

MEMORANDUM

To: Maira Blanco, City of San Jose

From: Bianca Clarke, Project Manager
Brian Kearns, Wildlife Biologist

cc: Desiree DeiRossi, David J. Powers and Associates

Date: April 19, 2022

Subject: Alviso Hotel Project (File No. PD19-031) Initial Study/Mitigated Negative Declaration – Response to Comments from LIUNA regarding the Biological Resources Section

This memorandum was prepared by WRA, Inc. (WRA) to provide information to the City of San Jose and David J. Powers and Associates for use in responding to comments raised by LIUNA and their biologist in a letter dated April 5, 2022 on the Initial Study/Mitigated Negative Declaration (IS/MND) of the Alviso Hotel Project (File No. PD19-031). It specifically addresses comments regarding the biological section of the Alviso Hotel Project IS/MND and the City's Responses to Public Comments and Text Changes document dated March 2022. The comments are made by Dr. Shawn Smallwood, who originally issued comments on the IS/MND sections in November 2021.

Given that WRA has already responded to all concerns raised by the commenter in the City's Responses to Public Comments and Text Changes document dated March 2022, this memorandum will focus on new information contained in the recent comment letter, while also highlighting key points from previous responses. Information below is categorized based on the relevant topic rather than by specific comment.

Wildlife Movement and Vehicle Collisions

Dr. Smallwood claims that the construction of the project will significantly impact wildlife movement and result in numerous animal/vehicle collisions due to the site's alleged heavy use as a wildlife corridor. These issues were raised in the previous comment letter dated November 10, 2021, and responses were provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to Responses B.9 and B.10). Although no new issues are raised, additional responses are provided below.

The term "wildlife corridor" is often used when referring to areas that function as a corridor or linkage that connects two larger habitat blocks, also referred to as core habitat areas (Beier and Loe 1992; Soulé and Terbough 1999). The term "wildlife corridor" is useful in the context of smaller, local area planning, where wildlife movement may be facilitated by specific local biological habitats or passages and/or may be restricted by barriers to movement. Above all, wildlife corridors must link two areas of core habitat and should not direct wildlife to developed areas or areas that are otherwise void of core habitat (Hilty et al. 2019).

As described in the IS/MND and as stated in the Biological Resources Assessment prepared by WRA and dated March 2020, the site has been mostly disturbed and compacted within the proposed building footprint, and is dominated by weedy non-native annual grasses and forbs. Surrounding areas are either similarly impacted and vegetated, or inarguably developed into residential or commercial properties. While the Guadalupe River provides high quality wildlife habitat to the west of the project site, similar habitats do not exist on other sides of the proposed development. Although common and urban adapted wildlife may use areas such as the project site for short distance dispersal movements, the project site does not serve to connect core habitat areas and thus is not characteristic of a wildlife corridor. As discussed below, the height of the proposed building would also not be prohibitive for avian species to transit through the area to other available foraging grounds on the north, east, and south sides of the project site.

As for vehicle/wildlife collisions, WRA acknowledges that increased traffic during construction could result in a minor increase in vehicle-related wildlife mortality. However, any species present on the already highly trafficked roads surrounding the project site are expected to be common, urban-adapted species, and any increase in traffic associated with the project is not expected to result in significant additional mortality to even these species. It should also be noted that, although the Project and its proponents will seek to minimize incidences of traffic-related mortality of all species, the threshold for CEQA significance is not applicable to non-status species unless the project would have a regional impact on the viability of the species or species group, which this project will not. Roads immediately surrounding the project site can currently be classified as busy arterial roads that service residential, commercial, and other existing development. Construction activities associated with the project are thus not projected to raise traffic levels significantly above baseline, and will not result in a significant impact.

Habitat Loss

Dr. Smallwood raises the issue of habitat loss, which was also raised in the previous comment letter dated November 10, 2021, and responses were provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to Response B.8). Although no new issues are raised, additional responses are provided below.

Under State CEQA Guidelines Section 15065, a project's effects on biotic resources are deemed significant where the project would (1) substantially reduce the habitat of a fish or wildlife species, (2) cause a fish or wildlife population to drop below self-sustaining levels, (3) threaten to eliminate a plant or animal community, or (4) reduce the number or restrict the range of a rare or endangered plant or animal. Dr. Smallwood continues to claim that the project will result in significant habitat loss, both on the ground and in the air. WRA does not agree with this statement. While it is true that the project seeks to put a building in place where currently a building does not exist, the land to be converted is not high quality habitat for any species. As described in the Biological Resources Assessment (Appendix B of the IS/MND) and based on numerous database searches, 51 special-status plant species 42 special-status species of wildlife have been documented in the vicinity of the project area. Two of these plant species have moderate or high potential to occur within the project area. The remaining 49 species are unlikely or have no potential to occur in the Project Area as a result of the high level of disturbance and a lack of suitable habitat elements such as vernal pool, chaparral, and woodland habitats or serpentine substrate. Similarly to plants, 38 of these wildlife species are excluded from the project site based on a lack of suitable habitat elements to sustain critical life history periods; however, four special-status wildlife species were acknowledged to have moderate or high potential to occur and were assessed in detail in the IS/MND.

While Dr. Smallwood is correct in his assertion that ground nesting species such as killdeer (*Charadrius vociferus*) and small passerine songbirds may nest in areas dominated by bare ground and ruderal vegetation, it cannot be reasonably argued that construction of this hotel project, which avoids impacts to surrounding sensitive habitats associated with nearby wetlands and the Guadalupe River, constitutes an impact that would significantly reduce fish or wildlife habitat, would cause a wildlife population to drop below self-sustaining levels, threaten eliminate a community, or reduce the number or restrict the range of a special-status species (the definition of which is discussed below).

Additionally, the project will further mitigate any perceived loss of habitat through implementation of conditions in the Santa Clara Valley Habitat Plan (SCVHP) which is an effective regulatory tool accepted by the involved regulatory agencies (including US Fish and Wildlife and the California Department of Fish and Wildlife, as well as numerous local governments within the plan area) to mitigate project impacts to covered species in a sensitive region.

Species Observations/Detections and Richness

A great deal of the comment letter drafted by Dr. Smallwood is directed at attempting to discredit WRA's survey effort because of the lack of species detections, and consequent lack of species richness included in the IS/MND. This issue was raised in the previous comment letter dated November 10, 2021, and responses were provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to Response B.2). Although no new issues are raised, additional responses are provided below.

Dr. Smallwood draws a direct comparison between the number of species observed within a project site and the viability of a survey effort. WRA believes this characterization is incorrect, and also not relevant. While it is certainly possible that WRA biologists might have observed more species on a different day or at a different time of day, had the biologists gone further away from the project site to make observations, or conducted multiple site visits as Dr. Smallwood did, this point remains irrelevant where the CEQA process is concerned. WRA's survey was sufficient to document habitat conditions within the project footprint at the time of the survey, and expert biologists were able to draw reasonable inferences about the type of species that could potentially utilize that habitat. This level of effort and inference is typical of the CEQA process, and does not constitute a misrepresentation of habitats within the project site or the project's potential impacts.

It should also be noted that while Dr. Smallwood lists the additional species he observed while traversing the site beyond those observed by WRA, none of the species he observed would be cause to identify a new significant impact or include additional mitigation measures in the IS/MND. The IS/MND identified a significant impact to nesting birds and required mitigation in the form of pre-construction surveys and establishment of non-disturbance buffers should any nests be discovered (MM BIO-1.2 and MM BIO-1.3). The additional species observed by Dr. Smallwood are exclusively bird species that would be detected during the required pre-construction surveys were they to be nesting in work areas. The project would thus avoid significant impacts to these species as it is currently designed.

Lastly, WRA would like to briefly address Dr. Smallwood's concerns regarding the use of the "aerosphere", as well as his claim that consideration of aerial habitats result in the potential for additional species to occur within the project site. WRA does not debate the fact that avian species use areas other than the ground as "habitat". Birds must move between suitable habitats, and often do so by moving variable distances above the ground. However, CEQA is concerned with determining whether or not a project will

result in additional significant impacts to a species or species group, and then prescribing mitigation to reduce this impact to a less than significant level. WRA maintains that, while species such as California brown pelican (*Pelecanus occidentalis californicus*) may occasionally fly above the project site, construction of a four-story building does not constitute a significant habitat impact for this species or others that primarily utilize aquatic habitats, and would not significantly limit the movement capability of such species. The proposed building has also been designed to limit collision risk for dispersing avian species; please see subsequent sections for a more detailed discussion of bird-safe design elements. It is the opinion of WRA that, given the existing conditions of the area (i.e., presence of buildings of similar size in the immediate vicinity, extensive residential and commercial development in the area), that construction of this hotel project will not result in a significant additional impact to volant wildlife species.

Special-Status Species Protection

Dr. Smallwood raises the issue of special-status species protection, which was also raised in the previous comment letter dated November 10, 2021, and responses were provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to Response B.2). Although no new issues are raised, additional responses are provided below.

As stated in WRA's previous response to comments, species typically regarded as "special-status" in the CEQA context include: those that have been formally listed, or are candidates for such listing under the federal Endangered Species Act (ESA) and/or California Endangered Species Act (CESA); CDFW Fully Protected Species (CFP); and, CDFW Species of Special Concern (SSC). Although SSCs generally have no special legal status, they are given special consideration under CEQA. Many of the observed species that Dr. Smallwood classifies as "special-status" are common and widespread species that are not typically given special consideration under CEQA or even included on CDFW's highly inclusive Special Animals List. For example, simply being referenced in the California Fish and Game Code (e.g., all birds of prey) does not indicate that a species is of special-status.

The only additional species identified by Dr. Smallwood during his April 2022 site visit that would be considered special-status in typical CEQA analyses are the San Francisco common yellowthroat (*Geothlypis trichas sinuosa*; CDFW SSC) and the Alameda song sparrow (*Melospiza melodia pusillula*; CDFW SSC). While WRA acknowledges that both of these species should be given additional consideration under CEQA if they were to occur in proximity to the project, both are protected from significant impacts through the mitigation measure mandating a pre-construction survey be conducted during the avian breeding season (MM BIO-1.2). This mitigation measure also ensures that, if these or other avian species are found nesting on the site (including those such as killdeer that may nest in disturbed areas), protection buffers would be put in place such that nest destruction or abandonment would not occur as a result of project activities. While Dr. Smallwood calls into question the validity of such surveys, pre-construction surveys are considered to be a best management practice and industry standard to avoid impacts to common and special-status nesting birds; mitigation measures of this type are among the most common included in projects with essentially any impact to natural or manmade features that could provide nesting substrate for birds. WRA thus maintains that pre-construction surveys would be effective to reduce impacts to these newly identified species to a less than significant level.

Bird-Safe Building Design Elements

Dr. Smallwood has made multiple comments regarding the bird-safe design of the hotel building itself, as well as concerns related to the Top Golf net. These issues were raised in the previous comment letter

dated November 10, 2021, and responses were provided in the City's Responses to Public Comments and Text Changes document dated March 2022 (refer to Responses B.11). Although no new issues are raised, additional responses are provided below.

WRA would firstly like to point out that, although some interaction between the hotel building and the Top Golf net is reasonable to consider as part of the current CEQA analysis, the Top Golf facility was a separate project that is not currently under consideration. Lighting of the Top Golf facility and other elements that do not involve the development included in the current analysis are thus not discussed further in this response. It remains unclear to WRA how construction of the hotel building provides a significant increase in collision risk, given that only a single corner of the building comes close to the net structure, this corner is minimally glazed, and glazing will not be more than 10 percent untreated. Dr. Smallwood's concern regarding the concave shape of the building is noted; however, provided recommendations regarding landscaping included in the City guidelines are followed, the courtyard area is unlikely to provide a major attractant to birds and is thus not considered to be a threat for collisions given other included bird-safe design elements such as limiting glazed surfaces (i.e., those comprised of reflective glass), incorporating "visual noise" (e.g., surface relief, use of differing materials, different colors), using landscaping elements that are not highly attractive as sources of forage, and more. Most of the potential negative impacts described by Dr. Smallwood relate only to the Top Golf net and its lack of visibility, and not to the hotel project building itself. Again, this is not the appropriate forum to discuss any potential bird safety concerns related to the Top Golf net, but should be focused instead on the proposed hotel building which, based on WRA's analysis, does not provide a significant collision risk for dispersing birds.

Dr. Smallwood does not appear to raise any new concerns related to bird-safe design specifically of the hotel building in the new comment letter, and mainly reiterates his belief that the proposed structure was not held to a sufficiently high standard during bird-safe design environmental impact analysis. WRA's analysis was thorough and adhered to both current City standards and industry best practices. The applicant has incorporated numerous elements that would hold up to the highest levels of scrutiny given to these concerns by municipalities in the Bay Area. WRA conducts bird-safe design review analyses on a regular basis, and routinely recommends material changes or design element changes for buildings during these analyses if they do not conform to municipal guidelines (which vary widely throughout the Bay Area), as was the case with this project. The outcome of this analysis was that, based on the City of San José Downtown Design Guidelines, City Council Policy 6-34 (Riparian Corridor Protection and Bird-Safe Design), and mitigation measures for this project, the building's design was determined to be sufficient to reduce bird collision risk to a less than significant level. The applicant took WRA's recommendations and revised building plans to more closely conform with existing City standards and best practices, and the resulting product provides a less than significant risk for bird collision mortality.

Conclusion

In conclusion, Dr. Smallwood's letter does not raise any new issues about the project's environmental impacts, nor does it 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.

References

- Beier, P., and S. Loe. 1992. A checklist for evaluating impacts to wildlife movement corridors. *Wildlife Society Bulletin* 20(4):434–440.
- Hilty, J. A., W. Z. Lidicker Jr, and A. M. Merenlender. 2019. *Corridor Ecology: Linking Landscapes for Biodiversity Conservation*. Second Edition. Island Press.
- Soulé, M. E., and J. Terbough. 1999. Conserving nature at regional and continental scales - a scientific program for North America. *BioScience* 49(10):809–817.