



April 5, 2022

To:  
Maira Blanco,  
Environmental Project Manager,  
Planning, Building and Code Enforcement  
City of San Jose

Sylvia Do,  
Division Manager,  
Planning, Building and Code Enforcement  
City of San Jose

Re: Item 4a on the April 6 Director Hearing Agenda - Alviso Hotel File No. PD19-031

Dear Ms. Blanco and Ms. Do

The Santa Clara Valley Audubon Society (SCVAS) participated in the public process for the Alviso Hotel Project (Project) by attending the public meeting and submitting comments on the IS/MND. The Project proposes to construct a five-story hotel and a four-story parking garage on approximately 6.20-gross acres of open space adjacent to the Guadalupe River.

SCVAS is concerned that as currently proposed, the Project poses unmitigated environmental impacts that have not been publicly disclosed or addressed and that therefore the CEQA process is procedurally defective.

Our comment letter, echoes the concerns of other comments, that the CEQA analysis is not supported by substantial evidence in the record and that the Project violates CEQA in the following ways:

- The IS/MND "Project Description" mischaracterizes the site's baseline conditions by describing open space dominated by ruderal vegetation and habitat for migratory birds as "developed land", and by dismissing bird and wildlife observations in this important riparian corridor area as inconsequential;
- The Project improperly segments CEQA review by claiming that a previous project (Topgolf) that included the 6.20 acre Project site could not foresee development on this land. This site is within the well known "golden triangle" of development in San Jose<sup>1</sup>. Thus development of the site was foreseeable.

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<sup>1</sup> [http://sanjose.granicus.com/Viewer.php?meta\\_id=625602](http://sanjose.granicus.com/Viewer.php?meta_id=625602), slide 4

- The analysis of impacts to Biological Resources and other environmental resources is inadequate; and,
- The proposed mitigation measures do not reduce Project impacts to a less-than-significant level.

We believe a fair argument exists, in light of the whole record, that the Project will have significant impacts to the environment. Further, we argue that the IS/MND, as modified in the City of San Jose's Responses to Comments and Text Edits, has not eliminated the reasonable possibility of a significant effect on the environment, as supported by substantial evidence provided by SCVAS and other comments on the record.

Under the "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 Cal. Code Regs., § 15064(f)(1); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 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.)

We ask the Planning Director to require the preparation of an EIR to fully describe, analyze and mitigate the Project's impacts.

Respectfully,

Shani Kleinhaus, Ph.D.  
Environmental Advocate  
Santa Clara Valley Audubon Society  
22221 McClellan Rd.,  
Cupertino 95014  
[Advocate@scvas.org](mailto:Advocate@scvas.org)