDDDB relies entirely on volunteer reporting from biologists who were allowed access to whatever properties they report from. Many properties have never been surveyed by biologists. Many properties have been surveyed, but the survey outcomes never reported to the CNDDDB. Many properties have been surveyed multiple times, but not all survey outcomes reported to the CNDDDB. Furthermore, the CNDDDB is interested only in the findings of special-status species, which means that species more recently assigned special status will have been reported many fewer times to the CNDDDB than were species assigned special status since the inception of the CNDDDB. Therefore, occurrence records in the CNDDDB are most abundant for species assigned special status decades ago, but fewest for species only recently assigned special status. And because negative findings are not reported to the CNDDDB, the CNDDDB is also inappropriate as a basis for weighting occurrence likelihoods such as absent, not expected, unlikely, low, moderate or high. Whereas the CNDDDB can be confirmatory of species presence, it cannot support absence determinations or assignments of low likelihood of occurrence.

And again, the screening out of a species due to lack of occurrence records in the CNDDDB is the same as an absence determination, and this step is being taken without adequate support of field surveys.

2-13
(cont.)

In my assessment based on a database review and site visits, 143 special-status species of wildlife are known to occur near enough to the site to warrant analysis of occurrence potential (Table 2). Not all these species should be expected to occur at the project site, but each of them should be given a closer look to determine occurrence likelihoods and whether additional surveys are needed, or implementation of detection surveys, or whether it would be reasonable to assume presence. Of these 143 species, 8 (6%) were recorded on or just off the project site, and another 47 (33%) species have been documented within 1.5 miles of the site (Very close), another 43 (30%) between 1.5 and 4 miles (Nearby), and another 39 (27%) between 4 to 30 miles (In region). Two thirds (69%) of the species in Table 2 have been reportedly seen within 4 miles of the project site. The site therefore supports at least eight special-status species of wildlife, and it carries the potential for supporting many more special-status species of wildlife based on the proximities of recorded occurrences. Evidence certainly suggests that habitat assessments are needed for these species.

MBI (2026) considers the occurrence likelihoods of only 46 (32%) of the special-status species listed in Table 2, which means that 97 (68%) of the special-status species in Table 2 were screened out of the analysis in the first step of the desktop review. Of the 46 species considered, all but two were determined to be “not expected” to occur on the project site. Of the species determined to be “not expected,” one of them, Cooper’s hawk, was observed just off the project site, another 13 species have been documented within 1.5 miles of the project site, and another 12 species have been documented within 4 miles of the project site. In summary, MBI’s occurrence likelihood determinations comport poorly with the data.

Mischaracterization of the Wildlife Community

2-14

MBI (2026) reports on a field survey and a desktop review having been performed, but the field survey results are interpreted without any context to survey results from elsewhere, and the desktop review starts with an inappropriately small pool of special-status species after misusing the CNDDDB. MBI (2026) often resorts to speculation in its analyses of occurrence likelihoods, having not completed surveys appropriate to bats and burrowing owls, and having committed too little survey effort overall. Speculated habitat assessments are highly uncertain, which is inappropriate for precious or rare resources such as special-status species (National Research Council 1986). The true wildlife community remains to be described with sufficient accuracy. Without a more accurate characterization of the wildlife community, the basis is inadequate for predicting impacts and formulating appropriate mitigation strategies.

At least a fair argument can be made for the need to prepare and EIR to accurately characterize the wildlife community of the projects site as a suitable baseline from which to predict project impacts and to formulate an appropriate mitigation strategy.

Table 2. Occurrence likelihoods of special-status species of wildlife 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. MSCP cover refers to whether incidental take of the species is covered by the San Diego Multiple Species Conservation Program. Entries in bold font identify species detected by Noriko Smallwood during her site visit.

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	FT			In region
San Diego fairy shrimp	<i>Branchinecta sandiegonensis</i>	FE, CSD1	Yes	Not expected	In region
Riverside fairy shrimp	<i>Streptocephalus woottoni</i>	FE	Yes	Not expected	In region
Wandering skipper	<i>Panoquina errans</i>	CSD1			Nearby
Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	FE, CSD1	Yes		In region
Monarch	<i>Danaus plexippus</i>	FC, CSD2		Not expected	Very close
Crotch’s bumble bee	<i>Bombus crotchii</i>	CCE		Moderate	Very close
Western spadefoot	<i>Spea hammondi</i>	SSC, CSD2	Yes	Not expected	Nearby
Southwestern pond turtle	<i>Actinemys pallida</i>	FC, SSC	Yes	Not expected	In region
San Diego banded gecko	<i>Coleonyx variegatus abbotti</i>	SSC, CSD1			In region
Coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC, CSD2	Yes	Not expected	Nearby
Coronado skink	<i>Plestiodon skiltonianus interparietalis</i>	WL, CSD2		Not expected	In region
Orange-throated whiptail	<i>Aspidoscelis hyperythra</i>	WL, CSD2	Yes	Not expected	In region
Coastal whiptail	<i>Aspidoscelis tigris stejnegeri</i>	SSC, CSD2		Not expected	Very close
San Diegan legless lizard	<i>Anniella stebbinsi</i>	SSC		Not expected	Nearby
Coastal rosy boa	<i>Lichanura orcutti</i>	CSD2			Nearby
California glossy snake	<i>Arizona elegans occidentalis</i>	SSC, CSD2		Not expected	In region
San Diego ringneck snake	<i>Diadophis punctatus similis</i>	CSD2			Nearby
Coast patchnose snake	<i>Salvadora hexalepis virgultea</i>	SSC, CSD2		Not expected	In region
Two-striped gartersnake	<i>Thamnophis hammondi</i>	SSC, CSD1	Yes	Not expected	Nearby
South coast garter snake	<i>Thamnophis sirtalis pop. 1</i>	SSC, CSD2		Not expected	In region
Red diamond rattlesnake	<i>Crotalus ruber</i>	SSC, CSD2	Yes	Not expected	Very close
Brant	<i>Branta bernicla</i>	SSC2			Nearby
Cackling goose (Aleutian)	<i>Branta hutchinsii leucopareia</i>	WL			Nearby

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
Moffitt's Canada goose	<i>Branta canadensis moffitti</i>	CSD2			In region
Redhead	<i>Aythya americana</i>	SSC2, CSD2			Very close
Western grebe	<i>Aechmophorus occidentalis</i>	BCC, CSD1			Nearby
Clark's grebe	<i>Aechmophorus clarkii</i>	BCC			Nearby
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	FT, CE, CSD1		Not expected	Very close
Black swift	<i>Cypseloides niger</i>	SSC3, BCC, CSD2			Very close
Vaux's swift	<i>Chaetura vauxi</i>	SSC			Very close
Calliope hummingbird	<i>Selasphorus calliope</i>	BCC			Nearby
Rufous hummingbird	<i>Selasphorus rufus</i>	BCC			Very close
Allen's hummingbird	<i>Selasphorus sasin</i>	BCC		Present	Very close/ On site
Light-footed Ridgway's rail	<i>Rallus obsoletus levipes</i>	FE, CE, CFP		Not expected	Nearby
Mountain plover	<i>Charadrius montanus</i>	SSC2, BCC, CSD2			In region
Snowy plover	<i>Charadrius nivosus</i>	BCC			Nearby
Western snowy plover	<i>Charadrius nivosus nivosus</i>	FT, SSC		Not expected	In region
Long-billed curlew	<i>Numenius americanus</i>	WL, CSD2			Nearby
Marbled godwit	<i>Limosa fedoa</i>	BCC			Nearby
Red knot (Pacific)	<i>Calidris canutus</i>	BCC			Nearby
Short-billed dowitcher	<i>Limnodromus griseus</i>	BCC			Nearby
Willet	<i>Tringa semipalmata</i>	BCC			Nearby
Laughing gull	<i>Leucophaeus atricilla</i>	WL, CSD2			Nearby
Heermann's gull	<i>Larus heermanni</i>	BCC			Nearby
Western gull	<i>Larus occidentalis</i>	BCC			Very close
California gull	<i>Larus californicus</i>	BCC, WL, CSD2			Very close
California least tern	<i>Sternula antillarum browni</i>	FE, CE, CFP, CSD1		Not expected	Very close
Gull-billed tern	<i>Gelochelidon nilotica</i>	BCC, SSC3			Nearby
Black tern	<i>Chlidonias niger</i>	SSC2, BCC, CSD2			Nearby
Elegant tern	<i>Thalasseus elegans</i>	BCC, WL, CSD1			Nearby
Black skimmer	<i>Rynchops niger</i>	BCC, SSC3, CSD1			Nearby
Common loon	<i>Gavia immer</i>	SSC, CSD2			Nearby

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
Wood stork	<i>Mycteria americana</i>	SSC1, CSD2			In region
Brandt's cormorant	<i>Urile penicillatus</i>	BCC			Nearby
Double-crested cormorant	<i>Phalacrocorax auritus</i>	WL, CSD2			Very close/ On site
American white pelican	<i>Pelicanus erythrorhynchos</i>	SSC1, CSD2			Very close
Least bittern	<i>Ixobrychus exilis</i>	SSC2, CSD2		Not expected	Nearby
Great blue heron	<i>Ardea herodias</i>	CSD2			Very close
Reddish egret	<i>Egretta rufescens</i>	CSD2			Nearby
Green heron	<i>Butorides striatus</i>	CSD2			Very close
White-faced ibis	<i>Plegadis chihi</i>	WL, CSD1	Yes	Not expected	Very close
Turkey vulture	<i>Cathartes aura</i>	BOP, CSD1			Very close
Osprey	<i>Pandion haliaetus</i>	WL, BOP, CSD1	Yes		Very close
White-tailed kite	<i>Elanus leucurus</i>	CFP, BOP, CSD1		Not expected	Very close
Golden eagle	<i>Aquila chrysaetos</i>	BGEPA, BOP, WL, CFP, CSD1	Yes	Not expected	In region
Northern harrier	<i>Circus cyaneus</i>	SSC3, BCC, BOP, CSD1	Yes	Not expected	Very close
Sharp-shinned hawk	<i>Accipiter striatus</i>	WL, BOP, CSD1			Very close
Cooper's hawk	<i>Accipiter cooperi</i>	WL, BOP, CSD1		Not expected	Very close/ Just off site
Bald eagle	<i>Haliaeetus leucocephalus</i>	CE, BGEPA, BOP CSD1			Nearby
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP, CSD1			Very close/ On site
Swainson's hawk	<i>Buteo swainsoni</i>	CT, BOP, CSD1		Not expected	Very close
Zone-tailed hawk	<i>Buteo albonotatus</i>	BOP			Very close
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP		Present	Very close/ On site
Ferruginous hawk	<i>Buteo regalis</i>	BOP, WL, CSD1			Nearby
American barn owl	<i>Tyto furcata</i>	BOP, CSD2			Very close
Western screech-owl	<i>Megascops kennicotti</i>	BOP			Very close

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
Great-horned owl	<i>Bubo virginianus</i>	BOP			Very close
Burrowing owl	<i>Athene cunicularia</i>	CCE, BCC, SSC2, BOP, CSD1	Yes		Nearby
Long-eared owl	<i>Asio otus</i>	BCC, BOP, SSC3, CSD1			In region
Short-eared owl	<i>Asia flammeus</i>	BCC, SSC3, BOP, CSD2			Nearby
Lewis's woodpecker	<i>Melanerpes lewis</i>	BCC, CSD1			Nearby
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC		Present	Very close/On site (MB)
American kestrel	<i>Falco sparverius</i>	BOP			Very close
Merlin	<i>Falco columbarius</i>	WL, BOP, CSD2			Very close
Peregrine falcon	<i>Falco peregrinus</i>	BOP, CSD1			Very close
Prairie falcon	<i>Falco mexicanus</i>	WL, BOP, CSD1			In region
Olive-sided flycatcher	<i>Contopus cooperi</i>	BCC, SSC2, CSD2			Very close
Willow flycatcher	<i>Empidonax trailii</i>	CE			Very close
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE, CE	Yes	Not expected	In region
Vermilion flycatcher	<i>Pyrocephalus rubinus</i>	SSC2, CSD1			Very close
Least Bell's vireo	<i>Vireo belli pusillus</i>	FE, CE, CSD1	Yes	Not expected	Very close
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC2, CSD1			Very close
Oak titmouse	<i>Baeolophus inornatus</i>	BCC			Very close
California horned lark	<i>Eremophila alpestris actia</i>	WL, CSD2			Very close
Bank swallow	<i>Riparia riparia</i>	CT, CSD1		Not expected	Nearby
Purple martin	<i>Progne subis</i>	SSC2, CSD1			Very close
Wrentit	<i>Chamaea fasciata</i>	BCC			Very close/ Just off site
California gnatcatcher	<i>Poliioptila c. californica</i>	FT, SSC2, CSD1	Yes	Present	Very close/On site (MB)/ Just off site
Clark's marsh wren	<i>Cistothorus palustris clarkae</i>	SSC2			In range

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
San Diego cactus wren	<i>Campylorhynchus brunneicapillus sandiegensis</i>	SSC1, CSD1	Yes	Not expected	Nearby
California thrasher	<i>Toxostoma redivivum</i>	BCC			Very close
Western bluebird	<i>Sialia mexicana</i>	CSD2			Very close
Cassin's finch	<i>Haemorhous cassinii</i>	BCC			In region
Lawrence's goldfinch	<i>Spinus lawrencei</i>	BCC			Very close
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC2, CSD1	Yes		Nearby
Black-chinned sparrow	<i>Spizella atrogularis</i>	BCC			In region
Bell's sparrow	<i>Amphispiza b. belli</i>	WL, CSD1	Yes		In region
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>	SSC2			In range
Belding's savannah sparrow	<i>Passerculus sandwichensis beldingi</i>	CE, BCC, CSD1		Not expected	Nearby
Large-billed savannah sparrow	<i>Passerculus sandwichensis rostratus</i>	SSC2, CSD2			In region
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	WL, CSD1	Yes	Not expected	Very close
Yellow-breasted chat	<i>Icteria virens</i>	SSC3, CSD1	Yes	Not expected	Very close
Yellow-headed blackbird	<i>Xanthocephalus xanthocephalus</i>	SSC3			Very close
Bullock's oriole	<i>Icterus bullockii</i>	BCC			Very close
Tricolored blackbird	<i>Agelaius tricolor</i>	CT, BCC, SSC1, CSD1	Yes	Not expected	Nearby
Lucy's warbler	<i>Leiothlypis luciae</i>	SSC3, CSD1			Very close
Virginia's warbler	<i>Leiothlypis virginiae</i>	WL, BCC			Nearby
Northern yellow warbler	<i>Setophaga aestiva</i>	SSC2, CSD2		Not expected	Very close
Summer tanager	<i>Piranga rubra</i>	SSC1, CSD2			Very close
Pallid bat	<i>Antrozous pallidus</i>	SSC, WBWG H, CSD2	Yes	Not expected	In region
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC, WBWG:H, CSD2	Yes	Not expected	In region
Spotted bat	<i>Euderma maculatum</i>	SSC, WBWG H, CSD2			In region
California leaf nosed bat	<i>Macrotus californicus</i>	SSC, WBWG H, CSD2			In region
Western red bat	<i>Lasiurus blossevillii</i>	SSC, WBWG H, CSD2			In region
Hoary bat	<i>Lasiurus cinereus</i>	WBWG M			Nearby
Western yellow bat	<i>Lasiurus xanthinus</i>	SSC, WBWG H			In region
Small-footed myotis	<i>Myotis cililabrum</i>	WBWG M, CSD2			In region

Common name	Species name	Status ¹	MSCP cover	Occurrence likelihood	
				MBI (2026)	Records, Surveys
Long-eared myotis	<i>Myotis evotis</i>	WBWG M, CSD2			In region
Fringed myotis	<i>Myotis thysanodes</i>	WBWG H, CSD2			In region
Long-legged myotis	<i>Myotis volans</i>	WBWG H, CSD2			In region
Yuma myotis	<i>Myotis yumanensis</i>	WBWG LM, CSD2		Not expected	In region
Western mastiff bat	<i>Eumops perotis</i>	SSC, WBWG H, CSD2		Not expected	In region
Pocketed free-tailed bat	<i>Nyctinomops femorosaccus</i>	SSC, WBWG M, CSD2		Not expected	In region
Big free-tailed bat	<i>Nyctinomops macrotis</i>	SSC, WBWG MH, CSD2			In region
San Diego black-tailed jackrabbit	<i>Lepus californicus bennettii</i>	SSC, CSD2	Yes		In region
Southern grasshopper mouse	<i>Onychomys torridus ramona</i>	SSC, CSD2			In range
Dulzura pocket mouse	<i>Chaetodipus californicus femoralis</i>	SSC, CSD2		Not expected	In range
Pallid San Diego pocket mouse	<i>Chaetodipus fallax pallidus</i>	SSC, CSD2			In range
Northwestern San Diego pocket mouse	<i>Chaetodipus fallax fallax</i>	SSC, CSD2		Not expected	Nearby
Los Angeles pocket mouse	<i>Perognathus longimembris brevinasus</i>	SSC, CSD2			In range
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	FT, CT, CSD1	Yes	Not expected	In region
San Diego Bryant's woodrat	<i>Neotoma bryanti intermedia</i>	SSC, CSD2		Not expected	Nearby

¹ Listed on CDFW's Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as FT or FE = federal threatened or endangered; FC = federal candidate for listing; 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_i = California Species of Special Concern with i = priorities 1, 2 and 3; WL = CDFW's Taxa to Watch List; BGEPA = Bald and Golden Eagle Protection Act; WBWG = Western Bat Working Group with priority rankings, of low (L), moderate (M), and high (H); BCC = U.S. Fish and Wildlife Service's Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>); and as CSD1 and CSD2 = Group 1 and Group 2 species on County of San Diego Sensitive Animal List (County of San Diego 2010).

BIOLOGICAL IMPACTS ASSESSMENT

The impacts analysis in CEQA review involves prediction. Predictions are necessary because measuring a project's impacts directly could not happen until after the impacts occur, and the timing of this type of measurement would come too late for the formulations of avoidance and minimization mitigation strategies that are prioritized by the CEQA. Impact predictions are necessary as part of the environmental review. The accuracy of the predictions of impacts and their significance ultimately relies on the degree of accuracy in the characterization of the existing environmental setting (Figure 7).

Assess species occurrence likelihoods

1. Desktop review
 - a. Species geographic range overlap or database occurrence records
 - b. Crosswalk habitat associations with mapped ground cover
2. Reconnaissance survey/Habitat assessment
3. Detection surveys for special-status species



Characterize wildlife community

4. Lists of species detected and of those expected but not yet detected, and any known trends



Outcomes

5. Predict impacts
6. Formulate mitigation strategy
7. Determine significance of impacts

Note: Impact predictions and significance determinations have been of unknown accuracy in the absence of experimental measurement

Figure 7. General flow of information from the gathering stage through the characterization of the existing environment to predictions of impacts and their significance.

Impact predictions can derive from speculation or from experience (Figure 6). Speculation is repeatedly discouraged in the CEQA Guidelines, because speculation is an inconclusive guess or ponderance on a phenomenon without the benefit of data. Prediction accuracy improves with experience, though the experience that can be brought to bear on impact predictions ranges from anecdotes to careful use of scientific inference. Inference is a conclusion derived logically from data that are available about a phenomenon. Any type of experience is usually better than relying on speculation, but careful scientific inference, especially inference drawn from experiments, has proven most effective. An analogy would be predicting the boiling temperature of water at a certain place with a known atmospheric pressure after having measured it hundreds of times at other places under various atmospheric pressures. The experience of measuring the boiling temperature at all these other places would certainly result in a more accurate prediction of the boiling point as compared to a speculative prediction. We know that use of inference in this example is *certainly* more predictive, and not

potentially more predictive, because we have a long successful history with the application of this type of experimentation to draw predictive inference.

The many projects that have undergone CEQA review provide a comparative basis for drawing inferences needed to predict the impacts of the next proposed project (Figure 8). Reconnaissance survey results that are not compared to survey results from other project sites miss the opportunity to interpret the results for the purpose of predicting impacts. The same is true of CDNNB occurrence records. For example, it would be helpful to know how often a species lacking CNDDDB occurrence records on a site is nevertheless detected onsite by reconnaissance survey(s). It would be helpful to know how often the impact predictions of other projects are proven accurate, and how often the required mitigation measures are proven effective. The comparative method enables the use of scientific inference over speculation and the blind confidence of simply repeating impact conclusions of unknown accuracy and mitigation strategies of unknown efficacy.

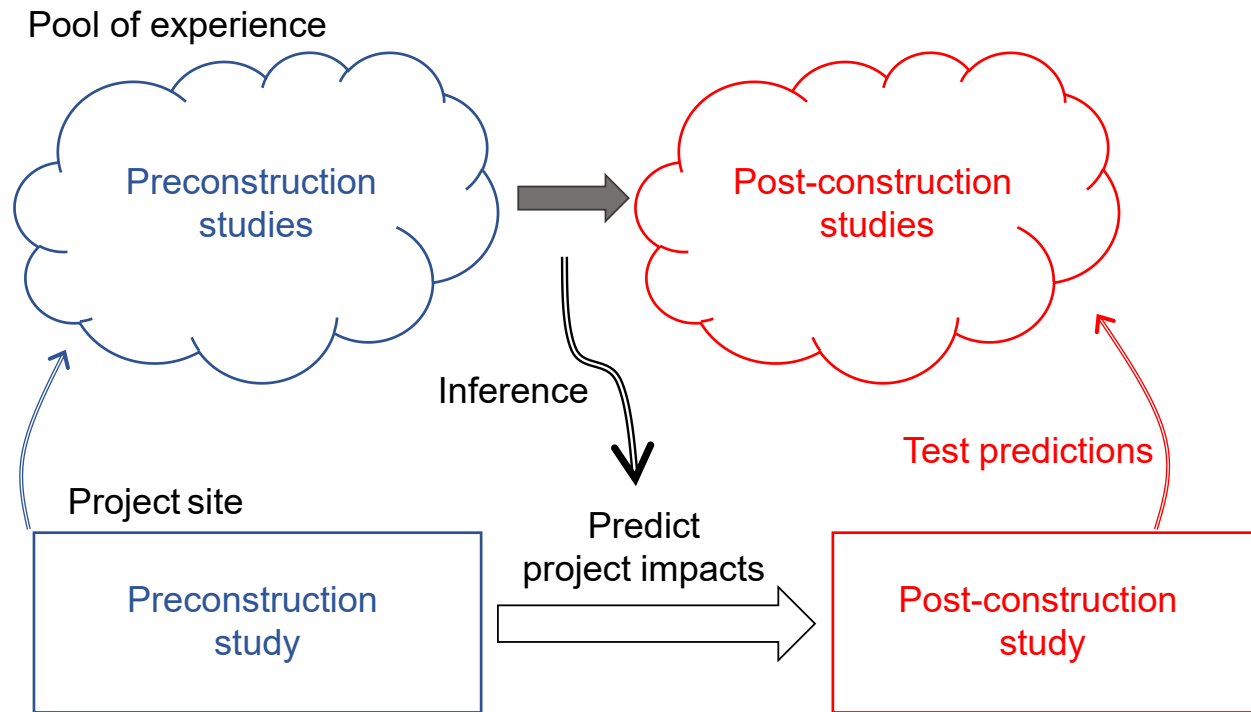


Figure 8. A framework for arriving at predicted project impacts based on experience with other project sites. Ideally, there is a pool of similar projects in similar circumstances where predicted impacts were compared to realized impacts, and into which the proposed project can also contribute to experience.

In the following, I analyze several types of impacts likely to result from the project, none of which are analyzed adequately in the IS/MND, and some of which are not analyzed at all.

REDUCED PRODUCTIVE CAPACITY FROM HABITAT LOSS

2-17

Habitat loss results in a reduced productive capacity of affected wildlife species. The site is proven to serve as habitat to at least 44 species of vertebrate wildlife which Noriko and MBI observed on the site, but the number of avian nest sites remains unknown. The surveys that have been conducted on the project site were unsuitable for detecting all bird nests or estimating total nest density. The alternative method for estimating avian productive capacity is to infer it from estimates of total nest density elsewhere. Noriko and I completed studies to estimate total avian nest density in similar environments.

Noriko estimated 1.63 nests/acre in 1.23 acres of sage scrub in Murrieta, California. Among three of her grassland study sites, one of my grassland study sites, and an estimate from another grassland (Jorgensen et al. 2014), the average was 3.2 nests/acre. However, I estimated 21.25 nests/acres at a study site composed of ornamentals grown in hedges. Applying Noriko’s 1.63 nests/acre to the site’s 0.33 acres of Diegan sage scrub predicts 0.54 nests/acre, or a nest every other year. To the 9.45 of the remainder of the site, I will adjust my average 3.2 nests/acre for the inclusions of ornamentals to estimate 6.4 nests/acre. This density applied to the 9.45 acres of the project site would predict 60.5 nest sites. Altogether with the Diegan sage scrub, I estimate 61 nest sites on the project site. Assuming 1.39 broods per nest site based on a review of 322 North American bird species, which averaged 1.39 broods per year, then I estimate 85 nest attempts per year on the project site. Assuming Young’s (1948) study site typifies bird productivity of 2.9 fledged birds per nest attempt, then I predict 247 fledglings/year at the project site.

The loss of 61 nest sites and 85 nest attempts per year would qualify as significant impacts that have not been analyzed in the IS/MND. But the impacts would not end with the immediate loss of nest sites. The reproductive capacity of the site would be lost. The project would prevent the production of 247 fledglings per year. Assuming an average bird generation time of 4 years, the lost capacity of both breeders and annual fledgling production can be estimated from an equation in Smallwood (2022):

$$\{(nests/year \times chicks/nest \times number\ of\ years) + (2\ adults/nest \times nests/year) \times (number\ of\ years \div years/generation)\} \div (number\ of\ years) = 278\ birds\ per\ year\ lost\ to\ California.$$

The loss of 278 birds per year would be a loss of significant habitat value that is currently provided by the project site. Most if not all these birds are protected by the federal Migratory Bird Treaty Act and by California’s Migratory Bird Protection Act, both of which are intended to most strongly protect breeding migratory birds. The loss of 278 birds per year would easily qualify as an unmitigated significant impact.

INTERFERENCE WITH WILDLIFE MOVEMENT

2-18

One of CEQA’s principal concerns regarding potential project impacts is whether a proposed project would interfere with wildlife movement in the region. Unfortunately, this concern has not motivated any serious analysis of whether or how the project would interfere with wildlife movement in the region. The analysis in the IS/MND consists of

conclusory statements about how the project site is isolated and lacks vegetative cover of the sort that would support wildlife movement. No sources are cited in support of the IS/MND’s conclusions. However, contrary to the IS/MND’s characterization, the project site is covered by ornamentals, scattered coyote brush (*Baccharis pilularis*), and grassland, as well as a patch of Diegan sage scrub. Noriko saw and photographed birds flying across the site, foraging and collecting nest materials. The isolated nature of the site only increases its value to migratory wildlife in need of stopover opportunities for forage, rest and cover. The evidence readily refutes the conclusory statements in the IS/MND.

The IS/MND also resorts to the red-herring argument that a known wildlife movement corridor needs to exist before any significant impact can be determined. However, the CEQA standard expressed in Question (d) of CEQA’s App. G Checklist applies to all types of movement and not just the movement channeled by corridors.

Moreover, MBI (2026) reports no survey objective to detect signs or patterns of wildlife movement or roosting, and it implemented no study design or program of observation to characterize wildlife movement or to detect roost sites. No data were collected that would have supported the IS/MND’s conclusions regarding the site’s value to wildlife movement or nursery value. The IS/MND’s conclusions are unfounded.

WILDLIFE DEPREDATION BY HOUSE CATS

Considering national trends, it is safe to assume that house cats would be introduced to the project area by residents of the proposed residential units. This is significant because house cats serve as one of the largest sources of avian mortality in North America (Dauphiné and Cooper 2009, Blancher 2013, Loss et al. 2013, Loyd et al. 2017). Loss et al. (2013) estimated 139 million cats in the USA in 2013 (range 114 to 164 million), which killed an estimated 16.95 billion vertebrate wildlife annually (range 7.6 to 26.3 billion). In 2012 there were 0.44 house cats per human in the USA, and 122 vertebrate animals were killed per cat, free-ranging members of which killed disproportionately larger numbers of vertebrate wildlife. The IS/MND reports no prediction of the number of new residents in the project, but assuming 2 residents per apartment unit, then the project can be expected to support 794 new residents. This is important because Ma and McLeod (2023) found that only 15% of apartment owners allow their cats to roam free. The above rates of cat ownership applied to numbers of new residents who would allow their cats to roam free would predict 52 new free-ranging cats, which based on the findings of Loss et al. (2013) would kill 6,344 vertebrate wildlife per year.

House cats also contribute to downstream loading of *Toxoplasma gondii*. According to a UC Davis wildlife health research program, “*Toxoplasma gondii* is a parasite that can infect virtually all warm-blooded animals, but the only known definitive hosts are cats – domesticated and feral house cats included. Cats catch the parasite through hunting rodents and birds and they offload it into the environment through their feces... and ...rain that falls on cement creates more runoff than rain that falls on natural earth, which contributes to increased runoff that can carry fecal pathogens to the sea” (The

original link is no longer active, but the quote came from the program described at: <https://whc.vetmed.ucdavis.edu/programs-projects/ca-conservation/sea-otter>).

2-19
(cont.)

Impacts on wildlife from the introduction of house cats into the environment would be highly significant, and yet these impacts are not considered in the IS/MND. An obvious mitigation measure would be to constrain house cat ownership such as requiring cats to remain indoors.

BIRD-WINDOW COLLISION MORTALITY

2-20

The IS/MND does not address one of the best-known impacts on wildlife from a residential project, and that is bird-window collision mortality. The project would introduce glass windows into an essential portion of avian habitat – that portion of the gaseous atmosphere that is referred to as the aerosphere (Davy et al. 2017, Diehl et al. 2017). The aerosphere is where birds and bats and other volant animals with wings migrate, disperse, forage, perform courtship and where some of them mate. Birds are some of the many types of animals that evolved wings as a morphological adaptation to thrive by moving through the medium of the aerosphere. The aerosphere is habitat, to which an entire discipline of ecology has emerged to study this essential aspect of habitat – the discipline of aeroecology (Kunz et al. 2008).

Many special-status species of birds have been recorded at or near the aerosphere of the project site. My database review and our site visits indicate there are 101 special-status species of birds with potential to use the site's aerosphere (Table 2). All the birds represented in Table 2 can quickly fly from wherever they have been documented to the project site, so they would all be within brief flights to the proposed project's windows. We confirmed birds of 31 species on the project site, many of them flying across the site.

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 they 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 by 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 in searches, 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 two of the studies included adjustments for carcass persistence and searcher detection error, and it was unclear how and to what degree fatality rates were adjusted for these factors. Although Loss et al. (2014) attempted to account for some biases as well as for large sources of uncertainty mostly resulting from an opportunistic rather than systematic sampling data source, their estimated annual fatality rate across the USA was highly uncertain and vulnerable to multiple biases, most of which would have resulted in fatality estimates biased low.

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

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

Project Impact Prediction: By the time of these comments, I had reviewed and processed results of bird collision monitoring at 213 buildings and façades for which bird collisions per m² of glass per year could be calculated and averaged (Johnson and Hudson 1976, O'Connell 2001, Somerlot 2003, Hager et al. 2008, Borden et al. 2010, Hager et al. 2013, Porter and Huang 2015, Parkins et al. 2015, Kahle et al. 2016, Ocampo-Peñuela et al. 2016, Sabo et al. 2016, Barton et al. 2017, Gomez-Moreno et al. 2018, Schneider et al. 2018, Loss et al. 2019, Brown et al. 2020, City of Portland Bureau of Environmental Services and Portland Audubon 2020, Riding et al. 2020). These study results averaged 0.073 bird deaths per m² of glass per year (95% CI: 0.042-0.102). This average and its 95% confidence interval provide a robust basis for predicting fatality rates at a proposed new project.

With the estimated average bird collision mortality above, all that is needed is an estimate of the spatial extent of windows in the project, but the IS/MND reports no such metric. However, the IS/MND reports the building would gross 416,152 square feet of floor space, and I happen to have maintained an average extent of windows per square foot in other apartment projects. The average was 0.01158 m² of glass window per square foot of floor space, which applied to the square footage of the project would predict 4,819 m² of windows in the project. This extent of windows multiplied against the above-reported average bird collision deaths per m² of glass per year predicts 352 (95% CI: 202–493) bird collision fatalities per year.

The vast majority of these predicted deaths would be of birds protected under the Migratory Bird Treaty Act and under the California Migratory Bird Protection Act, thus causing significant unmitigated impacts that were not addressed in the IS/MND. 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, including the unmitigated take of both terrestrial and aerial habitat of birds and other sensitive species. Not only would the project take habitat of rare and sensitive species of birds, but it would transform the project's airspace into a lethal collision trap to birds.

2-20
(cont.)

TRAFFIC IMPACTS ON WILDLIFE

The IS/MND neglects to address one of the project's most obvious, substantial impacts to wildlife, and that is wildlife mortality and injuries caused by project-generated traffic. Project-generated traffic would endanger wildlife that must, for various reasons, cross roads used by the project's traffic (Photos 23–26), including along roads far from the project footprint but which would nevertheless be traversed by automobiles head to or from the project's building. 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.

2-21



Photo 23. A desert cottontail runs across the road just in Murietta, California. Such road crossings are usually successful, but too often prove fatal to the animal.



Photo 24. A great-tailed grackle crosses a road in the Imperial Valley.



Photos 25 and 26. Raccoon killed on Road 31 just east of Highway 505 in Solano County (left; photo taken on 10 November 2018), and California kingsnake killed by a vehicle on a rural road in El Dorado County in 2024.

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 9,462 animals killed by traffic on the road. This fatality number projected over 1.25 years and 2.5 miles of road translates to 3,028 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 188,191 animals killed per 100 km of road per year, or 22 times that of Loss et al.'s (2014) upper bound estimate and 53 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 3,028 animals killed per mile along a county road in Contra Costa County. The estimated numbers of fatalities were 1.75% birds, 26.4% mammals (many mice and pocket mice, but also ground squirrels, desert cottontails, striped skunks, American badgers, raccoons, and others), 67.4% 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 4.4% 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 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 on wildlife

The IS/MND fails to report annual VMT that would be generated by the project. However, I have maintained a database of predicted annual VMT from other apartment projects on which I provided expert testimony. The average has been 26 annual VMT per square foot of floor space, which applied to the project's 416,152 sf would predict 10,819,952 annual VMT would be generated by the project.

During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road in Contra Costa County daily, so the vehicle miles that contributed to my estimate of non-volant fatalities was $19,500 \text{ cars and trucks} \times 2.5 \text{ miles} \times 365 \text{ days/year} \times 1.25 \text{ years} = 22,242,187.5 \text{ vehicle miles per } 9,462 \text{ wildlife fatalities, or } 2,351 \text{ vehicle miles per fatality. This rate divided into the predicted annual VMT would predict } 4,602 \text{ vertebrate wildlife fatalities per year due to project-generated traffic.}$

However, some might argue that this prediction relies too much on a study along a road through less-disturbed rangeland that likely supports more non-volant wildlife that is

more vulnerable to collision mortality. I would argue that the project-generated traffic would pass through similar rural environments with ample wildlife available to be crushed under automobile tires. Nevertheless, to better represent those reaches of road that are more urban than rural, or that would become more urban with the development of the project, I recently completed my own study of wildlife mortality caused by automobiles along roads that were urban and interfaced between urban and agricultural land uses.

I completed one year of daily pedestrian surveys along 2.7 km (1.713 miles) of local, collector and minor arterial roads in north Davis, California, where I tallied 314 fatalities of 40 species of vertebrate wildlife. Most of the fatalities were small-bodied animals such as Sierran treefrogs, western toads, western fence lizards, 10"- to 16"-long juvenile Pacific gophersnakes, valley gartersnakes and California kingsnakes, as well as bushtits, yellow-rumped warblers, deer mice and California ground squirrels. Most of the animals I found would never have been detected from a moving vehicle, which is why people often underestimate how many wild animals are killed by vehicle traffic.

The animals I found in my study did not include all the animals killed by vehicles on the roads I searched. Many had been removed by scavengers before I could find and count them. (American crows patrol the roads every morning, and so does a large flock of wild turkeys.) Some of the animals are knocked off the road in places where I could never find them, and some were undoubtedly caught and carried away in the grills of vehicles or in tire treads. Most of the Sierran treefrogs disappeared from where I found them within several hours, so daily searches missed many of the fatalities. To adjust for these undetected fatalities, I fit a logit regression model to my fatality finds, all of which transitioned to carcass detection trials after I initially found them. Starting with the first day after each detection, I monitored the carcass trials for 30 days, and I assigned each a body mass estimate based on typical body mass reported in the literature. Predictor variables were days since detection and \log_{10} body mass. The relationship between carcass detection probability and the predictor variables is depicted in Figure 9. My fatality finds adjusted by the model results in an estimate of 2,126 vertebrate wildlife fatalities over 1.713 miles of roads in one year, or 1,241 vertebrate wildlife fatalities/mile/year. This rate is 40.9% of the rate measured at Vasco Road, or an estimated 5,748 vehicle miles per fatality. Applying this urban fatality rate to the VMT that is predicted for the project would predict 1,882 vertebrate wildlife fatalities per year in the area around the project that is traveled by project-generated traffic.

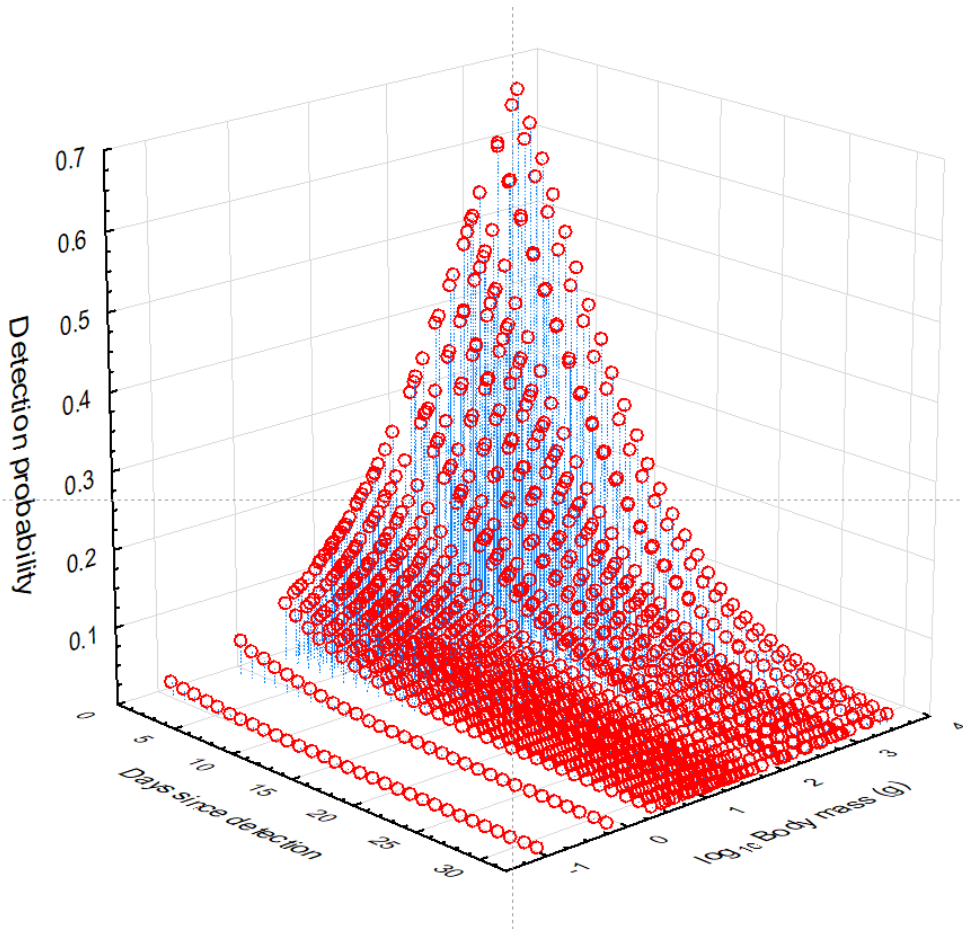
A reasonable range of predicted mortality is therefore 1,882 to 4,602 vertebrate wildlife fatalities/year due to project-generated traffic.

Based on my analysis, the project-generated traffic would cause substantial, significant impacts on wildlife. The IS/MND 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, and that these impacts would be unmitigated.

2-21
(cont.)

Figure 9.
Wildlife carcass detection probability is a function of the number of days since discovery and \log_{10} body mass.



CUMULATIVE IMPACTS

2-22

One of CEQA’s principal concerns regarding potential project impacts is whether a proposed project would contribute significantly to cumulative impacts of past, present and future projects, or to multiple types of impacts that are cumulatively considerable. Unfortunately, the IS/MND fails to analyze the project’s contribution to cumulative impacts on biological resources.

Noriko Smallwood and I performed an experiment to measure the efficacy of permitting requirements and required mitigation measures at avoiding or minimizing project impacts including cumulative impacts. We revisited the project sites we had surveyed as experts 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 to control these sources of variation to cleanly 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. All the developed sites had included mitigation measures to avoid, minimize or compensate for impacts to wildlife. Nevertheless, 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%. We found that “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,” and despite all the mitigation measures and existing policies, regulations, and habitat plans. Experimental evidence demonstrates the need to analyze a project’s potentially significant contributions to cumulative impacts on wildlife. The environmental review for this project needs to include a cumulative impacts analysis.

2-22
(cont.)

FLAWED MITIGATION STRATEGY

2-23

The mitigation strategy needs to be based on a sound understanding of the existing wildlife community. It needs to be known which species occur or are likely to occur on the project site as well as the nature of their occurrences. Are the occurrences of resident species? Migratory? For special-status species, detection surveys should have been performed to either detect the species or to obtain evidence of absence. Surveys should have been performed to understand how wildlife use the site in their movement patterns. And what was found of wildlife species needs to be carefully interpreted by comparing the findings to the findings from other survey efforts at other sites. Failures to detect species should be interpreted relative to the probabilities of their detections given the survey effort. The mitigation strategy needs to follow the steps under Assess species occurrence likelihoods and Characterize wildlife community, followed by Step 7: Predict impacts (Figure 7). However, the IS/MND’s mitigation strategy does not follow from these steps. This pointed out, my comments follow in regular font the summary of each required mitigation measure in italics.

MM BIO-1 Pre-Construction Bird Surveys, Avoidance, and Notification. *If construction activities are initiated during the bird nesting season (February 1–August 31) involving removal of vegetation or other nesting bird habitat, including abandoned structures and other man-made features, a pre-construction nesting bird survey shall be conducted no more than 14 days prior to initiation of ground disturbance and vegetation removal activities. ... The survey shall be conducted by a [qualified] biologist ... If active nests are found, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, which shall be demarcated by the biologist ... No ground-disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is completed, ... A report summarizing the pre-construction survey(s) shall be ... submitted to the City prior to the commencement of construction activities. ...*

If the project goes forward, preconstruction surveys for nesting birds should be implemented, but this measure would not avoid the permanent loss of habitat nor the

collision mortality with automobiles. Preconstruction, take-avoidance surveys should consist of two steps, both of which are very difficult. First, the biologist(s) performing the survey must identify birds that are breeding. Second, the biologist(s) must locate the breeding birds' nests. The first step is typically completed by observing bird behaviors such as food deliveries and nest territory defense. To be successful, these types of observations typically require many surveys on many dates spread throughout the breeding season even for a single species. To identify and locate the birds of all species nesting on a site would require a much greater survey effort than can be accomplished in MM BIO-1's allotted time. Many bird nests would be missed.

I predict the project site supports 61 nest sites in the average year, and this number does not include those that would need to be located within the defined buffer area beyond the project site's boundary. Even assuming all these nests could be found (not likely), the mitigation measure would apply only to the breeding season of the survey. After the breeding season of the preconstruction survey, there would be no further production of birds from the project site. The project's impact on birds would be permanent and of large magnitude. The conservation benefits of this measure would be *de minimis* compared to the project's potential impacts on breeding birds.

Furthermore, the mitigation language allows a single individual to make a subjective decision, outside the public's view, to determine the buffer area and buffer timing for any given species. This measure lacks objective criteria, and it is therefore unenforceable.

Lastly, the mitigation language includes the requirement that the preconstruction nest survey shall be conducted by a qualified biologist, and this requirement carries over to determinations of the buffer areas and buffer timing to avoid take caused by construction activities. Undefined, however, is what qualifies as a "qualified biologist" in these contexts, other than familiarity "with the identification of avian species known to occur in southern California coastal communities." As mentioned earlier in this letter, Noriko Smallwood and I have been conducting surveys over the past several years to estimate total nest density, which is relevant to a preconstruction, take-avoidance survey because our surveys were likewise directed to all bird species that could be concurrently nesting on a site. Searching for the nests of one species is difficult, but searching for nests of all bird species at once is vastly more difficult. For this reason, there are very few published estimates of total nest density, and there are very few wildlife biologists who have experience with surveys for the nest attempts of all bird species on a given site. A technical way to qualify a wildlife biologist for the tasks outlined in this measure would be to obtain an agency Memorandum of Understanding in which the biologist is named and said to be qualified for conducting the preconstruction survey and for determining the take-avoidance buffer area and timing. However, a more compelling means of qualifying the biologist would be to require that the biologist has achieved demonstrable experience with nest surveys and avian nesting behavior. Without a better definition of what is a qualified biologist in the contexts of these tasks, BIO-1 lacks objective criteria, and it is therefore unenforceable.

MM BIO-2 Crotch’s Bumble Bee (CBB) Avoidance and Clearance Survey ...
Three on-site surveys for Crotch’s bumble bee (CBB) shall be conducted prior to initiation of ground disturbing project activities to identify if the CBB is present within the project site. ...

2-23
(cont.)

MM BIO-1 is inappropriate because it defers the appropriate detection survey to a time when it would no longer achieve four of CEQA’s primary objectives to (1) accurately characterize the existing environmental setting as part of the CEQA review, (2) disclose potential project impacts to the public and decision-makers, and (3) foster public participation with decision-making over proposed projects to (4) identify issues and feasible alternative mitigation measures to minimize environmental impacts. The appropriate timing of the survey is essential, not just biologically but also in terms of achieving CEQA’s objectives. According to CDFW (2023:3), “On-site surveys provide the most valuable information for determining potential impacts of proposed projects and activities on the four candidate bumble bee species, and subsequently developing measures to avoid or minimize take of these species.” This guidance obviously recognizes the need to complete the detection surveys before the public circulation of the CEQA review document; otherwise, it would not be possible to determine potential impacts or formulate appropriate mitigation.

Crotch’s bumble bee is a candidate for listing under the California Endangered Species Act. It is therefore important to implement the appropriate detection survey, which should be consistent with CDFW (2023).

Furthermore, I found no evidence in the IS/MND that efforts have been made to obtain an incidental take permit (ITP), nor that CDFW is inclined to issue and ITP for Crotch’s bumble bee in this project.

NEEDED MITIGATION MEASURES

2-24

Compensatory Habitat Protection: The project would destroy the productive capacity of the project site for birds and other wildlife. The loss of this capacity would need to be offset by compensatory mitigation as near to the site as possible. I recommend a 5:1 mitigation ratio to achieve a no net loss standard, as a 1:1 ratio would simply ensure a 50% loss of habitat between the project site and mitigation site.

The loss of burrowing owl foraging opportunities would need to be mitigated, as well. The applicant needs to consult with the CDFW to learn what mitigation ratio would be acceptable for loss of burrowing owl habitat on the project site, and whether and where habitat is available to be protected nearby.

Bird-Window Collision Mortality: 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). For example, Feather Friendly® circular adhesive markers applied in a grid pattern across all windows reduced bird-window collision mortality by 95% in one study (Riggs et al. 2023) and by 95% in another (de Groot et al. 2021). Another study tested the efficacy of two filmshades to be applied exteriorly to windows prior to installations: BirdShades increased bird-window avoidance by 47% and Haverkamp increased avoidance by 39% (Swaddle et al. 2023).

Road Mortality: Compensatory mitigation is needed for the increased wildlife mortality that would be caused by collisions with automobiles due to 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 is needed, and it ought to also 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 during construction, by house cats, and by collisions with windows and with automobiles traveling to and from the project site.

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

Thank you for your consideration,



Shawn Smallwood, Ph.D.

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Responses to Comments from Lozeau Drury LLP on behalf of the Supporters Alliance for Environmental Responsibility (SAFER)

Response to Comment 2-1

The comment summarizes the CEQA “fair argument” standard and legal requirements for preparing an EIR versus an MND. The City acknowledges and has complied with these standards. In this case, a Focused IS/MND was prepared because all potential impacts to biological resources were found to be less than significant with mitigation. The City carefully evaluated the whole record and determined that no substantial evidence supported a fair argument of unmitigated significant impacts. On the contrary, the letter from Dr. Smallwood and the report prepared by Ms. Smallwood rely on speculative analysis and unsupported extrapolation, which substantially overstate the project’s potential impacts to biological resources. The following Responses to Comments 2-2 through 2-24 provide substantial evidence that the project’s biological resources impacts have been fully analyzed and mitigated to less than significant consistent with CEQA requirements.

Response to Comment 2-2

The project-specific Biological Resources Technical Letter Report provided a comprehensive approach and included a literature/database review (California Natural Data Diversity Database [CNDDDB], US Fish and Wildlife Service [USFWS] Information for Planning and Consultation, California Native Plant Society, etc.), a site visit by qualified biologists in January 2026, and consideration of previous biological surveys from 2001–2003. This effort identified all sensitive biological resources with potential to occur on-site (including coastal California gnatcatcher, Crotch’s bumble bee, and thread-leaved brodiaea) and determined that other special-status species were unlikely to occur due to the absence of suitable habitat (e.g., no wetlands, vernal pools, or extensive native vegetation) or other environmental constraints. The commenter’s March 11, 2026 site survey by Ms. Smallwood recorded additional common wildlife species, primarily birds such as hummingbirds, sparrows, and crows, which are typical of the region’s urban-edge habitats and were not individually listed in the IS/MND but were generally acknowledged in the description of the site’s wildlife community. These additional observations do not indicate that the IS/MND overlooked any previously unknown significant resource; rather, they reflect common wildlife species acclimated to an urban environment. Crucially, all species of concern for CEQA purposes (e.g., those that could trigger significant impacts) were duly considered in the IS/MND. The City stands by the adequacy of the environmental setting description in the IS/MND, which meets CEQA Guidelines Section 15063(d) requirements by focusing on the physical biological conditions relevant to assessing significant impacts. The commenter’s broad claim that the site supports numerous special-status species is not supported by substantial evidence of suitable habitat or direct observations beyond those already addressed. In summary, the City finds that the IS/MND and supporting biological resources technical report properly identified the presence and potential of special-status species on-site and that it provided an accurate baseline for impact analysis. No species likely to be significantly impacted by the project were omitted.

Response to Comment 2-3

The City has considered whether the project’s biological resources impacts could be significant, including those listed by the commenter. For each category—habitat loss and nesting productivity, wildlife movement, predation by pets, bird-window collisions, vehicle-related mortality, and

cumulative effects—the IS/MND provides analysis and, where necessary, identifies appropriate mitigation measures. As detailed in Responses to Comments 2-4 through 2-8 below, the City’s analysis concludes that these impacts would be reduced to less than significant with mitigation incorporated. MM BIO-1 (Pre-Construction Nesting Bird Surveys, Avoidance, and Notification) establishes clear performance standards to avoid and minimize indirect impacts to gnatcatchers, including protection of active nests and limitation of construction-related disturbance. The mitigation measure requires installation of a no-disturbance buffer around any active gnatcatcher nest identified by a qualified biologist and implementation of construction controls to ensure disturbance levels remain below thresholds that could adversely affect nesting behavior. It is noted that clarification related to the coastal California gnatcatcher was made to MM BIO-1 (refer to Response to Comment 2-23 for revisions). See also Response to Comment 2-17.

MM BIO-2 (Crotch’s Bumble Bee Avoidance and Clearance Survey) would ensure that Crotch’s bumble bee focused surveys would occur on-site at the appropriate time of year (during the flowering/active season) prior to any ground disturbance, when detection is most likely. Subsequent to release of the IS/MND for public review, a site-specific three-survey protocol design was approved by CDFW. The three subsequent surveys were conducted in April and May 2026. Crotch’s bumble bee was not detected in any of the three surveys and the negative findings were reported to CDFW. The commenter’s assertions that the project would result in loss of 61 bird nesting sites and 85 nesting attempts per year, as well as prevention of the production of 247 fledglings and 278 birds per year are not supported by substantial evidence and are therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). The project would convert approximately 9.5 acres of previously graded, routinely mowed disturbed habitat. This would not substantially reduce local wildlife populations or bird reproductive capacity. The only on-site native habitat (a 0.33-acre Diegan coastal sage scrub patch with potential gnatcatcher foraging value) would be avoided and preserved as open space. The remaining habitat is of low quality and supports common, regionally abundant species. Project compliance with Migratory Bird Treaty Act and California Fish and Game Code requirements would be ensured through MM BIO-1 (pre-construction nesting bird surveys and avoidance buffers). With implementation of MM BIO-1 and existing regional conservation/Citywide coverage (via the City’s HMP³), project impacts from habitat removal would be less than significant and an EIR is not warranted.

Response to Comment 2-4

The project site is an isolated, disturbed infill parcel surrounded by existing roadways and development and is not identified as a designated wildlife corridor or linkage in regional plans (including the HMP, which clearly calls out wildlife corridors in the City). Existing barriers (e.g., Salk Avenue) currently limit wildlife movement through the area. The on-site Diegan coastal sage scrub patch may provide minor bird stopover value; such habitat would be avoided and preserved as open space with project implementation. The project would not add new major barriers across natural open space. Further, there is ample alternative stopover habitat in the area for migratory birds. Project conformance with applicable HMP Adjacency Standards (directed lighting, construction noise controls, and pet management) would also ensure that the project would not substantially interfere with area wildlife movement. Impacts would be less than significant. Refer

³ City of Carlsbad. Habitat Management Plan for Natural Communities in the City of Carlsbad. Final approved December 1999; as amended and approved November 2004.
<https://www.carlsbadca.gov/home/showpublisheddocument/1600/638366818940500000>.

also to Responses to Comments 1-10 and 2-18 for additional discussion of habitat connectivity and fragmentation.

Response to Comment 2-5

The project is subject to the City's HMP Adjacency Guidelines which require pet/predator control measures. In compliance with these standards, the project would include: (1) resident education that provides all tenants with information on the ecological importance of keeping cats indoors or supervised (e.g., through community guidelines prohibiting free-roaming cats and lease provisions such as outdoor leash requirements), and (2) fully enclosed trash rooms and regularly scheduled trash removal to avoid attracting rodents or other prey that could draw feral cats or other predators. These measures are proven strategies that many jurisdictions use to minimize pet predation near sensitive areas. It is also worth noting that this infill project is surrounded by existing residential developments in the vicinity where outdoor pets are likely already present. Additionally, there is no evidence that the incremental increase of domestic cats, estimated by the commenter as approximately 50 cats. This estimated increase in domestic cats at the project site is not supported by evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). Nevertheless, the City HMP Adjacency Standards explicitly require that projects adjacent to preserves implement measures to control pets/predators. Predation by domestic cats on birds and other wildlife is a recognized issue primarily associated with single-family residential development, where cats can freely exit homes and roam yards and adjacent open space. In contrast, a multi-level apartment building is inherently not conducive to free-roaming cats, as pets cannot independently open doors or access elevators to enter or exit units. As a result, cats residing in multi-family developments are predominantly, if not entirely, indoor pets, substantially reducing the likelihood of access to adjacent habitat.

Moreover, the HMP Adjacency Standards explicitly require that projects adjacent to preserves implement measures to manage pets and potential predators of developments adjacent to preserve area. Consistent with these requirements, the project would include provisions pursuant to the City's HMP, Objective Design Standards, and Landscape Manual to further minimize any already low potential for pets entering the adjacent habitat. Specifically, the project would provide educational materials (e.g., brochures or handbook provisions) to all new residents informing them of the nearby sensitive habitat and requiring cats be kept indoors, with outdoor access permitted only if leashed and under direct supervision. Additionally, the project's landscape plan would avoid planting features that might inadvertently attract domestic animals to the habitat edge (e.g., no litter boxes near open space, no features that encourage house pets to roam near the preserve boundary). It is also noted that the habitat patch is relatively small and bordered on two sides by existing development or roads. There is not currently nor would the project result in an accessible path from the proposed apartment complex to the 0.33-acre Diegan coastal sage scrub patch located in the northwest corner of the site. While the City can manage pet-related risks through project design and adherence to City requirements, the project's incremental contribution to domestic cat presence near the preserve would be negligible. Therefore, future domestic cats associated with the project would not cause a significant decline in local wildlife populations.

One coastal California gnatcatcher was observed in 2025 in the 0.33-acre Diegan coastal sage scrub patch on-site, which would be avoided by the project. The consulting biologist concluded that the individual was transient, most likely residing in the more abundant and established habitat opposite Salk Avenue and using the patch for foraging. Coastal California gnatcatchers primarily occupy coastal sage scrub characterized by dense, low-growing shrub cover, where nests are

typically placed several feet above ground within intact vegetation, limiting exposure to urban predators. Predation pressure documented for the species is primarily associated with avian predators and habitat fragmentation, and domestic cats are not identified by USFWS as a common or significant source of gnatcatcher mortality.⁴ In summary, with implementation of required pet management practices and design features, indirect impacts from potential house cat predation would be minimized and would remain less than significant. Refer also to Responses to Comments 1-10 and 2-19.

Response to Comment 2-6

The City acknowledges increased attention to bird-window collisions and continues to address potential risks through implementation of applicable state and local regulations. The IS/MND did not specifically analyze bird-window collisions; however, CEQA does not require evaluation or mitigation of speculative impacts absent substantial evidence that a project would have a significant effect on biological resources. The project site is located in a developed, urbanized setting and is not adjacent to large water bodies or expansive natural habitat typically associated with elevated collision risk. Ms. Smallwood's speculative collision fatality estimates based on window area and published collision rates, such projections rely on generalized data from varied building types and locations rather than site-specific conditions for this mid-rise infill project. The collision fatality estimates are not supported by substantial evidence and are therefore speculative for evaluation (CEQA Guidelines Sections 15064[d][3] and 15145). The City enforces existing state and local regulations that protect migratory and nesting birds during construction and applies building and lighting standards that are intended, in part, to reduce potential hazards to wildlife over time. Regarding the commenter's suggested mitigation measures (i.e., bird-safe glass treatments, window films, exterior markers), mitigation is not necessary as no potential significant impacts have been identified. Moreover, such measures would only be appropriate where substantial evidence demonstrates elevated collision risk. Absent such evidence specific to this project site, imposition of these measures is not required under CEQA. The proposed apartment complex would not contain any glass façades (other than windows) or glass walkways, which are cited in Smallwood's analysis. Rather, the project would include Spanish architecture with stucco exterior. Based on the project's setting and compliance with applicable regulations, the project would not have a significant impact on migratory or resident bird species related to building design or operation, and no additional analysis or mitigation is required pursuant to CEQA. Refer also to Response to Comment 2-20.

Response to Comment 2-7

The project would not create a significant new source of wildlife roadkill, and thus, potential traffic-related wildlife mortality impacts are considered less than significant. The commenter's assertion that 1,800 to 4,600 additional animal fatalities per year would occur due to project traffic is unsupported by site-specific evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). Such figures are derived from studies including rural highways (Vasco Road in Contra Costa County) as well as the commenter's urban/suburban study in Davis, California; however, neither study reflects conditions comparable to the project's infill location along already-developed arterial roads in Carlsbad. The proposed project would add traffic primarily to busy urban streets (e.g., College Boulevard, El Camino Real) where wildlife presence

⁴ US Fish and Wildlife Service (USFWS). Coastal California Gnatcatcher Species Profile. <https://www.fws.gov/story/coastal-california-gnatcatcher>.

is relatively low compared to the rural and semi-rural study areas cited by the commenter. Large mammals and sensitive species are rarely found on these roadways and local data does not indicate unusual roadkill hotspots that would be exacerbated by the project. The IS/MND did not identify such conditions as resulting in a significant impact because any incremental increase in collisions with common wildlife (such as small rodents or rabbits) would be unlikely to cause a substantial population decline or threaten any sensitive species. Implementation of standard operational practices along with the project's infill nature (which inherently directs traffic onto developed roads) and minimal direct interaction with undeveloped habitat, would ensure that the effect of project traffic on wildlife is less than significant. No mitigation is required under CEQA as the impact does not meet significance criteria (CEQA Guidelines Section 15126.4[a][3]). Refer also to Response to Comment 2-21.

Response to Comment 2-8

The IS/MND's analysis of cumulative biological impacts is consistent with the CEQA Guidelines Section 15063(b) and fully considers the project's contribution to regional habitat loss and species decline in Carlsbad. The adopted HMP serves as a comprehensive mitigation program for cumulative biological effects by establishing a regionwide preserve system and requiring project-specific habitat mitigation fees or conservation measures for development in non-preserve areas. The project, located on a site designated for development under the HMP (and not within a hardline preserve), would comply with all applicable HMP requirements. This includes preserving the on-site Diegan coastal sage scrub habitat patch, thereby addressing the project's part in the regional conservation strategy. In any event, the IS/MND did not identify a cumulatively considerable impact to specific species or resources. In the broader view, previous disturbance and grading (in 2007) on the project site have reduced much of the site's habitat value (and associated species), and the current project would implement mitigation to address potentially significant impacts. Considering these factors, the City finds that the project's incremental effects on biological resources, when viewed in combination with past and future development in Carlsbad, would not be cumulatively considerable. The conclusion of less than significant cumulative impacts is supported by project consistency with the HMP and lack of evidence of a cumulatively significant decline in biological resources attributable to the project. Refer also to Response to Comment 2-22.

Response to Comment 2-9

As stated in the IS/MND, the project could result in potentially significant impacts to coastal California gnatcatcher and Crotch's bumble bee. MM BIO-1 and MM BIO-2 would reduce potential impacts to these species to less than significant levels.

MM BIO-1 establishes clear performance standards to avoid and minimize indirect impacts to coastal California gnatcatchers, including protection of active nests and limitation of construction-related disturbance. The mitigation measure requires installation of a no-disturbance buffer around any active coastal California gnatcatcher nest identified by a qualified biologist and implementation of construction controls to ensure disturbance levels remain below thresholds that could adversely affect nesting behavior. Consistent with USFWS guidance, these performance standards are intended to meet or exceed commonly recommended buffers (e.g., approximately 500 feet) and construction noise limits during the breeding season, unless a qualified biologist determines that site-specific conditions support an alternative protective distance or additional measures. The City acknowledges that USFWS guidance commonly recommends a minimum

500-foot buffer around active gnatcatcher nests and includes construction noise thresholds intended to limit disturbance during the breeding season. USFWS guidance also allows these buffers and noise controls to be refined based on site-specific conditions, nest location, topography, intervening screening, and the nature of construction activities. In no circumstances shall a buffer of less than 100 feet be used even with noise attenuation measures. Any reduction in the 500-foot no-disturbance buffer must be supported by site-specific analysis by the qualified biologist and approved by the City in consultation with USFWS. As a result, MM BIO-1 ensures that protective measures consistent with USFWS recovery objectives will be implemented, and the absence of a pre-approval protocol survey will not result in any unmitigated significant impact. Because the coastal California gnatcatcher is a covered species by the City HMP, the HMP holistically addresses species concerns on a broader ecosystem scale. By establishing a citywide preserve system with core areas interconnected with wildlife movement corridors, the City is protecting the gnatcatcher at buildout and in perpetuity, while allowing development in appropriate places.

For Crotch's bumble bee, MM BIO-2 ensures that focused surveys will occur at the appropriate time (during the flowering/active season) before any ground disturbance, when the species is most active and detection is most likely. Subsequent to release of the IS/MND for public review, a site-specific three-survey protocol design was approved by CDFW. The three Crotch's bumble bee surveys were conducted in April and May 2026. Crotch's bumble bee was not detected in any of the three surveys and the negative findings were reported to CDFW.

Response to Comment 2-10

Refer to Responses to Comments 2-2 through 2-9. The comment summarizes SAFER's position that an EIR is required, but it does not introduce new factual issues beyond those addressed in Comments 2-2 through 2-9. The City has provided detailed responses above, demonstrating that the IS/MND adequately evaluated and mitigated the project's impacts on biological resources. As such, the record does not contain substantial evidence of a potentially significant effect that remains unmitigated and the IS/MND satisfies CEQA requirements for the project. Therefore, preparation of an EIR is not required.

Response to Comment 2-11

The comment raises the issue of whether the IS/MND's focus on special-status species overlooked broader impacts to the general wildlife community. Pursuant to CEQA, analysis must be commensurate with the potential for significant impacts. In practice, as reflected in Appendix G of the CEQA Guidelines, CEQA prioritizes special-status species and sensitive habitats as proxies for broader ecological health. The IS/MND's biological analysis evaluated the project site's overall habitat value and common wildlife use. It identified the site as mostly disturbed grassland with a small area of Diegan coastal sage scrub, supporting a typical assemblage of urban-edge wildlife (various birds, small mammals, reptiles). The project's expected effects on this common wildlife assemblage – primarily through habitat removal – were determined to be minor because the site is not unique or critical for those species, and similar habitat is widespread nearby. The project does not propose any action that would eliminate an entire species or cause wildlife populations to fall below self-perpetuating levels; thus, the broad CEQA mandate to protect all wildlife is not violated. In summary, the City has considered the wildlife community and finds that the project would not result in a significant adverse change to local fauna or ecological communities. The analysis appropriately emphasizes special-status species and sensitive

communities as required by CEQA, and no further generalized wildlife impact analysis is necessary.

Response to Comment 2-12

The City acknowledges that Ms. Smallwood's March 2026 site visit identified more total species than the January 2026 survey reported; however, this does not indicate a deficiency in the IS/MND analysis. Many factors influence wildlife detectability (season, time of day, survey duration, etc.), and it is expected that an early spring survey would record more migratory and breeding bird activity than a mid-winter survey. However, the additional species noted by Ms. Smallwood were predominantly common birds and one or two raptor species, all of which are typical for the area and none of which represent previously unknown sensitive species. Ms. Smallwood extrapolated from the March survey data to predict that extended surveys would detect 166 vertebrate wildlife species (including 31 special-status species); however, such statistical modeling does not constitute substantial evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). In fact, the modeling relies on extrapolation from brief survey periods and assumes detection patterns from distant study sites (Altamont Pass) are transferable to this urban-edge infill parcel. Such assumptions are unwarranted and not based on fact.

Regarding the commenter's assertion that breeding-season detection surveys for burrowing owl were not conducted as recommended by CDFW (2012), the project site lacks suitable burrowing owl habitat (e.g., open grassland with ground squirrel burrows or similar structures); therefore, protocol-level burrowing owl surveys were not warranted.

Further, the IS/MND conclusions would not change even when considering those additional observations, because the significance of a biological impact under CEQA depends on the nature of the impact, not simply the presence of common species. All of the species observed by Ms. Smallwood are generally well-adapted to urban environments or would continue to be supported in the region after project implementation (e.g., in yards, parks, and nearby open space). Preservation of the on-site Diegan coastal sage scrub habitat and implementation of mitigation (e.g., timing restrictions and buffers for nesting birds) as proposed with the project would further ensure that loss of the site's wildlife usage would not cause significant ecological harm. While the site provides temporary habitat for a variety of wildlife, the overall environmental setting was accurately captured in the IS/MND and demonstrates that the project is unlikely to significantly impact local wildlife populations. Refer also to Responses to Comments 2-3 through 2-7.

Response to Comment 2-13

CEQA does not require analysis of impacts that are speculative or unlikely to occur (CEQA Guidelines Sections 15064[d][3] and 15145). The preparers of the IS/MND followed standard practice by using the CNDDDB as a primary tool to identify special-status species previously documented in the vicinity of the site. Contrary to the commenter's assertion that the City's biologist "relied on only one database," the biological resources analysis also consulted the California Native Plant Society inventory, USFWS Information for Planning and Consultation (IPaC), and other resources for federally protected species and critical habitat, ensuring a broad initial list of species for consideration. It is true that CNDDDB is a "positive occurrence" database; however, it remains the most authoritative source for known locations of sensitive species in California, and it was appropriately used to flag species for analysis. The IS/MND did not assume that absence of a CNDDDB record equates to absence of a species; rather, absence of records plus lack of suitable habitat on-site led to conclusions of "not expected." This is a scientifically

valid approach, as the potential for a species to occur is inherently tied to whether the environment can support it. The commenter's claim that 143 special-status species were "known to occur near" the site is an over-inclusive list that effectively combines all species reported from a broad region (up to 30 miles away, per Dr. Smallwood's Exhibit A) and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). The City's biologists reasonably narrowed the list to 46 special-status species for detailed evaluation, focusing on those with ranges, habitat requirements, and occurrence records suggesting a plausible presence on or immediately adjacent to this infill site. For example, wetland- and aquatic-dependent species, as well as species requiring large habitats, were screened out because the project site contains no wetlands, streams, or extensive natural communities to support them. This is consistent with CEQA, which does not require analysis of every species, but rather allows for a more focused consideration of those species having a reasonable potential to be impacted. This direction supports focusing species-level analysis only on those with a reasonable potential for impact.

In summary, the desktop review conducted by the City's biologists provided a foundation for the field survey and impact analysis, emphasizing those species having the potential to be present and did not "misuse" the CNDDDB. Instead, it combined CNDDDB data with habitat assessment and professional judgment to focus the analysis on relevant species. The result was that the IS/MND closely examined all biological resources that may be significantly affected by the proposed development and no substantial evidence has been presented that additional undetected special-status species are present on the site. Therefore, the City finds the environmental setting description and species occurrence analysis to be adequate.

Response to Comment 2-14

The comment questions whether the IS/MND mischaracterized the site's wildlife community due to limited survey effort and an "inappropriately small pool" of species considered. While no survey can document every species on a site, the purpose of the CEQA baseline is to capture the presence of resources in sufficient detail to inform impact analysis. The IS/MND identified the key habitats on-site, the common wildlife using those habitats, and the special-status species with potential to occur. Additional context, such as regional species lists or statistical detection probability analyses, can be useful for academic study; however, CEQA does not require exhaustive surveys if the anticipated impacts can be understood and mitigated with available information. The "true wildlife community" of the site is not expected to include rare or unusual species beyond those already accounted for. Even without documenting every single species, the IS/MND's conservative approach (e.g., assuming coastal California gnatcatcher present based on one observation, assuming Crotch's bumble bee could be present despite none observed) ensured that if a potentially sensitive wildlife resource existed, it was considered. The conclusion that impacts would be less than significant (with mitigation for sensitive species) remains valid. Preparing an EIR or conducting additional surveys would not change the outcome; the exercise would simply confirm that the site is used primarily by common species and potentially a limited number of special-status species that the IS/MND has already addressed. Pursuant to CEQA, the adequacy of the environmental setting is judged by whether it provides decision-makers with sufficient information to assess potential impacts. Thus, the City finds no evidence of a deficiency in the baseline characterization provided in the IS/MND that would warrant a revised impact prediction or additional mitigation beyond that already proposed.

Response to Comment 2-15

The commenter's Table 2 (Exhibit A) lists 143 special-status wildlife species and implies that the IS/MND should have analyzed each one's potential occurrence. The City maintains that such an expansive analysis is unnecessary and would not yield meaningful additional protection to biological resources. The analysis in the IS/MND is focused on the subset of species with non-negligible likelihood of occurrence, considering such factors as habitat presence/absence and known species distributions. Many species in the commenter's table require habitat types not present on the project site (e.g., vernal pools for fairy shrimp, open water for waterfowl, large undisturbed tracts for certain mammals) or are migratory birds unlikely to rely on this small, disturbed parcel for any significant portion of their life cycle. Including numerous "in-region" species—some documented miles away—would not change the impact analysis, as the project would not affect those species in the absence of suitable habitat or site usage. CEQA does not require an agency to analyze every species; rather, it requires agencies to use their best judgment, based on substantial evidence, to evaluate resources that could be substantially impacted by a project. The project-specific Biological Resources Technical Report's narrowed list of 46 species was developed by considering special-status species that may conceivably use the subject property. This methodology is consistent with the CEQA Guidelines and longstanding practice in biological impact assessments. Therefore, the City finds that the list provided by the commenter does not represent the actual "wildlife community" of the project site, and no additional significant impacts would be identified by analyzing all such species. The IS/MND's conclusions remain accurate based on the evidence gathered for the species that are considered relevant in this context.

Response to Comment 2-16

The analysis provided in the IS/MND is not considered to be speculative; it is based on scientific data, including literature review and a habitat assessment/field survey conducted by qualified biologists (refer to Response to Comment 2-13). CEQA requires a "good faith effort at full disclosure" using the best available information, rather than absolute scientific certainty. In preparing the IS/MND and Biological Resources Technical Report, the City's biologists drew upon professional experience, established scientific literature, and resource agency guidance to evaluate the project's likely effects. For example, the assessment of Crotch's bumble bee followed CDFW guidance for evaluating projects with potential bumble bee habitat. Impact conclusions in the IS/MND are supported by either empirical observations (e.g., the site survey and reference to historical surveys) or by accepted ecological principles (e.g., understanding that small, isolated habitat patches have limited carrying capacity for wildlife). The commenter advocates for extensive comparative data and post-project monitoring to validate predictions, efforts that go far beyond what CEQA requires for an individual project. Rather, a lead agency is required to consider available data and make reasonable assumptions in determining whether a significant impact may occur. In conforming with this approach, the IS/MND conservatively assumes the presence of sensitive species on-site and identifies appropriate mitigation based on available data, without resorting to speculation. The IS/MND's analyses and mitigation measures were formulated using expertise and recognized standards and represents a scientifically sound basis pursuant to CEQA requirements. For these reasons, the impact assessment provided in the IS/MND is considered to be adequate and non-speculative.

Response to Comment 2-17

As addressed in Response to Comment 2-3, the on-site habitat (aside from the preserved Diegan coastal sage scrub patch) is of relatively low ecological value and its proposed removal would not cause a significant decline in regional bird populations. The comments provided assume that all 61 hypothetical nest sites and 278 birds produced annually on the property would be permanently lost. However, such assumptions do not constitute substantial evidence and are therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). Further, this analysis does not account for the fact that birds and other wildlife are mobile and would relocate to adjacent habitats (including the preserved on-site patch and nearby open spaces) as the site is developed. Moreover, the Diegan coastal sage scrub patch would remain intact, meaning nesting capacity for species such as wrentits and California towhees would persist on-site. The City's determinations are guided by Appendix G of the CEQA Guidelines, which does not treat the loss of each individual bird or nest as a significant impact if it does not threaten a species' population viability or otherwise cause a substantial adverse change in the environment. Furthermore, implementation of MM BIO-1 would require the project to avoid direct destruction of any active nests (those with eggs or chicks) during construction, thereby complying with the Migratory Bird Treaty Act and the California Fish and Game Code and preventing the direct take of birds. The IS/MND therefore appropriately determined that impacts from habitat loss (and associated reduction in nesting/reproductive output) would be less than significant with mitigation measures incorporated. A more expansive interpretation of significance (treating any reduction in wildlife usage as "significant") would be inconsistent with CEQA requirements to identify a substantial adverse effect and would effectively make any development on disturbed land appear significant, contrary to the intent of the CEQA Guidelines.

Response to Comment 2-18

As discussed in Response to Comment 2-4, the project would not significantly impact regional wildlife movement. On-site vegetation and wildlife observations provided by the commenter do not equate to a crucial movement corridor. Occasional foraging and movement on-site by wildlife (e.g., birds collecting nest material or moving through the Diegan coastal sage scrub patch) would not be blocked or substantially altered because the project design would leave the key habitat area undeveloped and would implement measures to limit disturbance in that area. The site does not have "stopover" value for migratory birds or other characteristics that would make it uniquely important. Migratory songbirds and other species can and do use a variety of green spaces (including developed areas) during transit. The limited size of the parcel means its role as a stopover is opportunistic, not critical. Additionally, the project would include a landscaping plan with native trees and shrubs, which can provide some replacement for the low-quality foraging habitat that would be removed with development of the site's ruderal portions. The IS/MND's conclusions regarding wildlife movement were based on the absence of any large-scale corridor and the urban context of the site, which the commenter does not refute. Further, CEQA does not require a project to maintain every minor usage of a site by wildlife. Rather, it asks whether a project would substantially impede wildlife movement. Wildlife movement on the project site is already constrained by existing development, and the project's footprint does not extend into any larger habitat block. The City finds that the project would not create a significant barrier or cause wildlife movement to be substantially more constrained than under existing conditions. Consequently, the impact remains less than significant, as originally addressed in the IS/MND.

Response to Comment 2-19

The commenter's assertion that the project would result in 6,344 wildlife kills per year by 52 free-roaming cats is not supported by substantial evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). Predation by domestic cats on birds and other wildlife is a recognized issue primarily associated with single-family residential development, where cats can freely exit homes and roam yards and adjacent open space. In contrast, a multi-level apartment building is inherently not conducive to free-roaming cats, as pets cannot independently open doors or access elevators to enter or exit units. As a result, cats residing in multi-family developments are predominantly, if not entirely, indoor pets, substantially reducing the likelihood of access to adjacent habitat.

Further, the assumed number of domestic cats associated with the project likely overestimates for the project site and context, as they rely on national data that include areas with high feral cat populations and sensitive ecosystems. Nonetheless, the City acknowledges that any avoidable predation on wildlife is undesirable. Many of the potentially affected species (rodents, small birds) are abundant in the region, and the project's design and adherence to requirements set forth in the City's HMP, Objective Design Standards, and Landscape Manual would help ensure that increases in predation are minimized. The City therefore maintains that the project's impact from domestic animals would not result in a significant impact. This issue does not involve non-compliance with any specific regulatory threshold as neither CEQA nor local ordinances consider incremental pet predation a "significant impact" unless it affects a sensitive species or violates a policy, which is not the case being considered in this scenario.

Response to Comment 2-20

The City has considered the issue of potential bird collisions with windows that would be installed on-site with the proposed residential development (see Response to Comment 2-6). Importantly, it is not standard practice under CEQA to quantify expected bird fatalities for every project, especially when a project is not located in a known migratory bird concentration area, nor is such analysis required by law. The project's location and scale do not suggest an unusually high collision risk compared to typical urban development; rather, the project proposes a mid-rise structure in a developed setting, similar to other buildings in Carlsbad that have not been associated with noteworthy bird mortality events. Ms. Smallwood substantially overestimates the amount of exterior window area associated with the project, and her statement that bird-window collision fatalities are higher than nationwide estimates is not supported by evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). The IS/MND's conclusion that no significant operational impacts to avian species would occur remains valid.

Response to Comment 2-21

As addressed in Response to Comment 2-7, the project's traffic-related wildlife impacts are expected to be less than significant. The commenter cites studies of roadkill in various settings (rural highways, semi-urban roads) and uses an inferred rate per vehicle-miles-traveled to predict thousands of annual wildlife fatalities from project traffic. This information is not supported by evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). The project is estimated to generate approximately 2,382 average daily trips (ADTs) —contributing vehicle trips to major roadways that already experience tens of thousands of ADTs under existing conditions. Any wildlife (mostly small mammals, reptiles, and birds typical of urban edges) on area roadways are already subject to vehicle hazards. Dr. Smallwood overestimates vehicle miles

traveled for the project by more than 72 percent compared to City's analysis. The incremental increase in traffic from the proposed project would be a fraction of total volumes and would not create a new significant "death toll" for local wildlife. Additionally, evidence that such incremental road mortality would threaten any local wildlife populations or involve special-status species is not presented. The City's experience with similar infill projects in developed areas has not shown traffic-wildlife collisions to rise to the level of CEQA significance. CEQA requires mitigation for significant impacts; given the lack of substantial evidence linking project traffic to a significant wildlife impact, additional specific mitigation is not merited (CEQA Guidelines Section 15126.4[a][3]). The project's potential effect on wildlife from increased traffic is expected to be negligible in the context of existing conditions.

Response to Comment 2-22

The IS/MND's discussion of cumulative biological impacts (see also Response to Comment 2-8 above) is in line with the CEQA Guidelines Section 15063(b), which focus on whether a project's incremental contribution is cumulatively considerable. The City's reasoning, in combination with the findings of its biologists, is that the project's contribution to area-wide habitat loss and wildlife impacts are addressed through existing frameworks. Specifically, the HMP and related programs have already accounted for the cumulative loss of habitats, including on the project site, and have set aside conservation areas to balance growth. The project would be consistent with the HMP by avoiding direct impacts to sensitive on-site habitat (thus not diminishing the preserved open space network) and implementing HMP standards to protect adjacent natural lands. In addition, no aspect of the project would produce a unique or additive effect on biological resources in combination with other projects. Project-related construction noise would be temporary and localized; any incremental pet or lighting effects would be managed on-site; and the project would not substantially affect regional wildlife corridors or water resources. The commenter references a generalized study pertaining to mitigation effectiveness. As such, this claim is not supported by substantial evidence and is therefore speculative (CEQA Guidelines Sections 15064[d][3] and 15145). The City can only evaluate the specific context and mitigation for the proposed project. Based on the evidence, the project would not result in a considerable contribution to cumulative biological resource issues such as habitat fragmentation or species decline. Other future development proposed in the project vicinity would also be required to comply with applicable HMP and CEQA regulations to ensure that overall cumulative effects remain mitigated to the degree feasible. The IS/MND conclusion that the proposed project would not contribute to a significant cumulative impact on biological resources remains valid.

Response to Comment 2-23

MM BIO-1 was originally formulated to be flexible, recognizing that appropriate buffer distances can depend on factors such as avian behavior, location of the nest, existing ambient noise, and the nature of construction activity.

To directly address the concern raised, the City has updated MM BIO-1 (Pre-Construction Nesting Bird Surveys, Avoidance, and Notification) to require that, if a gnatcatcher nest is found during pre-construction surveys, a minimum 500-foot wide no-disturbance buffer be established around the nest and maintained until a qualified biologist confirms that the young have fledged, the nest is no longer active, or that construction noise levels can be maintained below 60 dBA L_{eq} at the nest site with a smaller buffer.

A “qualified biologist” is defined as a professional biologist with demonstrated experience conducting nesting bird surveys in southern California coastal habitats and familiarity with the identification, behavior, and nesting ecology of avian species known to occur in the region, including federally listed species such as the coastal California gnatcatcher. By incorporating these specifics—a numeric distance, noise criteria, and biologist qualifications—MM BIO-1 would have clear performance standards. Specifically, MM BIO-1 from the public review IS/MND stated:

MM BIO-1 Pre-Construction Bird Surveys, Avoidance, and Notification. If construction activities are initiated during the bird nesting season (February 1–August 31) involving removal of vegetation or other nesting bird habitat, including abandoned structures and other man-made features, a pre-construction nesting bird survey shall be conducted no more than 14 days prior to initiation of ground disturbance and vegetation removal activities. The nesting bird pre-construction survey shall be conducted on foot and shall include a 300-foot survey buffer around the construction site. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in southern California coastal communities (i.e., qualified biologist). If active nests are found, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, which shall be demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to demarcate the boundary. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. No ground-disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist on the basis that the encroachment will not be detrimental to an active nest. A report summarizing the pre-construction survey(s) shall be prepared by a qualified biologist and shall be submitted to the City prior to the commencement of construction activities.

Note: To mitigate the potential impact to California gnatcatcher or other nesting birds, this mitigation measure shall be applied to land use and activities occurring at the project site. No Pre-Construction Bird Surveys, Avoidance, and Notification mitigation is required to implement the Study Area-Off-Site Sewer Line portion of the project.

MM BIO-1 has been revised as follows (the bird survey window has been revised to a minimum of three days prior to ground disturbance, and the second paragraph is newly added text):

MM BIO-1 Pre-Construction Nesting Bird Surveys, Avoidance, and Notification. If construction activities are initiated during the bird nesting season (February 1–August 31) involving removal of vegetation or other nesting bird habitat, including abandoned structures and other man-made features, a pre-construction nesting bird survey shall be conducted no more than three days prior to initiation of ground disturbance and vegetation removal activities. The nesting bird pre-construction survey shall be conducted on foot and shall include a 300-foot survey buffer around the construction site. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in southern California coastal

communities (i.e., qualified biologist). If active nests are found, an avoidance buffer shall be determined by a qualified biologist in coordination with the City. The avoidance buffer width will depend upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site, which shall be demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to demarcate the boundary. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. No ground-disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist on the basis that the encroachment will not be detrimental to an active nest. A report summarizing the pre-construction survey(s) shall be prepared by a qualified biologist and shall be submitted to the City prior to the commencement of construction activities.

If an active coastal California gnatcatcher nest is found during pre-construction surveys, a minimum 500-foot no-disturbance buffer shall be established around the nest. The buffer shall be clearly marked (e.g., with fencing or flagging) and maintained until a qualified biologist confirms that the young have fledged, the nest is no longer active, or that construction noise levels can be maintained below 60 dBA L_{eq} at the nest site with a smaller buffer. In no circumstances shall a buffer of less than 100 feet be used even with noise attenuation measures. Any reduction in the 500-foot buffer must be supported by site-specific analysis by the qualified biologist and approved by the City in consultation with the US Fish and Wildlife Service.

Note: To mitigate the potential impact to California gnatcatcher or other nesting birds, this mitigation measure shall be applied to land use and activities occurring at the project site. No Pre-Construction Nesting Bird Surveys, Avoidance, and Notification mitigation is required to implement the Study Area-Off-Site Sewer Line portion of the project.

It is also noted that such clarification to MM BIO-1 does not represent “significant new information” as defined in CEQA Guidelines Section 15088.5. The revised MM BIO-1 is more effective than that presented in the Draft IS/MND. Therefore, recirculation of the IS/MND prior to adoption is not required (CEQA Guidelines Sections 15073.5[c][1] and 15074.1).

Regarding Crotch’s bumble bee, a site-specific three-survey protocol design was approved by CDFW subsequent to release of the IS/MND for public review. The three subsequent surveys were conducted in April and May 2026. Crotch’s bumble bee was not detected in any of the three surveys and the negative findings were reported to CDFW.

Response to Comment 2-24

The City has reviewed the additional measures suggested by the commenter, including compensatory habitat protection at a 5:1 ratio, bird-safe glass treatments, native plant landscaping, and funding for wildlife rehabilitation facilities. The project’s biological resource impacts have been reduced to a less than significant level through the mitigation measures identified in the IS/MND (including MM BIO-1 and MM BIO-2), project design (including avoidance/preservation of the on-site Diegan coastal sage scrub), and applicable HMP

requirements and Adjacency Standards. Regarding compensatory habitat protection, the project's compliance with HMP requirements addresses the project's contribution to habitat loss within the established regional framework. Bird-safe glass treatments are addressed in Response to Comment 2-6. Native plant landscaping is encouraged through the project's landscaping plan, which includes native trees and shrubs; however, mandatory native-only landscaping requirements are not necessary to reduce impacts to less than significant levels. As the mitigation identified for the project would adequately reduce project impacts to less than significant, additional mitigation measures beyond those already required are not warranted under CEQA (CEQA Guidelines Section 15126.4[a][3]).\