

## Memorandum

**To:** Maira Blanco, Planner  
City of San José

**From:** Michael Lisenbee, Senior Project Manager  
David J. Powers & Associates, Inc.

**Date:** April 19, 2022

**Subject:** **Alviso Hotel Project (File No. PD19-031) Initial Study/Mitigated Negative Declaration – Response to Supplemental Comments from the Santa Clara Valley Audubon Society**

On April 5, 2022, the Santa Clara Valley Audubon Society (SCVAS) submitted supplemental comments on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Alviso Hotel Project (File No. PD19-031). The SCVAS then submitted an additional supplemental comment letter on April 18, 2022 (dated April 15, 2022). Both comment letters are in addition to the SCVAS's initial comments on the IS/MND dated November 10, 2021, which received full responses in the City's Responses to Public Comments and Text Changes document dated March 2022. As described in further detail below, the supplemental comments letters do not raise any new issues about the project's environmental impacts, nor do they provide new information that would constitute substantial evidence to indicate that the project would result in new significant environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. The discussion below summarizes the issues raised in the supplemental comment letters and provides additional responses where warranted.

### April 5, 2022 Supplemental Comment Letter

The April 5, 2022 supplemental comment letter raises the following issues, which were also raised in the initial comment letter dated November 10, 2021, without providing additional supporting information:

- The IS/MND 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 the previously approved Topgolf @ Terra project that included project site within its boundaries could not foresee development on this land;

- 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.

All of the issues raised in the April 5, 2022 supplemental comment letter were included in the SCVAS's initial comment letter dated November 10, 2021. As such, responses to these comments have already been provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to responses H.1 through H.4). As described in those responses, the IS/MND properly describes the existing conditions on the site, does not improperly segment CEQA review in relation to the previously approved Topgolf @ Terra project, provides adequate analysis of the projects impacts to biological resources, and includes mitigation measures adequate to reduce impacts to a less than significant level. Since no new issues were raised and no new information provided, no additional responses are warranted.

#### April 15, 2022 Supplemental Comment Letter

The April 15, 2022 supplemental comment letter elaborates on the issues raised in the previous SCVAS comment letters, specifically providing rebuttals to responses included in the City's Responses to Public Comments and Text Changes document dated March 2022.

The SCVAS again comments that the proposed Alviso Hotel project was foreseeable at the time the previously approved project was considered in 2016, even though the SCVAS acknowledges that the proposed project was not yet planned at that time. In response H.1, the City demonstrated that the project did not improperly segment environmental review under CEQA in relation to the previously approved Topgolf @ Terra project. The SCVAS comments that, because the project site is designated for development in the City's General Plan, the 2016 IS/MND for the Topgolf @ Terra project should have assumed development on the project site even though none was proposed at the time. As described previously in Response H.1, the Alviso Hotel project was not proposed at the time the Topgolf @ Terra IS/MND was prepared and, therefore, no analysis could have been completed regarding its potential environmental impacts. This project and its associated environmental impacts were not reasonably foreseeable at the time the Topgolf @ Terra IS/MND was prepared and, thus, it is not considered segmentation under CEQA.

In Response H.1, the City also demonstrated that the IS/MND properly analyzed the project's cumulative impacts, including cumulative impacts related to the previously approved Topgolf @ Terra project. The SCVAS again comments incorrectly that the IS/MND did not include an analysis of cumulative impacts to biological resources. As described in Response H.1, the IS/MND prepared for the proposed project includes project-specific reports, including a Biological Resources Assessment, and takes into consideration cumulative impacts associated with the Topgolf @ Terra project, as shown in Section 4.21 Mandatory Findings of Significance. Additional text was added to the IS/MND in the City's Responses to Public Comments and Text Changes document dated March 2022 to supplement the original IS/MND analysis of cumulative impacts (refer to page 128 of the document). SCVAS comments that, because the Topgolf @ Terra project did not pay Santa Clara Valley Habitat Plan (Habitat Plan) fees for impacts related to the proposed Alviso Hotel project site,

the cumulative impacts to special status species and habitat have not been addressed or mitigated. As described in the IS/MND, the proposed project is required to comply with all Habitat Plan measures and fees (refer to MM BIO-1.3, MM BIO-3.1, and the Standard Habitat Plan Conditions listed on pages 68-69 of the IS/MND). Compliance with the Habitat Plan mitigates the project's contribution to cumulative impacts to species and habitat covered by the Habitat Plan.

The SCVAS also comments that the IS/MND's identification of a portion of the site as "developed" in the context of habitat for biological resources is incorrect since disturbed and graded land can still provide habitat for raptors and other bird species. The City's Responses to Public Comments and Text Changes document dated March 2022 addressed this issue in Response B.3, where it was demonstrated that "developed" is the correct determination of this habitat type due to conditions observed on the site. Additionally, it should be noted that the IS/MND includes mitigation measures requiring pre-construction surveys and non-disturbance buffers for raptors and other bird species that may be present on the site, thus ensuring a less than significant impact (refer to MM BIO-1.2 and MM BIO-1.3).

The SCVAS comments that the project would result in a significant loss of foraging habitat. This issue was addressed in the City's Responses to Public Comments and Text Changes document dated March 2022, albeit in response to a comment letter from a different organization. As described in Response B.39, a species' fleeting presence on the site via a flyover or brief foraging visit is not sufficient to suggest that a species will be impacted by project activities. The threshold for CEQA significance is generally considered to be founded on the potential for a project to result in large-scale or otherwise appreciable disruptions to the life history of a species that is dependent on resources within the project area. In this case, the project area is a relatively small patch of mostly disturbed/ruderal land cover in a largely urban matrix, and higher-quality habitat for almost all species groups is present nearby. Development of the site would not result significant impacts to special-status species related to a loss of foraging habitat.

The SCVAS also reiterates their concern that the project would result in significant impacts to burrowing owls, and comments that compliance with the Habitat Plan is insufficient to mitigate the project's impacts. The issue of impacts to burrowing owls was raised in the initial SCVAS comment letter, and a response was provided demonstrating that the analysis of impacts in the IS/MND was adequate (refer to Response H.3). Although the issue of compliance with the Habitat Plan being insufficient to mitigate the project's impacts was not raised in the initial SCVAS comment letter, it was raised in a comment letter from a different organization and received a response from the City, where it was demonstrated that compliance with the Habitat Plan is adequate mitigation under CEQA (refer to Response B.51). The IS/MND identifies significant impacts to burrowing owls and includes mitigation measures to reduce those impacts to a less than significant level. The analysis of impacts and identification of appropriate mitigation in the IS/MND are both adequate under CEQA.

## Conclusion

In conclusion, the supplemental comment letters from the SCVAS do not raise any new issues about the project's environmental impacts, nor do they provide new information that would constitute

substantial evidence to indicate that the project would result in new significant environmental or impacts substantially greater in severity than disclosed in the IS/MND.