



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: July 18, 2022

Approved

Date

COUNCIL DISTRICT: 4

SUBJECT: ADMINISTRATIVE HEARING ON THE ENVIRONMENTAL APPEAL OF THE PLANNING DIRECTOR'S ADOPTION OF THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION (IS/MND) FOR THE ALVISO HOTEL PROJECT (PLANNED DEVELOPMENT PERMIT NO. PD19-031)

RECOMMENDATION

- a) Conduct an Administrative Hearing to consider the appeal of the Planning Director's adoption of the IS/MND for the Alviso Hotel Project in accordance with the California Environmental Quality Act (CEQA) for Planned Development Permit, File No. PD19-031, to allow the construction of an approximately 112,463-square-foot, 214-room hotel in a five-story building, including surface parking and a four-story parking garage on an approximately 6.23-acre project site located south of North First Street and north of Highway 237 in the Alviso area of San José.
- b) Adopt a resolution denying the Environmental appeal and upholding the Planning Director's adoption of the Alviso Hotel Project IS/MND, associated Mitigation Monitoring and Reporting Program, and Planned Development Permit, and finding that:
 - (1) The City Council has read and considered the IS/MND for the Alviso Hotel Project and related administrative records related to Planned Development Permit No. PD19-031; and
 - (2) The IS/MND for the Alviso Hotel Project was prepared and completed in full compliance with the California Environmental Quality Act of 1970, as amended, together with state and local implementation guidelines; and
 - (3) Adoption of the IS/MND reflects the independent judgment and analysis of the City of San José; and
 - (4) The preparation of a new environmental document is not required because the IS/MND thoroughly and adequately analyzed the project and the environmental

appeal does not raise any new significant impacts that have not already been analyzed or addressed in the IS/MND in accordance with Public Resources Code (PRC) Section 21083 or CEQA Guidelines Sections 15073 and 15185.

OUTCOME

Denial of the environmental appeal and upholding the Planning Director's adoption of the IS/MND for the Alviso Hotel Project will allow the project applicant to move forward with the implementation of Planned Development Permit No. PD19-031, to allow the construction of an approximately 112,463-square-foot, 214-room hotel in a five-story building, including surface parking and a four-story parking garage.

Upholding the environmental appeal would void both the Planning Director's adoption of the IS/MND and approval of the Planned Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the project may elect not to move forward.

EXECUTIVE SUMMARY

The proposed project would allow the construction of a 214-room, five-story hotel and associated parking on a vacant, previously graded site located on the southside of North First Street, approximately 410 feet westerly of Nortech Court. The City prepared an IS/MND for the Alviso Hotel project which was circulated for public review for 30 days (Exhibit D). During the IS/MND's public circulation period, the City of San José received eight comment letters and staff fully responded to the comments formally in a Response to Comments and Text Changes (RTC) document dated March 2022 (Exhibit E). All commenters were notified of the RTC's availability and the document was posted on the City's Environmental Review website on March 24, 2022, prior to the scheduled Director's Hearing on April 6, 2022.

During the April 6, 2022 Director's Hearing, staff requested a deferral to April 20, 2022, in order to fully and adequately respond to supplemental comment letters submitted on April 5, 2022, the day before the hearing, by Shani Kleinhaus on behalf of the Santa Clara Valley Audubon Society (SCVAS) and Brian B. Flynn of Lozeau Drury, LLP, on behalf of the Laborers International Union of North America, Local 270 and its members ("LIUNA"). Staff published responses to these comments on the City's website on April 19, 2022. These responses are attached to this memorandum, see Exhibit F.

On April 20, 2022, the Planning, Building, and Code Enforcement Director, ("Hearing Officer") held a public hearing to consider the IS/MND for the Alviso Hotel Project and Planned Development Permit No. PD19-031. At the hearing, five members of the public commented on the project; all but two speakers had submitted comments during the public circulation period. Shani Kleinhaus spoke on behalf of SCVAS and summarized objections to the IS/MND included

in their previous comment letters, including an additional comment letter submitted to the City via email on April 19, 2022, prior to the hearing. Matthew Jones, an interested member of the public, spoke regarding a letter he submitted immediately before the hearing on the adequacy of the biological resources assessment, and Brian Flynn from Lozeau Drury, LLP, spoke on behalf of the Laborers International Union of North America, Local 270 and its members (LIUNA), summarizing concerns raised in previous comment letters. Marcos Espinoza, a resident of Alviso, stated concerns about the project's environmental impacts. All the speakers stated concerns regarding the adequacy of the CEQA analyses. Staff responded verbally to the comments raised, specifically those directed at staff by the SCVAS and Mr. Jones at the public hearing. During the hearing, staff responded to previous concerns regarding biological resources and air quality. The Hearing Officer considered all the information in the administrative record including the IS/MND, responses to comments, and letters and testimony presented at the public hearing and determined that the IS/MND was adequately prepared and also the appropriate environmental clearance under CEQA for the proposed project and therefore, approved Planned Development Permit No. PD19-031.

On April 22, 2022, Shani Kleinhaus on behalf of SCVAS and Mark Espinoza, a resident of Alviso, submitted timely appeals for the adoption of the IS/MND for the Alviso Hotel Project. On April 25, 2022, Brian B. Flynn from Lozeau Drury, LLP, on behalf of LIUNA Local 270, also submitted a timely appeal for the adoption of the IS/MND for the project. The appellants claimed that the IS/MND did not fully analyze the project's noise and traffic impacts, the project's impacts and cumulative impacts on biological resources, address indoor air quality, and had deficiencies in its review, including segmentation of CEQA review. The appellants alleged that for the appeal reasons provided, there was substantial evidence supporting a fair argument for the preparation of an Environmental Impact Report (EIR). Two appeals of the project permit were also received within the allotted ten days after the Director's decision; however, neither appellant met the location requirement (i.e., property owner or tenant within one thousand feet of the subject site). Copies of the environmental determination appeals are included as Exhibit A.

As explained in detail below and in the Response to Environmental Determination Appeals (Exhibit B), the appellants failed to provide substantial evidence in raising a fair argument under CEQA that the proposed project would result in significant, adverse, un-mitigatable impacts. Therefore, the appellants have not presented substantial evidence that the proposed project requires new environmental documents as set forth in California Public Resources Code Section 21166, CEQA Guidelines Sections 15162-15164 and 15168, or any other provisions under CEQA.

BACKGROUND

Site Location

The approximately 6.23-acre site is located south of North First Street and north of Highway 237, approximately 410 feet west of Nortech Court in the Alviso area of San José. The project site is currently vacant but partially paved with a non-wetland water feature present along the

southern boundary. The site is bounded by the Guadalupe River Trail and the Guadalupe River to the west, a recreational facility (Top Golf) to the north, office buildings and associated surface parking to the east, and California State Route 237 to the south. The site is accessible from Bay Vista Drive, via a 26-foot-wide private street that was recently constructed to support the newly opened recreational facility (Top Golf) adjacent to the subject site.

Proposed Project

The subject Planned Development Permit application was filed by Shops@Terra, LLP, on October 20, 2019. The Planned Development Permit would allow the construction of an approximately 112,463-square-foot, 214-room hotel in a five-story building, including surface parking and a four-story parking garage on an approximately 6.23-acre project site located south of North First Street and north of Highway 237 in the Alviso area of San José.

Environmental Review

Pursuant to CEQA, the City prepared an IS/MND for the project which concluded that all the identified potentially significant impacts would be reduced to less than significant with the implementation of mitigation measures, and therefore, a Mitigated Negative Declaration was the appropriate environmental clearance for the proposed project. The Alviso Hotel Project IS/MND (SCH#2021100134) was circulated for public review and comment for 30 days, from October 12, 2021 to November 10, 2021. Eight comment letters were received from public agencies and private parties, including neighbors. Comments received concerned the following:

- Landscaping and on-site wells,
- alleged fair argument standard for an EIR regarding significant and unavoidable impacts to wildlife,
- indoor and outdoor air quality impacts,
- evaluation of greenhouse gas impacts,
- piecemealing under CEQA,
- transportation impacts, and
- previous environmental review and analyses for the adjacent TopGolf project regarding sensitive habitat and species of special concern.

Staff responded to all concerns raised in the Response to Comments document (Exhibit E) posted on the City's environmental website on March 24, 2022, and notified commenters of the document's availability via email. In summary, the comments received on the IS/MND did not raise any new or previously unknown issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. The entire IS/MND, Responses to Comments, and other related environmental documents are attached as Exhibit D and Exhibit E respectively, and available on the environmental review webpage:

<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/alviso-hotel-project>.

Planning Director's Public Hearing

On April 20, 2022, the Hearing Officer held a public hearing to consider the IS/MND and Planned Development Permit No. PD19-031. At the public hearing, five members of the public spoke against the project approval citing concerns with the project and environmental document including:

- The adequacy of the mitigation and concerns with segmentation under CEQA because the project was not evaluated in the IS/MND prepared for the TopGolf project, and reiterated the need for an EIR.
- An EIR is needed to analyze and disclose the project's impacts on biological resources; the biological report underestimated the diversity of wildlife, and conclusions in the MND regarding biological resources are not supported by substantial evidence.
- Impacts of indoor air quality from interior finishes, including increased cancer risks from indoor air quality emissions of formaldehyde that could expose future hotel employees.
- The project's review process and claims that findings cannot be made for the Planned Development Permit because it is inconsistent with the General Plan's goals and policies outlined under Environmental Resources, Chapter 3.
- Transparency regarding the environmental conditions of approval and mitigation measures and consequences regarding non-compliance with mitigation measures.
- Maintenance of neighboring roads and critique of the applicant's current road maintenance practices.

After public comment, staff summarized responses from the posted response to comments and responded to public testimony. Namely, that staff had deferred the scheduled April 6, 2022 Director's hearing to review the supplemental comments submitted on April 5, 2022, by the SCVAS and Lozeau and Drury, LLP, and that upon a thorough evaluation of the additional information presented, staff maintained that the analysis in the IS/MND is adequate and in accordance with CEQA and that the project's identified significant impacts can be mitigated to a less than significant level with mitigation measures. The Alviso Hotel IS/MND includes project-specific reports, including a Biological Resources Assessment prepared by Brian Kearns, Ph.D, wildlife biologist, with WRA Environmental Consultants in February 2020. WRA's survey documented 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, conforms with industry standards, and does not constitute a misrepresentation of habitats within the project site or the project's potential impacts. Furthermore, in response to claims that the IS/MND is a segmentation of CEQA analysis, staff stated that the IS/MND properly describes the existing conditions on the site, and does not improperly segment CEQA review in relation to the previously approved Topgolf @ Terra project, provides adequate analysis of the project's impacts to biological resources, and includes mitigation measures adequate to reduce impacts on the site and its immediate environs to a less than significant level.

Regarding the indoor air quality claims, staff reiterated that the Bay Area Air Quality Management District (BAAQMD) does not have an adopted threshold for formaldehyde

exposure from indoor building sources. While BAAQMD recognizes formaldehyde as an outdoor Toxic Air Contaminant from automobile and truck exhaust, the BAAQMD CEQA guidelines do not define a specific threshold for formaldehyde emissions from interior finishes and furnishing, as BAAQMD does it regulate indoor air quality. Additionally, staff noted that CEQA is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project's future users or residents unless the project risks exacerbate those environmental hazards or risks that already exist. Because there is no existing formaldehyde condition, there would be no requirement to analyze the impact of the project's formaldehyde emissions on future site workers/site users because such impacts do not need to be considered under CEQA. Further, any such analysis regarding the future use of building materials would be speculative under CEQA, and thus is not a requirement. Staff identified that the proposed project would be built in accordance with the most recent California Green Building Code, which specifies that composite wood products (such as hardwood, plywood, and particleboard) meet the requirements for formaldehyde as specified in the California Air Resources Board's Air Toxic Control Measures, and would be required to comply with the City's Green Building Ordinance. In addition, the project would be designed to achieve minimum LEED certification per the City's Private Sector Green Building Policy (Council Policy 6-32). LEED certification requires measures to improve indoor air quality.

The Hearing Officer considered the administrative record including the information presented prior to and during the hearing, including written and verbal testimony, in addition to the CEQA process and product, and determined that the IS/MND was the appropriate environmental clearance under CEQA and approved the Planned Development Permit.

The Planning Director's Hearing Agenda of item 4a. including the draft Planned Development Permit and all associated documents for the April 20, 2022 Planning Director's Hearing, are included as an attachment, see Exhibit C. The audio recording of the meeting is available at https://sanjose.granicus.com/ViewPublisher.php?view_id=54.

Environmental Appeal

Pursuant to Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal to the City Council the determination made by the Planning Director, Planning Commission, or non-elected decision-making body regarding the appropriate environmental clearance for a project. At the Appeal Hearing, the City Council may uphold the Planning Director's adoption of the IS/MND or require the preparation of new environmental documents in accordance with Title 21 of the Municipal Code.

Environmental Appeals

The City received three appeals of the Director's adoption of the IS/MND for the Alviso Hotel Project. On April 22, 2022, Shani Kleinhaus on behalf of SCVAS and Mark Espinoza, a resident of Alviso, submitted timely environmental appeals, and on April 25, 2022, Brian B. Flynn from Lozeau Drury, LLP, on behalf of LIUNA also submitted a timely environmental appeal. The appellants cited the previous concerns raised in prior letters and at the Director's Hearing as

reasons for their appeals. The appellants maintained that the IS/MND did not fully analyze the project's impacts on noise and traffic, the project's impacts and cumulative impacts on biological resources, address indoor air quality, and had deficiencies in its review, including segmentation of CEQA review. The appellants concluded that for the appeal reasons provided, there was substantial evidence supporting a fair argument for the preparation of an EIR. Copies of the appeals are included as Exhibit A to this memorandum.

In summary, the basis for the appeals as stated in the Notice of Environmental Appeal are as follows:

1. The SCVAS's stated reasons for the appeal included:
 - a. Deficiencies in the City's CEQA process such as segmentation of CEQA review and underpayment of Habitat Agency fees;
 - b. Mischaracterization of the project description regarding the site's baseline conditions and the inappropriate definition of the site as developed land;
 - c. Inadequate reconnaissance-level surveys and inappropriate evaluations of species richness and wildlife and avian habitat;
 - d. Inadequate analysis of impacts to biological resources and other environmental resources and discussion and analysis of significant and unavoidable impacts to special status species, including California species of special concern such as the Western Pond Turtles, burrowing owls (especially in Santa Clara County), and other avian species;
 - e. Failure to analyze and mitigate the project's impacts on wildlife movement; fish migration, road mortality, and window collisions;
 - f. Impacts of direct and indirect biological impacts of lighting; cumulative impacts analysis to biological resources and to open space, discussion of cumulative loss of open space and habitat;
 - g. Inadequate mitigation measures;
 - h. The project's air quality and greenhouse gas impacts (conclusions not supported by substantial evidence);
 - i. Inconsistency with the City's General Plan, in particular the Environmental Resources section and Council Riparian and Bird Safety Policy 6-34.
2. Mark Espinoza's appeal identified general concerns with the project's impacts to air quality, noise, traffic, and biological resources and cited comment letters from Lozeau Drury, LLP, dated November 10, 2021 and April 5, 2022, the joint comment letter from SCVAS, Green Foothills, and the San Francisco Bay Citizens Committee to Complete the Refuge dated November 10, 2021, and SCVAS comment letter dated April 5, 2022, and his email/comment from November 1, 2021, which included concerns with piecemealing under CEQA and a demand to prepare an EIR.
3. The appeal application from Lozeau Drury, LLP, included an attachment of the supplemental letter submitted to the City on April 5, 2022 ("Attachment A"). In summary, the overarching concerns and responses focused on wildlife movement and vehicle collisions, habitat loss, species observations/detections and richness, special-status species protection, and bird-safe building design elements.

ANALYSIS

Exhibit A includes the full Environmental Appeal Letters and Exhibit B includes a detailed response to each item raised in the letters. Staff's responses are summarized below:

Response to the Environmental Appeal

As described above, the MND appeals referred to comment letters submitted on April 5, 2022, by SCVAS and Lozeau, Drury LLP. Formal responses were prepared and publicly posted in response to these supplemental comment letters a day prior to the Director's hearing on April 19, 2022. The City affirms its responses and maintains that none of the comments by the appellants raised any new issues about the project's environmental impacts, nor did they provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the supporting Initial Study for the MND. The following summarizes staff's response to each topic area.

- **Cumulative Impacts and Habitat Plan impact fees:** The IS/MND included project-specific reports, including a Biological Resources Assessment, and took into consideration cumulative impacts on biological resources associated with the previously approved Topgolf @ Terra project, as shown in Section 4.21 Mandatory Findings of Significance of the IS/MND. As further described in Section 4.4 Biological Resources of the IS/MND, the project could affect sensitive biological resources in both the short- and long-term and therefore, would implement measures such as preconstruction surveys to reduce impacts on biological resources. Additionally, all projects, including the Alviso Hotel Project, are required to implement best management practices and comply with all federal, state, regional, and local regulations described in Section 4.4 of the IS/MND.
- **Segmentation/Piecemealing under CEQA:** The SCVAS claims that since 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 no development was proposed at the time the IS/MND for the Topgolf@Terra project was adopted. The CEQA Guidelines define a project under CEQA as "the whole of the action" that may result either directly or indirectly in physical changes to the environment. Piecemealing or segmenting entails dividing a project into two or more pieces and evaluating each piece in a separate environmental document, rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA, because dividing a project into several pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less than significant impact on the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies. When the Topgolf @ Terra IS/MND was prepared in 2016, the Alviso Hotel project site was identified as a 5.8-acre undeveloped area at the far eastern end of the site that would remain

undeveloped with the proposed Topgolf @ Terra project. The application for this project was submitted in October of 2019, therefore; the City did not improperly segment environmental review under CEQA as the Alviso Hotel project was not a reasonably foreseeable project at the time and no analysis could have been completed regarding its potential environmental impacts.

- Habitat Plan and Conservation of Burrowing Owls: SCVAS's comment regarding the project's underpayment of Santa Clara Valley Habitat Plan (Habitat Plan) fees is incorrect. 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 fair share contribution to cumulative impacts to species and habitats covered by the Habitat Plan. Further, the project would implement best management practices (BMPs) for the protection of wildlife such as pre-construction surveys and mitigation measures to reduce impacts on sensitive habitats and on both common and special-status species, as described in Section 4.4 Biological Resources. Therefore, the project would not significantly contribute to cumulative impacts on biological resources and would conform with the Habitat Plan.
- Project Description and Baseline Conditions: The SCVAS claims 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 by a qualified biologist. Additionally, 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 regardless of the habitat definition, thus ensuring any potential impact to nesting birds or burrowing owls is a less than significant impact (refer to MM BIO-1.2 and MM BIO-1.3).
- Biological Resources surveys, Special Status Species: Dr. Smallwood, a biologist retained by Lozeau Drury, LLP, claims that the biological surveys to support the IS/MND were insufficient. For the purposes of CEQA, the survey effort completed by WRA Environmental Consultants for the IS/MND is sufficient and adequate. Site visits for CEQA-level biological assessments are often conducted in one day for a site of this type and size and are not expected to detect all and every species that could potentially occur on a site. Rather, reconnaissance-level surveys observe species largely opportunistically and focus predominantly on describing available habitat features that could support special status or protected common species. The IS/MND accurately described the potential for special-status species (as defined under CEQA) to utilize the site. The only species observed by the appellant's biologist, Dr. Smallwood in Lozeau Drury, LLP's comment letter, that would be considered special status within the context outlined above was the white-tailed kite. While WRA did not observe this species during site visits, the IS/MND acknowledged that this species has the potential to occur on the site and includes mitigation measures to avoid significant impacts on white-tailed kites (refer to

MM BIO-1.2). Therefore, the IS/MND adequately addresses potential impacts to special status species and no further study is required.

- Burrowing owls and habitat loss: The issue of impacts on 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 in Exhibit E). 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 Lozeau Drury, LLP, during the IS/MND's public circulation period 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 feasible mitigation measures to reduce those impacts to a less than significant level. Additionally, the project will further mitigate any perceived loss of habitat through the implementation of conditions in the Habitat Plan, 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.
- Wildlife movement and vehicle collisions: Lozeau Drury, LLP, commented that the IS/MND failed to analyze and mitigate the project's impacts on wildlife movement; fish migration, road mortality, and window collisions. As previously addressed in the City's formal response in coordination with the environmental consultant and WRA Environmental Consultants (Exhibit F), 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, 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. The height of the proposed Alviso Hotel 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, the City 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. Additionally, 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.

- Council Riparian and Bird Safety Policy 6-34: Lozeau Drury, LLP, allege that the project is inconsistent with the City's General Plan, in particular the Environmental Resources section and Council Riparian and Bird Safety Policy 6-34. A bird-safe design review was conducted for the project, 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.

Please refer to Exhibit B for detailed responses to each appellant's appeal letter. None of the comments by the appellants raised any new issues about the project's environmental impacts, nor do they provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the supporting IS/MND. Therefore, the IS/MND and associated documents are adequate in their analysis of the proposed project.

CONCLUSION

Based on the above analysis, the comments submitted by the appellants represent an unsubstantiated opinion and do not demonstrate facts and reasoned analysis, nor make a fair argument that a new environmental document is required pursuant to CEQA Guidelines Section 15162. The IS/MND has been prepared in full compliance with CEQA and its implementing guidelines. The conclusions are based on facts and reasoned analysis, which reflect the independent judgment of the City of San José. Therefore, staff recommends the City Council deny the appeal and uphold the Planning Director's adoption of the IS/MND and approval of the Planned Development Permit.

EVALUATION AND FOLLOW-UP

If the Council denies the appeal and upholds the Planning Director's adoption of the IS/MND for the Planned Development Permit, then the applicant may proceed with the acquisition of the necessary grading and building permits and implement the required mitigation measures to begin the development of the Alviso Hotel Project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would:

- Comply with the Greenhouse Gas Reduction Strategy 2030 goals
- Be consistent with the existing Envision General Plan Land Use Designation
- Enroll in San José Clean Energy (SJCE) GreenSource program

POLICY ALTERNATIVES

For the Environmental Appeal, the Council can either:

- a. Deny the appeal and uphold the adoption of the MND and Planned Development Permit, or
- b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Planned Development Permit, or the applicant not moving forward with the project.

Staff recommends that the City Council deny the CEQA appeal, uphold the Planning Director's adoption of the Alviso Hotel Project Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program, and the Planned Development Permit.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. The Notice of Intent for the IS/MND was distributed to interested members via email and newsflash on the City's website at the start of the public circulation period, from October 12, 2021 to November 10, 2021. Notice of the public hearing for this appeal and associated materials were distributed to the appellant, applicant, and adjacent property owner(s). Staff has been available to answer questions from the public.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

Initial Study/Mitigated Negative Declaration for the Alviso Hotel Project.

/s/
Christopher Burton, Director
Planning, Building, and Code Enforcement

For questions, please contact David Keyon, Principal Planner, at (408) 535-7898 or david.keyon@sanjoseca.gov.

Attachments:

Exhibit A: Environmental Appeal from Santa Clara Valley Audubon Society, dated April 22, 2021; Environmental Appeal from Lozeau Drury, LLP, on behalf of LIUNA dated April 25, 2022; Environmental Appeal from Mark Espinoza dated April 22, 2022.

Exhibit B: Response to Environmental Appeal Comments

Exhibit C: April 20, 2022 Director's Hearing, approved hearing documents: Planned Development Permit, Project Plans, Mitigated Negative Declaration (MND) Resolution and Mitigation Monitoring and Reporting Program (MMRP)

Exhibit D: Initial Study and Mitigated Negative Declaration for the Alviso Hotel Project

Exhibit E: Response to Comments (March 2022)

Exhibit F: Responses to Supplemental Comment Letters from SCVAS and Lozeau, Drury, LLP.