

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 East Ocean Blvd., Suite 300
Long Beach, CA 90802
(562) 590-5071



W14a

A-5-LGB-23-0047 (Laguna Royale HOA)
May 8, 2024

CORRESPONDENCE

May 3, 2024

California Coastal Commission
Via email

Re: Agenda Item 14a, Appeal of A-5-LGB-23-0047
Approval of Glass Railings without Sufficient Bird-Strike Protections
31423 Coast Highway, Laguna Royale, Laguna Beach

Dear Chair Hart and Commissioners:

Thank you for considering whether the appeal of a project with the potential to kill and injure migrating birds raises a substantial issue. I appreciate that the Commission and staff take seriously the impacts of glass on coastal bird life. I am also grateful to Meg Vaughan for her time and patience in speaking with me about staff's recommendation following the postponement of the March appeal hearing.

Several policies within Laguna Beach's Local Coastal Program protect wildlife and habitat, as noted in the Staff Report (April 18, 2024, p. 10). However, the Staff Report's finding that the appeal raises no substantial issue is based on a mistake regarding the wildlife protection condition imposed by the Planning Commission before it approved the Coastal Development Permit. As a result, the Staff Report flouts the Planning Commission's local authority to determine the project's compliance with the LCP, to approve conditions to bring the project into compliance with the LCP, and to approve the CDP (Laguna Beach LCP, Municipal Code 25.07.012(D) and (H)). The Staff Report improperly assumes that authority in this case to rest with City staff and the project applicant, in contravention of the LCP.

It is worth pointing out that the first Coastal Commission Staff Report, before the hearing was postponed, emphatically rejected the appeal's contention that "Laguna Beach has no definition of an equivalent of 'Ornilux'" (Appeal, Nov. 15, 2023, Exhibits, p. 25). If nothing else, the astonishing difference between the first and present Coastal Commission staff reports suggests that the issue is a muddle requiring your expert intervention. The first Staff Report stated "[t]here is no ambiguity to the meaning of equivalent to Ornilux" (Staff Report, Feb. 22, 2024, p. 2). "Ornilux glass is a bird-safe glass that incorporates ultraviolet (UV)-reflective patterns directly into the glass. Thus to be Ornilux equivalent, the glass used on the new glass railings would also need to incorporate the U-V reflective patterns directly into the glass." "[C]ondition No. 8 is not unclear about what Ornilux or equivalent means, and so is consistent with habitat and wildlife protections of the LCP" (p. 11).

The basis of my appeal regarding the meaning of Ornilux glass as well as my written response to the February Staff Report was that City staff emails—and later the City's response to my appeal—made clear that City staff had no intention of requiring such UV-incorporated patterns in the glass (see Exhibits, pp. 30-31, 37-39, 41-42). Now Coastal Commission staff seem to have decided that I was right, that the meaning of "Ornilux glass or equivalent" is, indeed, ambiguous. Perplexingly, the Staff Report asserts that it doesn't mean *glass* at all but basically signifies one among numerous measures, including admittedly less effective ones, to reduce bird strikes.

The current Coastal Commission Staff Report is retroactively interpreting a Planning Commission approval, resolution, and vote in a way that contravenes their decision-making authority over a project's compliance with the LCP. After much debate, the Planning Commission approved *two different* bird-safe treatments. Treatment 1: for the *new glass* balcony railings, the Planning Commission mandated the use of "*a treatment integrated into the glass.*" This language was provided to the Planning Commission by planner Heather Steven. Treatment 2: for the *existing glass* common deck railings, which were installed about four years ago without a Coastal Development Permit, the Commission allowed a variety of options to mitigate the impacts to birds, including appliqués or decals applied to the existing glass. These two different treatments are noted within the appeal.

The distinction drawn between these treatments in Condition 8 of the Resolution approving the CDP manifests the Planning Commission's decision and clear intent. First, here is the language from staff's draft resolution:

8. *All glass* or other permeable barriers installed on the balconies, decks, and other ocean-facing parts of the existing building shall consist of materials or coatings designed to minimize bird-strikes, as specified in the Biological Assessment, dated November 19, 2020, prepared by Hamilton Biological, Inc. to the satisfaction of the Director of Community Development..." (Draft Resolution, Oct. 4, 2023, p. 5, emphasis added).

The commissioners rejected that language. Instead, they developed the following:

8. "*All new glass, or other visually permeable barriers installed on balconies, decks, and other ocean-facing parts of the existing building, excluding any glass sliding doors, shall be 'Ornilux' glass or equivalent bird safe materials. The existing glass or other permeable barriers installed on the balconies, decks, and other ocean-facing parts of the existing building, excluding any glass siding doors, shall either be replaced as stated above or treated with materials or coatings designed to minimize bird-strikes, as specified in the Biological Assessment, dated November 19, 2020...*" (Final Resolution, Oct. 4, 2023, p. 5, my emphasis).

If, as the Staff Report asserts, "Ornilux glass or equivalent bird safe materials" means glass "treated with materials or coatings designed to minimize bird-strikes," the Commission would not have revised the draft motion. The first sentence would be redundant. The Staff Report misses that "materials or coatings" applies *only to "existing" glass*, even as it quotes that language (Staff Report, April 18, 2024, p. 9). Further, the Commission gave reasons for distinguishing between "Ornilux glass or equivalent" for *new glass* (treatment 1) and "treated with materials or coatings" for *existing glass* (treatment 2). Commissioners Goldman and Whitin said it would be a "hardship" to require treatment 1 for existing glass, because it would be very expensive to make the owners replace it all with new glass. As Chair Sadler put it in differentiating between treatments for existing and new glass: the applicant is "not going to want to rip out and replace those [existing] glass panels with some new glass panels that have something intrinsic in the glass...They are going to want to use some sort of applied material" (https://lagunabeachcity.granicus.com/player/clip/2160?view_id=3&redirect=true, hearing starts at the ten minute mark).

In short, the Planning Commission made clear that decals or other “applied material” do not satisfy the requirements of treatment 1: “Ornilux glass or equivalent bird-safe materials.” Indeed, they *explicitly rejected the applicant’s request that he be allowed to work with staff* to come up with bird-safe alternatives for *both new and existing glass* after the hearing. The Commission stated that *they* needed to specify the appropriate treatment, not the applicant or staff. Thus it is hard to credit the position that the City is acting in “good faith” (Staff Report, April 18, 2024, p. 3) when its letter asserts the contrary—that having the applicant and Director of Community Development decide which materials qualify for the new glass, including decals or appliques, is consistent with the Planning Commission’s approval of the CDP (City Response to Appeal, Exhibits, p. 41).

The current Staff Report acknowledges that ornithological organizations such as the Audubon Society prefer glass with UV-reflective patterns and “the use of UV-reflective glass is *generally the preferred method* for reducing bird strikes” (pp. 12-13, emphasis added). It does not acknowledge that the applicant’s consultant likewise found appliques to be an inferior method of protection (Hamilton Biological Report, 2020, p. 10). In wrongly claiming that the lower standard of protection applies to *all* glass, rather than just existing glass, the Staff Report thwarts the stronger protective measures for wildlife taken by the Commission under the LCP.

The Coastal Commission Staff Report makes claims for the LCP approval that are simply not borne out by the Planning Commission’s discussion, language, and actions. It is unsupported by substantial evidence and the administrative record. The Planning Commission has final local authority to determine this project’s compliance with the Local Coastal Program, not staff, not the applicant, including decisions about what type of new glass would best protect coastal wildlife. The Coastal Commission Staff Report proposes to confer that authority on City staff and the applicant, ignoring City staff’s stated intention to override the Planning Commission’s specific decision and authority.

The project site is a highly sensitive location—an ocean-facing property built well within the bluff-top setback, with the front building only a few feet from the water during very high tides. The issue is important: up to one billion birds die each year as a result of collisions with glass. Please find a substantial issue with the appeal so that Laguna Beach can do right by our coastal wildlife and ensure that the decision of its local approval body—the Planning Commission—is not overridden by applicants and staff in violation of the LCP.

Thank you for your consideration.

Sincerely,



Catherine Jurca

FW: Public Comment on May 2024 Agenda Item Wednesday 14a - Appeal No. A-5-LGB-23-0047 (Laguna Royale, Laguna Beach)

SouthCoast@Coastal <SouthCoast@coastal.ca.gov>

Tue 5/7/2024 12:31 PM

To:Vaughn, Meg@Coastal <Meg.Vaughn@coastal.ca.gov>

From: Richard Glasberg <iglassea25@gmail.com>

Sent: Tuesday, May 7, 2024 11:34 AM

To: SouthCoast@Coastal <SouthCoast@coastal.ca.gov>

Subject: Public Comment on May 2024 Agenda Item Wednesday 14a - Appeal No. A-5-LGB-23-0047 (Laguna Royale, Laguna Beach)

Dear commission members,

Re: Appeal Number A-5-LGB-23-0047 - Laguna Royale Condominium, Laguan Beach, Ca.

To be clear, we are all sensitive to our wildlife and care deeply for their preservation.

My wife Myrna and I have owned our condominium unit at the Laguna Royale since 2017. Our unit is directly oceanfront, facing the beach at the very front of the three tiered buildings of the condominium complex. There is absolutely no structure in front of our unit proper.

Glass doors on our 30 foot balcony extend the entire length of our unit. The glass doors have been a permanent fixture of each condominium unit since its inception in 1962. None of the existing glass doors have bird protective glass.

We are full time residents, unlike the part time resident who is appealing the new glass railings.

During the entire time we have owned our unit, we have never seen a bird strike whatsoever.

It has been almost 5 years since we paid our association for the glass balcony railings, which are yet to be installed. During this period of time, we have have been subjected to an incredibly dangerous situation, having to live with railing that are truly hazard to us, our family, as well as our neighbors. The railing are rotting, loose; too short; not to present day city code stand, with risers that are so wide a child could easily fit through them, potentially resulting in a 40 foot fall.

In fact, a small dog fell through the railing on the 7th floor of our complex due to the risers being too wide.

We are in fear of having family, friends, grandchildren, and our daughter's family dog over at our home. Because of the danger, we must shutter our doors whenever we have children and pets visiting, preventing them from going out onto the balcony. We also have to warn all guests to not touch or lean on the existing railings because the railings are so loose. The liability is staggering to think of. Why should we have to live through such a dangerous situation at our home?

This has simply gone on for too long. It is unconscionable to continue on this path.

Objections regarding glare affecting persons on the coast is just not realistic. I personally walk the beach for many miles each day, usually around 5 miles, and at different hours of the day, sunrise to sunset. I have never experienced glare from the plethora of glass railings at residences and commercial properties during my walks.

So many properties in Laguna Beach have recently been approved for installation of glass railing, such as The Sands Condominium Complex, and the Surf and Sand Hotel. Why is our building in question, especially when we are willing to comply with some type bird protective glass?

My wife and I are constantly in awe and wonder of the birds that fly along the beach. They fly beautifully, mostly parallel along the beach, not at our buidling, or glass doors, nor at the building's existing glass railings.

The Table Rock condominiums, along our same beachfront area protrude out far beyond our building. Our building is recessed more into the cove of West Beach, surrounded by jutting rocks, on which Table Rock (to our south) sets, and the large rock formations to our north, just before Aliso Beach. We often watch birds as they fly south toward Table Rock, especially the pelicans in their V-formation are inspring to watch as they fly toward the Table Rock Condominium building. However, we have never seen a bird strike that building, which too has glass railings. Instead the birds gracefully curve around the building, toward the beach side of the ocean, as they continue their travel along the coast. It's truly never tiring to see.

Bird are actually smarter than most are giving credit. Bird brain is simply a misnomer. There are many articles related to bird intelligence in publications, such as from the National Audubon Society, or Scientific American, which amplify birds are smarter than we have ever given credit.

Yes, birds are our concern, but we believe it is necessary to remind all of the importance of safety for us humans as well - Please, we implore this commission to help make our home safe for us, and approve the glass railings, as the delays are simply untenable.

Sincerely,

Richard & Myrna Glasberg