

## Amy Ow

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**From:** Camille Leung  
**Sent:** Thursday, July 2, 2020 1:16 PM  
**To:** Kristen Outten; Jessica Henderson-McBean  
**Cc:** Amy Ow  
**Subject:** FW: Highland Estates Lot 11 biological compliance memo  
**Attachments:** MIG Sept 28 2015 report to Suz Del.pdf; MIG to Suz Del Oct 26 15 Email.pdf; County to Sam N\_October 29 15.pdf

FYI

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**From:** Camille Leung  
**Sent:** Thursday, July 2, 2020 1:13 PM  
**To:** 'Deke & Corrin Brown' <d.cbrown@comcast.net>  
**Cc:** 'Liesje' <HighlandsCAPresident@gmail.com>; 'Sam Naifeh' <samnaifeh@sbcglobal.net>; 'Kim Ricket' <kim.ricket@gmail.com>; 'Meghan Lubker' <mclubker@gmail.com>; 'Nagle Laurel' <laureltnagle@gmail.com>; 'Ottoboni Linda' <ohyuuwho@yahoo.com>; 'Nishizaki Craig' <cnishizaki@nvidia.com>; 'Peter Lawrence' <4pclaw@gmail.com>; 'Linda Ozanne' <lindaozanne@me.com>; 'Mitroff George' <gbmlaw@sbcglobal.net>; 'John Mathon' <johnmathon@gmail.com>; 'Gerard Ozanne' <jerryozanne@me.com>; 'Christopher Karic' <ckaric@sellarlaw.com>; 'Dave Michaels' <dm94402@gmail.com>; 'Chris Misner' <chrismisner@yahoo.com>; 'Christophe Sarmiento' <csarmiento22@yahoo.com>; 'Pam Merkadeau' <pamela@merkadeau.com>; 'Tania Leung' <smallittlet@yahoo.com>; 'Gary Trott' <gary\_trott@comcast.net>; 'Dylan Ashbrook' <dylanashbrook@gmail.com>; 'Shlomit Holtzman' <holtzmans@pacbell.net>; 'Liesje' <highlandscapresident@gmail.com>; 'Raphael Holtzman' <holtzone@gmail.com>; 'Rick Priola' <hcapres@gmail.com>; 'Grace Hassid' <gracehassid@yahoo.com>; 'Janine Pin Yee Wong' <wongj@att.net>; 'Kristen Matsushino' <matsushino.kristen@gene.com>; 'Barbara Lowe' <paddlerblowe@yahoo.com>; 'Randall Lowe' <merglowe@sbcglobal.net>; Adair, Randi@Wildlife <Randi.Adair@wildlife.ca.gov>; Suzanne DeLeon <suzanne.deleon@wildlife.ca.gov>; Amy Ow <aow@smcgov.org>; Steve Monowitz <smonowitz@smcgov.org>; Dave Pine <dpine@smcgov.org>; David Burruto (DBurruto@smcgov.org) <dburruto@smcgov.org>  
**Subject:** FW: Highland Estates Lot 11 biological compliance memo

Hi Deke and Corrin,

Please see the County's mitigation monitor's responses in red below. As for the referenced clearing of October 2016, I wonder if you meant the clearing that occurred with CDFW approval in October 2015. Please see attached records. The County notified Sam N. as well as other neighbors of the clearing and CDFW approval at that time in an email which contains the phrase that was quoted. Thanks

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**From:** Kristen Outten <[koutten@swca.com](mailto:koutten@swca.com)>  
**Sent:** Thursday, July 2, 2020 9:38 AM  
**To:** Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>  
**Cc:** Jessica Henderson-McBean <[JHenderson-McBean@swca.com](mailto:JHenderson-McBean@swca.com)>; Steve Monowitz <[smonowitz@smcgov.org](mailto:smonowitz@smcgov.org)>; Amy Ow <[aow@smcgov.org](mailto:aow@smcgov.org)>  
**Subject:** FW: Highland Estates Lot 11 biological compliance memo

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Hello Camille,

Thank you for passing this along. I have reviewed Corrin and Deke's concerns and have provided responses in the email chain below. Please refer to red text for my responses. Feel free to give me a call if you would like to go over this in more detail.

Thank you,  
Kristen

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**From:** Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>  
**Sent:** Wednesday, July 1, 2020 5:17 PM  
**To:** Kristen Outten <[koutten@swca.com](mailto:koutten@swca.com)>; Jessica Henderson-McBean <[JHenderson-McBean@swca.com](mailto:JHenderson-McBean@swca.com)>  
**Cc:** Steve Monowitz <[smonowitz@smcgov.org](mailto:smonowitz@smcgov.org)>; Amy Ow <[aow@smcgov.org](mailto:aow@smcgov.org)>  
**Subject:** FW: Highland Estates Lot 11 biological compliance memo

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Hi Kristen and Jessie,

Please see neighbor correspondence below. Please let us know how SWCA responds.

Thanks

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**From:** Deke & Corrin Brown <[d.cbrown@comcast.net](mailto:d.cbrown@comcast.net)>  
**Sent:** Wednesday, July 1, 2020 4:22 PM  
**To:** Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>; Suzanne DeLeon <[suzanne.deleon@wildlife.ca.gov](mailto:suzanne.deleon@wildlife.ca.gov)>  
**Cc:** Liesje <[HighlandsCAPresident@gmail.com](mailto:HighlandsCAPresident@gmail.com)>; Sam Naifeh <[samnaifeh@sbcglobal.net](mailto:samnaifeh@sbcglobal.net)>; Kim Ricket <[kim.ricket@gmail.com](mailto:kim.ricket@gmail.com)>; Meghan Lubker <[mclubker@gmail.com](mailto:mclubker@gmail.com)>; Nagle Laurel <[laureltnagle@gmail.com](mailto:laureltnagle@gmail.com)>; Ottoboni Linda <[ohyuuwho@yahoo.com](mailto:ohyuuwho@yahoo.com)>; Nishizaki Craig <[cnishizaki@nvidia.com](mailto:cnishizaki@nvidia.com)>; Peter Lawrence <[4pclaw@gmail.com](mailto:4pclaw@gmail.com)>; Linda Ozanne <[lindaozanne@me.com](mailto:lindaozanne@me.com)>; Mitroff George <[gbmlaw@sbcglobal.net](mailto:gbmlaw@sbcglobal.net)>; John Mathon <[johnmathon@gmail.com](mailto:johnmathon@gmail.com)>; Gerard Ozanne <[jerryozanne@me.com](mailto:jerryozanne@me.com)>; Christopher Karic <[ckaric@sellarlaw.com](mailto:ckaric@sellarlaw.com)>; Dave Michaels <[dm94402@gmail.com](mailto:dm94402@gmail.com)>; Chris Misner <[chrismisner@yahoo.com](mailto:chrismisner@yahoo.com)>; Christophe Sarmiento <[csarmiento22@yahoo.com](mailto:csarmiento22@yahoo.com)>; Pam Merkadeau <[pamela@merkadeau.com](mailto:pamela@merkadeau.com)>; Tania Leung <[smalllittlet@yahoo.com](mailto:smalllittlet@yahoo.com)>; Gary Trott <[gary\\_trott@comcast.net](mailto:gary_trott@comcast.net)>; Dylan Ashbrook <[dylanashbrook@gmail.com](mailto:dylanashbrook@gmail.com)>; Shlomit Holtzman <[holtzmans@pacbell.net](mailto:holtzmans@pacbell.net)>; Liesje <[highlandscapresident@gmail.com](mailto:highlandscapresident@gmail.com)>; Raphael Holtzman <[holtzone@gmail.com](mailto:holtzone@gmail.com)>; Rick Priola <[hcapres@gmail.com](mailto:hcapres@gmail.com)>; 'Grace Hassid' <[gracehassid@yahoo.com](mailto:gracehassid@yahoo.com)>; 'Janine Pin Yee Wong' <[wongj@att.net](mailto:wongj@att.net)>; Kristen Matsushino <[matsushino.kristen@gene.com](mailto:matsushino.kristen@gene.com)>; Barbara Lowe <[paddlerblowe@yahoo.com](mailto:paddlerblowe@yahoo.com)>; Randall Lowe <[merglowe@sbcglobal.net](mailto:merglowe@sbcglobal.net)>  
**Subject:** Fw: Highland Estates Lot 11 biological compliance memo

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Camille,

Thank you for sending the Highland Estates Lot 11 Biological Mitigation Compliance from Mr. Chamberlain's environmental survey contractor.

I sent it on to neighbors, who were disconcerted and concerted by the following statement about the bird survey.

"Measure 2b Nesting Bird Survey Results. The nesting bird survey was completed on June 10. Several bird species were observed/heard, but no active nests or nesting behavior was observed in the construction zone. Access and visibility within 500 feet of the lots is limited, but time was spent observing the perimeters and no active nests were located. Birds observed included bushtit, American crow, California scrub jay, Anna's hummingbird, California towhee, black phoebe, dark-eyed junco, spotted towhee, mourning dove, turkey vulture and chestnut-backed chickadee."

Neighbors informed told me that two well established species are missing from this report: Western Blue Bird and White-tailed Kite.

### White-tailed Kite

At the time the report claims to have surveyed the area of the lot and surroundings within 500 feet of the lot, four White-tailed Kites were regularly around an active nest (image attached) located in a tree about ten feet from the lot boundary.

Here are White-tailed Kite pictures (attached) between May 22 and June 30th (yesterday) where the White-tailed Kites patrol, build nests, breed, and find food in the area the survey claims to have covered.

Thank you for your concerns and observations regarding white-tailed kite. This species is protected under the Migratory Bird Treaty Act (MBTA), which prohibits take of an active nest. "Take" is defined as killing, capturing, selling, trading, or transporting. An "active nest" is defined as those containing eggs or chicks. A pre-construction nesting bird survey was conducted on June 10<sup>th</sup> to ensure take of an active nest does not occur as a result of construction. No active white-tailed kite nest, nor white-tailed kite individuals, were observed by the project biologist (MIG) at the time of the survey. If an active nest has since been observed by the community, and is confirmed to be active at the time of construction, the contractor will be required to implement a no-disturbance buffer zone to ensure the project does not result in a violation of the MBTA. When the project biologist conducts a follow-up nesting bird survey prior to the start of construction, the status of the nest will be confirmed to ensure "take" does not occur.

It is also worth noting that white-tailed kite is a California Department of Fish and Wildlife (CDFW) fully protected species, which means they cannot be taken or possessed at any time. California Fish and Game Code 86 defines "take" as an action to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. The attached photos indicate that a white-tailed kite(s) is occupying the habitat within the vicinity of Lot 11. Its quite possible that this kite(s) is using the trees within the vicinity of the project for perching and/or nesting, and using the grasslands to the west of the neighborhood for foraging. Per Fish and Game Code 3511, the project may not take or possess a white-tailed kite at any time. The contractor, the contractor's biologist, and the County's mitigation monitor will work to ensure the project does not violate Fish and Game Code 3511.

### Western Blue Bird

A Western Blue Bird pair was nesting about 75 feet from lot 11 at the time of the survey and patrolling lot 11 and surroundings for food. Pictures of Western Blue Bird parents attached. They were still present when and after the survey was reportedly carried out.

Similar to the white-tailed kite, western bluebirds are protected under the MBTA. If a nest is confirmed to be active during the pre-construction nest survey, a no-disturbance buffer will be implemented until the biologist determines the nest is no longer active or that all the young have fledged. Avoidance buffers and monitoring of active nests will be required in accordance with mitigation measure BIO-2b.

Mitigation Measure BIO-2d: Habitat for the California Red Legged Frog was found by the County to be significant to point that it required a condition of approval

The neighbors expressed concern that their inquiries related to the County's biological conditions of approval on this project have gone unanswered. I was reminded that on 27 October 2016 without County permission in 27 October 2016 Mr. Chamberlain had lot 11 completely cleared of its well vegetated terrestrial areas within the riparian corridor known to provide shelter during winter. In fact you subsequently reported that "All clearing of Lots 9 through 11 is complete, with several small and trees left standing." Clearing of lot 11 vegetation outside County permission even though was no requisite building permit for ground disturbance.

Inquiry was made whether Ms. Suzanne DeLeon, Environmental Scientist California Department Of Fish And Wildlife, was notified of the applicant's clearing of vegetation in lot 11 outside County permission and the Conditions of Approval. The concern was and still is whether the County called Ms. Suzanne DeLeon to investigate the clearing of lot 11 without permit, to make determinations of violations, and to require habitat restoration or other reparations. The only information supplied was that Mrs. DeLeon was contacted about the dusky footed woodrat survey. There is no evidence that she as contacted about the clearing of lots without a permit.

The event Corrin and Deke are referring to precedes SWCA contract on this project; therefore, I lack the knowledge and history to provide detailed comment. However, any concerned citizens, and/or the County, have the right to contact CDFW and/or other regulatory agencies if they have evidence of a violation. If the County had not yet issued permits and did not witness the violation themselves, then I'm not sure the County would have much to report on. However, I will defer to the County on a more detailed response to this.

The report you were given is inadequate.

The biological report provided by MIG and reviewed by SWCA was in compliance with the MMRP and COA. Due to the migratory nature of birds, it is possible that individual species known to occur in the region were not present or observed by the biologist during the survey. The nest locations will be communicated to the contractor's biologist and inspected during the pre-construction nesting bird survey. SWCA and the County will continue to work closely with the NextGen to ensure the project remains in compliance with the MMRP and COA.

We urgently request that the County call in a new expert approved by all parties to resolve the significant issues with fulfillment of Condition of Approval Mitigation Measure BIO-2b.

No non-compliances have occurred at this time. We understand the community's concern regarding nesting birds, and appreciate the information and photo documentation of the white-tailed kite and western bluebird. If at any time they community has additional information that will help protect natural resources, and/or have concerns regarding compliance with the MMRP, the comments are welcome.

Please confirm suspension of any further activity on Lot 11 until we have a resolution on the County Condition of Approval for this project.

Thank you,

Deke & Corrin

On Tuesday, June 23, 2020, 10:34:53 AM PDT, Deke & Corrin Brown <[d.cbrown@comcast.net](mailto:d.cbrown@comcast.net)> wrote:

**From:** [Camille Leung](#)  
**Sent:** Tuesday, June 23, 2020 9:16 AM  
**To:** [Deke & Corrin Brown](#)  
**Subject:** FW: Highland Estates Lot 11 biological compliance memo

Here's the review of the Lot 11 bio report.

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**From:** Jessica Henderson-McBean <[JHenderson-McBean@swca.com](mailto:JHenderson-McBean@swca.com)>  
**Sent:** Monday, June 22, 2020 4:57 PM  
**To:** Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>; Kristen Outten <[koutten@swca.com](mailto:koutten@swca.com)>  
**Cc:** Amy Ow <[aow@smcgov.org](mailto:aow@smcgov.org)>  
**Subject:** RE: Highland Estates Lot 11 biological compliance memo

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Hi Camille,

Thank you so much for sending Tay's report for Lot 11. I have reviewed the report, and have no immediate comments.

I would like to note just for our own tracking purposes, that according to this report the last nesting bird survey was conducted on Lot 11 on June 10, and an updated nesting bird survey will be required if work is delayed past June 24 (which I expect is likely). In addition, a survey for California red-legged frogs is required immediately prior to ground disturbance, as outlined in this report. When I spoke with Tay onsite today she told me that MIG plans to conduct additional nesting bird surveys and CRLF surveys immediately prior to ground disturbance, which would meet the requirements of the MMRP.

Thanks!

Jessie

**Jessie Henderson-McBean**  
Biologist

**SWCA Environmental Consultants**  
60 Stone Pine Road, Suite 100  
Half Moon Bay, CA 94019  
P 650.440.4160 x 6410 | C 805.712.8794



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**From:** Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>

**Sent:** Monday, June 22, 2020 2:46 PM

**To:** Jessica Henderson-McBean <[JHenderson-McBean@swca.com](mailto:JHenderson-McBean@swca.com)>; Kristen Outten <[koutten@swca.com](mailto:koutten@swca.com)>

**Cc:** Amy Ow <[aow@smcgov.org](mailto:aow@smcgov.org)>

**Subject:** FW: Highland Estates Lot 11 biological compliance memo

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Hi Jessie and Kristen,

Please send me your comments regarding this report when you get a chance.

Please note that I am off on Thursday and Friday this week.

Thanks

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**From:** Camille Leung

**Sent:** Monday, June 22, 2020 1:49 PM

**To:** Amy Ow <[aow@smcgov.org](mailto:aow@smcgov.org)>

**Subject:** FW: Highland Estates Lot 11 biological compliance memo

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**From:** Taylor Peterson <[tpeterson@migcom.com](mailto:tpeterson@migcom.com)>

**Sent:** Monday, June 22, 2020 1:19 PM

**To:** Noel Chamberlain <[noel@nexgenbuilders.com](mailto:noel@nexgenbuilders.com)>; Camille Leung <[cleung@smcgov.org](mailto:cleung@smcgov.org)>

**Cc:** Robert Pellegrine <[robertpellegrine@yahoo.com](mailto:robertpellegrine@yahoo.com)>; Jessica Henderson-McBean <[JHenderson-McBean@swca.com](mailto:JHenderson-McBean@swca.com)>; Alex Broskoff <[abroskoff@migcom.com](mailto:abroskoff@migcom.com)>

**Subject:** Highland Estates Lot 11 biological compliance memo

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Hello everyone,

Please find our memo regarding recent biological surveys on Lot 11 attached. Let me know if there are any questions.

Thanks,

Tay

**Taylor Peterson**

*Director of Biological Analysis*



PLANNING | DESIGN | COMMUNICATIONS | MANAGEMENT | SCIENCE | TECHNOLOGY

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