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June 11, 2019

BY DELIVERY WITH APPLICATION PACKAGE

Honorable Mayor Mary Casillas Salas
and Members of the City Council
c/o City Clerk
276 Fourth Avenue, Building A
Chula Vista, California 91910

Re: Otay Ranch, Planning Area 12
Freeway Commercial SPA Plan Amendment #5
Council Agenda of June 18, 2019

Honorable Mayor Salas and Members of the City Council:

This firm represents Baldwin & Sons ("Baldwin"), the applicant for the project referenced above. I am writing to respond to a letter the City received from Douglas Chermak of Lozeau Drury on behalf of the "Supporters' Alliance for Environmental Responsibility" ("SAFER"). The SAFER letter complained about the City evaluating this project by using an addendum to an earlier environmental impact report ("EIR") for PA 12. The SAFER letter lacks legal and factual merit.

The foundational question, which the SAFER letter skips past, is whether the City believes the earlier analysis is still relevant. E.g., *Friends of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 951-953. The next question is whether there is significant new information or other changes that show that an impact could be worse than previously thought. E.g., *Citizens Against Airport Pollution v. City of San Jose* ["*CAAP*"] (2014) 227 Cal.App.4th 788, 807-808. The factual tests favor the City: the City Council can approve an addendum as long as there is credible, reasonable evidence to support its decision. E.g., *CAAP*, 227 Cal.App.4th at 796-797.

The SAFER letter offers arguments about the project but it offers no facts showing that the project will have different or worse impacts than the earlier EIR (including approved addenda) had foreseen. The closest it comes is to raise questions. The proposed project involves almost the identical development area as previously proposed; thus, there will be no different or worse agriculture, habitat, mining, or similar impacts. The traffic study Baldwin has submitted shows that there will be no worse traffic impacts. The GHG study Baldwin has submitted shows that there will be no worse impacts on climate change. There is not a CEQA topic whose impacts the project will make significantly worse.

The SAFER letter raises, without real evidence, five specific issues. First, the SAFER letter argues that air pollution *might* be worse. However, the addendum shows it will not be; there will not be a significant impact that had previously been less than significant. The SAFER letter

mentions an update to regulatory guidelines, but that update does not change the facts. Second, the SAFER letter argues that the project may have more impacts on public services. However, *services* are not a CEQA issue. The City's growth management policies and impact fees will assure that facilities impacts will not occur. Third, although the SAFER letter mentions climate change, it is too late to raise the issue against the EIR, a point which supports the use of an addendum. E.g., *CAAP*, 227 Cal.App.4th at 806-808. In any event, a consultant will show the City that the proposed plan amendment will *reduce* greenhouse gas emissions. Fourth, the SAFER letter mentions biology impacts, but all it offers is a theory that a species "may well be" present, which is hardly evidence. The SAFER letter also theorizes that an increase in building heights on this site will risk increasing bird strikes. However, that, too, is speculation that something might occur, not evidence. Moreover, the issue of bird strikes has existed since at least 1832 (see the enclosure), even longer than climate change, and there is case law on this topic back to 2003 (*Airport Communities Coalition v. Graves,* 280 F.Supp.2d 1207). Again, there is no basis to revisit the original 2003 analysis and an addendum is proper. Finally, the addendum for the Baldwin project is not the first addendum to the earlier EIR, but the number of addenda is irrelevant. Case law has upheld the use of an *eighth* addendum when factually appropriate. *CAAP*, 227 Cal.App.4th at 800-802.

Mr. Chermak's firm is based in Oakland, and his letter failed to identify any local community members who would be harmed. The City should ignore it. It contains no facts to support any decision other than your approval of the addendum and project. The project will provide greatly needed housing.

Baldwin looks forward to your hearing. Representatives of Baldwin will be present to answer your questions.

Very truly yours,

Richard A. Schulman
HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

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cc: Client (w/encl.)

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Wilson Bull., 101(4), 1989, pp. 606–620

BIRD–WINDOW COLLISIONS

DANIEL KLEM, JR.[1]

ABSTRACT.—Collisions of birds with windows were studied by reviewing the literature, collecting data from museums and individuals, monitoring man-made structures, and conducting field experiments. Approximately 25% (225/917) of the avian species in the United States and Canada have been documented striking windows. Sex, age, or residency status have little influence on vulnerability to collision. There is no season, time of day, and almost no weather condition during which birds elude the window hazard. Collisions occur at windows of various sizes, heights, and orientations in urban, suburban, and rural environments. Analyses of experimental results and observations under a multitude of conditions suggest that birds hit windows because they fail to recognize clear or reflective glass panes as barriers. Avian, man-made structural, or environmental features that increase the density of birds near windows can account for strike rates at specific locations. A combination of interacting factors must be considered to explain strike frequency at any particular impact site. *Received 28 Oct. 1988, accepted 17 April 1989.*

The earliest account of a bird hitting a window in North America is by Nuttall (1832:88). He described a Sharp-shinned Hawk (*Accipiter striatus*) which, in the pursuit of prey, flew through two panes of greenhouse glass only to be stopped by a third. Townsend (1931) described a series of five fatalities of the Yellow-billed Cuckoo (*Coccyzus americanus*). His paper was the first to suggest that avian vulnerability to windows may be more marked in some species than in others and that specific windows claim a succession of victims. He termed the victims "tragedies" and apparently regarded them as rare, self-destroying incompetents. Picture windows were relatively uncommon through the end of World War II, and there was little reason for concern about their threat to birds. In the postwar period, a building boom stimulated the rapid expansion of the sheet glass industry, and large glass windows were incorporated into the designs of new and remodeled structures. Today, it is not uncommon to find modern buildings that are entirely surfaced with glass.

I found 88 papers reporting bird-window collisions, primarily after the mid-1940s (Klem 1979). They document strikes in North America, South America, West Indies, Europe, and Africa, and, with few exceptions are cited in annotated bibliographies on man-caused mortality to birds (Weir 1976, Avery et al. 1980). However, most textbooks and encyclopedia treatments of ornithology present little, if any, description of the fatal hazards that windows pose to birds. The sheet glass industry and its

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commercial allies appear to be unaware of the problem. On the other hand, I found avian fatalities resulting from window strikes to be common knowledge among the general public.

Birds have been reported to strike two general types of windows as classified according to their visual effects on the human eye. These are transparent windows which appear invisible and reflective windows which mirror the facing outside habitat. Two general types of collisions have been described (Wallace and Mahan 1975:456) and both reveal the ability of glass to misinform and misguide at least some birds. One primarily involves birds such as Northern Cardinal (*Cardinalis cardinalis*) that commonly flutter against picture windows and harmlessly peck the glass during the spring and summer. These birds seldom, if ever, stun or injure themselves or shatter the glass and usually are males defending their territories against their reflected images. In the second type, birds fly into transparent or reflective windows as if unaware of their presence. These collisions often have fatal consequences, and are the subject of this paper.

In this paper my objectives are: (1) to propose an explanation for why birds collide with windows, (2) to describe and analyze species, environmental and man-made structural characteristics associated with bird–window collisions in the United States and Canada, and (3) to suggest how these select characteristics account for the differential frequency with which birds strike windows in various man-made structures.

METHODS

I collected data for this study from 1974 to 1986 from personal observations, records of cooperating individuals, and a series of field experiments. A form letter was sent to 466 curators of museums and 11 individuals in the United States and Canada. They were asked to identify birds salvaged as window-kills or noted as surviving window strikes in 1975 and 1976; a few respondents included additional data from 1963 to 1977. Of those surveyed, 208 responded: 125 listed species known or reported to have collided with windows and 13 estimated the number of collision casualties brought to them each year, although they did not indicate the species. I obtained data from: (1) salvaged window-kills that were placed in the Dept. of Zoology Bird Collection at Southern Illinois University at Carbondale (SIU–C) between 1971 and 1974 (currently in the Dept. of Biology bird collection at Muhlenberg College, Allentown, Pennsylvania), (2) Jack and Muriel Hayward's house in the Union Hill community located 5.7 km southwest of Carbondale, Jackson County, Illinois, and (3) several private homes and university and commercial buildings within a 52,300-h area in and around Carbondale, Illinois. The Hayward house was the only building at which bird strikes were recorded systematically in southern Illinois. The home was checked by the occupants, often several times a day, from September 1974 through December 1976. The house stands on a slope and is surrounded by shrubs, mixed conifer and deciduous trees, fields and lawn. It has 52 windows ranging in size from 0.6 m wide by 0.9–2.2 m high with a total outer glass surface area of 114.3 m^2. Each window was individually numbered to accurately register the location of bird strikes. As with the Hayward home, detailed data were obtained from the residence of Polly Rothstein in southeastern New York, 1.6 km southeast of Purchase,