

Alviso Hotel

File No. PD19-031

Initial Study / Mitigated Negative Declaration

RESPONSE TO APPEALS

July 8th, 2022

CEQA Lead Agency:



City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, California 95113 Phone: (408) 535-3555

In Consultation with:



David J. Powers & Associates
1871 The Alameda, Suite 200
San José, CA 95126
Phone: (408) 248-3500



Memorandum

To: Maira Blanco, Planner
City of San José

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

Date: July 8th, 2022

Subject: **Alviso Hotel – Responses to Appeal of Environmental Determination**

The City of San José approved a Planned Development Permit, File No. PD19-031, for the Alviso Hotel Project at the April 20, 2022 Director’s Hearing and considered and approved the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the project, in accordance with CEQA. After the Director’s Hearing, the City received three timely environmental appeals on the Director’s decision from the following appellants: Mark Espinoza (received April 22, 2022), the Santa Clara Valley Audubon Society (received April 22, 2022), and Brian B. Flynn of Lozeau Drury, LLP on behalf of Laborers International Union of North America – Local Union 270 (received April 25, 2022). As described in further detail below, the environmental appeals do not raise any new issues about the project’s environmental impacts, provide no substantial evidence in support of a fair argument that the project, after mitigation, would result in a significant, unavoidable impact, 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 following pages contain a list of the organization and persons that submitted appeals on the City’s decision to approve the IS/MND and the City’s responses to these appeals. The specific comments have been excerpted from the appeals and are presented as “Comment” with each response directly following (“Response”). Copies of the actual appeals submitted to the City of San José are attached to this document in Attachment A.

SECTION 1.0 APPELLANTS

| Appeal Received From | Date of Appeal | Page of Response |
|--|-----------------------|-------------------------|
| A. Mark Espinoza | April 22, 2022 | 2 |
| B. Santa Clara Valley Audubon Society | April 22, 2022 | 4 |
| C. Brian Flynn of Lozeau Drury, LLP., on behalf of the Laborers International Union of North America – Local Union 270 | April 25, 2022 | 11 |

A. Mark Espinoza (dated April 22, 2022)

Comment A.1: Evidence submitted in comment letters on the IS/MND and after show the Project will have significant unmitigated impacts in areas including but not limited to air quality, noise, traffic, biological resources, specifically see the following letters: Lozeau Drury/LIUNA Nov 10, 2021...

Response A.1: The appellant refers to previously submitted comment letters during the IS/MND public circulation period (October 12, 2021 to November 10, 2021). The appellant also raises the Lozeau Drury/LIUNA comment letter submitted November 10, 2021, that he alleges shows the project will have significant unmitigated impacts. This statement is without basis. The environmental impacts of the project were analyzed in the Alviso Hotel project IS/MND, which was circulated for public review for 30 days from October 12, 2021 through November 10, 2021. The analysis in the Initial Study identified the project would have impacts to Biological Resources, Cultural Resources, and Hazardous Materials. However, with implementation of mitigation measures identified in the IS/MND, the impacts would be mitigated to a less than significant level. The IS/MND did not identify any significant impacts to noise or air quality. The City responded to the Lozeau Drury/LIUNA November 10, 2021 letter in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions¹” under responses B.1 through B.90. The City’s response concluded that the comment letter did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment A.2: ...Green Foothills/Santa Clara Valley Audubon/committee to complete the refuge Nov 10, 2021.

This comment states that the Santa Clara Valley Audubon/Citizens Committee to Complete the Refuge comment letter submitted November 10, 2021 shows the project will have significant unmitigated impacts. This statement is without basis. The Audubon/Citizens Committee comment letter was responded to in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions²” under responses H.1 through H.4. The City’s response concluded that the Audubon/Citizens Committee comment letter dated November 10, 2021 did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment A.3: ...Lozeau Drury/LIUNA April 5, 2022,

¹ City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

² City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

Response A.3: This comment states that the Lozeau Drury/LIUNA comment letter submitted April 5, 2022 shows the project will have significant unmitigated impacts. This statement is without basis. The Lozeau Drury/LIUNA comment letter was responded to in the memorandum titled “WRA Alviso Hotel Response to Comments”.³ The memorandum concluded that the 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, after mitigation, would result in new significant environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND.” This same conclusion applies to this appeal comment.

Comment A.4: ...Santa Clara Valley Audubon, April 5, 2022.

Response A.4: This comment states that the Santa Clara Valley Audubon Society comment letter submitted April 5, 2022 shows the project will have significant unmitigated impacts. This statement is without basis. The comment letter was responded to in the memorandum titled “Alviso Hotel -Responses to SCVAS”.⁴ The memorandum stated the following, which also applies to this appeal comment: “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.”

Comment A.5: ...Email from Mark Espinoza, Nov 1, 2021

Response A.5: This comment states Mark Espinoza’s comment letter (email) submitted November 1, 2021 shows the project will have significant unmitigated impacts. Mark Espinoza’s comment letter was responded to in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions” under responses C.1 through C.2.⁵ The City’s response concluded that the comment letter dated November 1, 2021 did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts.

³ City of San José. WRA Alviso Hotel Response to Comments. April 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/84658/637859783827270000>

⁴ Alviso Hotel -Responses to SCVAS. April 19, 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/84656/637859783299600000>

⁵ City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

B. Santa Clara Valley Audubon Society (dated April 22, 2022)

Comment B.1: Reason for appeal: This appeal includes (but is not limited to): Comment letter by the Santa Clara Valley Audubon Society, Citizens Committee to Complete the Refuge, and Green Foothills (Dated November 10, 2021)...

Response B.1: The Santa Clara Valley Audubon, Citizens Committee to Complete the Refuge, and Green Foothills comment letter submitted November 10, 2021 was responded to in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions” under responses H.1 through H.4.⁶ The City’s response concluded that the comment letter dated November 10, 2021 did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR. Therefore, this comment has already been responded to and the statement is without basis.

Comment B.2: ...and letters by Santa Clara Valley Audubon Society dated April 5, 2022 and April 15, 2022...

Response B.2: The Santa Clara Valley Audubon Society comment letters submitted April 5, 2022 and April 15, 2022 were responded to in the memorandum titled “Alviso Hotel - Responses to SCVAS”.⁷ The memorandum responded to each argument made within the letters, and then made the following conclusion (which also applies to this appeal comment): “...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 impacts substantially greater in severity than disclosed in the IS/MND.”

Comment B.3: Comments and Letter submitted by the Laborers International Union of North America – Local Union 270 (Brian B. Flynn Lozeau | Drury LLP, Dated November 10, 2021 and April 5, 2022.

Response B.3: Lozeau Drury/LIUNA’s comment letter submitted November 10, 2021 was responded to in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions” under responses B.1 through B.90.⁸ The City’s response concluded that the comment letter dated November 10, 2021 did not provide substantial evidence supporting a fair argument that the project would not result in

⁶ City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

⁷ Alviso Hotel -Responses to SCVAS. April 19, 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/84656/637859783299600000>

⁸ City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

significant unavoidable impacts requiring preparation of an EIR. Additionally, Lozeau Drury/LIUNA's comment letter submitted April 5, 2022 was responded to in the memorandum titled "WRA Alviso Hotel Response to Comments". The memorandum concluded that the 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." This same conclusion applies to this appeal comment.

Comment B.4: Mr. Matt Jones (letter submitted for the Director of Planning hearing on April 20, 2022).

Response B.4: Mr. Matt Jones' letter was responded to verbally by Planning staff during the Planning Director's hearing on April 20, 2022. The transcript from the Director's Hearing has been attached to this document. A summary of the transcript is presented below:

"The comment sent this morning correctly identified that the posted permit online did not include the MMRP and environmental permit conditions identified for the project in the IS/MND. This was a clerical error. Staff has updated the record with the correct permit, as shown on the screen, which includes condition 25 and 26. Condition 25 requires conformance with the project's Mitigation, Monitoring and Reporting Program (MMRP) and Condition 26 requires conformance with all the standard environmental conditions including construction air quality, water quality, and noise Best Management Practices, conformance with the Santa Clara Valley Habitat Plan and payment of all applicable fees, flood control measures, conformance with state and local laws for asbestos and lead base paint, and conformance with the City's standard cultural resources conditions for inadvertent discovery. All of the mitigation measures in the MMRP and the standard environmental conditions were identified in the IS/MND circulated for public comments and posted on the City's website."

As described during the hearing, the letter did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.5: Verbal comments by Santa Clara Valley Audubon Society at a community meeting, Fall 2021, focusing on lighting.

Response B.5: The issue of lighting was addressed in the document titled “Alviso Hotel Responses to Public Comments and Text Revisions” under response B.41.⁹ As described in the response, the proposed project would comply with lighting restrictions as detailed in the City of San José Downtown Design Guidelines and City Council Policy 6-34 (Riparian Corridor Protection and Bird-Safe Design), which represent the City’s most up to date guidance on bird-safe design. These restrictions include turning lights off during nighttime hours or during assumed high volume migration periods to prevent attraction and confusion of birds in nearby marsh areas and prohibitions of lights pointing directly skyward. This appeal comment does not provide substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.6: Verbal comments by the Santa Clara Valley Audubon Society, Laborers Internation Union of North America, Local Union 270 (“LIUNA”), Mr. Matthew Jones, and Organización Comunidad de Alviso at the director hearing of April 20, 2022.

Response B.6: Verbal comments received during the Planning Director’s hearing on April 20, 2022 were responded to verbally during the hearing. The transcript from the Director’s Hearing has been attached to this document. To summarize, the Santa Clara Valley Audubon Society verbally commented that they stand by their concerns raised regarding the adequacy of mitigation and the segmentation of the project. This concern is responded to above; please see Response A.2, Response A.4, Response B.1, and Response B.2. They also stated that they were not able to follow what the City mentioned at the beginning of the hearing regarding the Mitigation Monitoring and Reporting Program and the Environmental Permit Conditions, and therefore believe that the decision should be deferred until the public could review. In response, the City clarified that not posting the Mitigation Monitoring and Reporting Program and the Environmental Permit Conditions was a clerical error and staff has updated the record with the correct permit. The City shared the items during the hearing for the record.

LIUNA verbally commented that an EIR should be completed due to the project’s impact to biological resources and air quality resources. In response, the City stated that in accordance with the California Supreme Court, CEQA analysis is concerned with the impacts of the project on the environment and not the impact of the environment on the project. The City also stated that the Bay Area Air Quality Management District does not have an adopted threshold for formaldehyde exposures from indoor building sources and the project would be constructed to meet the most recent California Building Code.

Matt Jones verbally commented to reference his letter submitted the morning of the hearing. Matt Jones also asked the City to consider completing an EIR due to the

⁹ City of San José. Response to Public Comments and Text Changes. March 2022.
<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

project potentially having significant impacts on the environment. Matt Jones questioned how the mitigation measures would be enforced. Mitigation measures are enforced by the City as the Lead Agency and are attached to the Planned Development Permit as conditions of approval. As described during the hearing, the letter did not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Organización Comunidad de Alviso verbally commented that he would like the applicant to give the conditions that they agreed to in a settlement. This information has no relation to the Initial Study and environmental analysis. No information was provided by the applicant.

As described during the hearing, the verbal comments did not provide substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.7: Our appeal focuses on the following deficiencies in the City’s CEQA process, including but not limited to: segmentation of CEQA review (and underpayment of Habitat Agency fees)

Response B.7: Comments on segmentation of CEQA review were addressed in the document titled “Response to Public Comments and Text Changes” dated March 2022 under Response H.1¹⁰, as well as in the document titled “Alviso Hotel - Responses to SCVAS”.¹¹ As stated within these two documents, 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. The Alviso Hotel 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. The project will be subject to payment of all applicable fees to the Habitat Agency in conformance with the Santa Clara Valley Habitat Plan (Habitat Plan), as described on page 59 and pages 66 through 69 of the IS/MND. Payment of the fees is completed prior to the issuance of grading permits for projects.

Additionally, the document titled “Response to Public Comments and Text Changes” provided responses regarding the Habitat Agency fees under Responses B.12, B.51, and H.3. Text revision to page 183 of the IS/MND (see page 128 of the document titled “Response to Public Comments and Text Changes”) revised the IS/MND to provide further information on the project’s compliance with the Habitat Agency

¹⁰ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

¹¹ Alviso Hotel -Responses to SCVAS. April 19, 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/84656/637859783299600000>

fees.¹² This appeal comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.8: Project description mischaracterizes the site’s baseline conditions; inappropriate definition of undeveloped (graded) land as developed land

Response B.8: This comment was addressed in the document titled “Response to Public Comments and Text Changes” dated March 2022 under Response B.3.¹³ As stated in the document referenced above, “developed” is an industry term for land that has been heavily graded and/or disturbed, and no longer supports native vegetation. It can be used to refer to areas with or without impervious surface. This appeal comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.9: Inadequate reconnaissance-level surveys; inappropriate evaluations of species richness and of wildlife and avian habitat

Response B.9: This comment was responded to in the memorandum titled “WRA Alviso Hotel Response to Comments March 2022”.¹⁴ The memorandum concluded that the 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.” This appeal comment does not raise any new concerns that have not already been addressed by the City. This appeal comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.10: The analysis of impacts to Biological Resources and other environmental resources is inadequate;

Response B.10: This appeal comment is broad in nature and does not point to a specific flaw in the IS/MND analysis of impacts to biological resources and other environmental resources nor does it provide any substantial evidence supporting the claim that the IS/MND analysis of impacts to biological resources and other environmental resources is inadequate. Therefore, this appeal comment does not provide substantial evidence supporting a fair argument that the project, after

¹² City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

¹³ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

¹⁴ City of San José. WRA Alviso Hotel Response to Comments. April 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/84658/637859783827270000>

mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.11: Significant and unavoidable impacts to Special Status species, including California species of special concern such as Wester Pond Turtles, burrowing owls and other avian species.

Response B.11: This comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant impacts to special status species. The IS/MND addressed impacted to special status species in Section 4.4.¹⁵ Additionally, impacts to special status species were addressed in the “Response to Public Comments and Text Changes” dated March 2022 under Response B.2 through B.6, B.9 through B.10, B.12 through B.13, B.35 through B.39, B.43, B.48, B.51, and H.2.¹⁶

Comment B.12: The IS/MND failed to analyze and mitigate the Project’s impacts on wildlife movement, fish migration, road mortality, and window collisions (including from architectural elements (glass)), electrical transmission, and infrastructure)

Response B.12: Comments on window collision were addressed in the document titled “Response to Public Comments and Text Changes” dated March 2022 under Response B.11 and B.50.¹⁷ Responses on wildlife movement and road mortality were provided in the document titled “Responses to Public Comments and Text Changes” dated March 2022¹⁸ (refer to Responses B.9 and B.10) as well as in the memorandum titled “WRA Alviso Hotel Response to Comments”.¹⁹

The IS/MND addressed the project’s impacts to the Guadalupe River riparian corridor in Section 4.4 and determined the impacts to be less than significant.²⁰ The project is set back approximately 150 feet from the Guadalupe River and 100 feet from the top of the river bank. No construction activities, such as staging, would occur within the setback. The project has been designed to avoid impacts on the riparian buffer and no project activities would occur within the 100-foot riparian setback. As a result, the project would not result in significant impacts to fish migration, and nothing in the comment substantiates the claim that fish would be affected by the project.

¹⁵ City of San José. Alviso Hotel Initial Study/Mitigated Negative Declaration. October 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument/78205/637696335075970000>

¹⁶ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

¹⁷ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

¹⁸ Ibid.

¹⁹ City of San José. WRA Alviso Hotel Response to Comments. April 2022

<https://www.sanjoseca.gov/home/showpublisheddocument/84658/637859783827270000>

²⁰ City of San José. Alviso Hotel Initial Study/Mitigated Negative Declaration. October 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument/78205/637696335075970000>

This appeal comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.13: Inadequate analysis of direct and indirect biological impacts of lighting

Response B.13: As discussed in the IS/MND, the project will comply with the City of San José Riparian Corridor Protection and Bird-Safe Design Council Policy. The project will use materials and lighting that are designed and constructed to reduce light and glare impacts to riparian corridors. Public comments on lighting in regard to bird collisions were addressed in the “Response to Public Comments and Text Changes” dated March 2022 under Response B.11 and B.41.²¹ This appeal comment does not provide substantial evidence supporting a fair argument that the Initial Study/MND had inadequate analysis of direct and indirect biological impacts of lighting, or that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.14: Cumulative impacts to biological resources and to open space are not adequately addressed. The cumulative loss of open space and habitat has not been discussed or mitigated

Response B.14: Cumulative impacts to biological resources are addressed in Section 4.21 of the IS/MND²² and in the “Response to Public Comments and Text Changes”²³ dated March 2022 under text revisions to page 183 of the IS/MND (see page 128 of the “Response to Public Comments and Text Changes” document), which concludes that the project would not significantly contribute to cumulative impacts on biological resources. Regarding the issue of cumulative impacts to open space as previously raised by the Santa Clara Valley Audubon Society, this comment was addressed in the “Response to Public Comments and Text Changes” dated March 2022 under Response H.1. This appeal comment does not provide substantial evidence supporting a fair argument that the Initial Study/MND had inadequate analysis of cumulative impacts to biological resources or to open space.

Comment B.15: Mitigation measures are inadequate. Significant and unmitigable impacts to Biological Resources will remain.

Response B.15: This appeal comment is broad in nature and does not point to a specific flaw in the IS/MND analysis of impacts to biological resources and other environmental resources nor does it provide any substantial evidence supporting the

²¹ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

²² City of San José. Alviso Hotel Initial Study/Mitigated Negative Declaration. October 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument/78205/637696335075970000>

²³ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

claim that the IS/MND analysis of impacts to biological resources is inadequate, or that mitigation measures incorporated in the project are incapable of reducing impacts to acceptable levels. Therefore, this appeal comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant unavoidable impacts requiring preparation of an EIR.

Comment B.16: Further development of this area will significantly and unavoidably impact the only currently significant breeding populations of burrowing owls in Santa Clara County.

Response B.16: Impacts to burrowing owls are addressed in the document titled “Response to Public Comments and Text Changes” under Response B.12, B.49, B.51, H.2, and H.3 as well as under text revision to page 183 of the IS/MND (see page 128 of the “Response to Public Comments and Text Changes” document).²⁴ During site visits, no evidence of burrowing owls was observed on-site. Burrowing owls are not currently breeding on the site, nor is the site important foraging habitat for owls. As discussed in Section 4.4 under Impact BIO-6 of the IS/MND, the project site includes habitat for burrowing owls, as mapped by the Habitat Plan, and therefore a specialty fee for impacts on habitat for burrowing owls would apply. The project will pay all applicable fees and implement mitigation measure MM BIO-1.2 to ensure compliance with Condition 15 of the Habitat Plan.²⁵ This appeal comment does not raise any additional concerns not already addressed by the City in prior responses and does not provide substantial evidence supporting a fair argument that development of this site with the proposed project will significantly and unavoidably impact burrowing owls.

Comment B.17: The IS/MND’s Analysis of the Project’s Air Quality impacts is not supported by substantial evidence.

Response B.17: This appeal comment is broad in nature and does not point to a specific flaw in the IS/MND’s analysis of air quality impacts nor does it provide any evidence supporting the claim that the IS/MND analysis of the project’s air quality impacts is not supported by substantial evidence. The Air Quality study prepared by Illingworth & Rodkin, Inc. for the project includes substantial evidence supporting the IS/MND’s conclusions. Responses to comments received during the public circulation period discussing air quality impacts are provided in the document titled “Response to Public Comments and Text Changes” under Response B.15 through B.24, B.26, and B.55 through B.67.²⁶ This comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant environmental impacts. Therefore, no further response is required.

²⁴ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

²⁵ City of San José. Alviso Hotel Initial Study/Mitigated Negative Declaration. October 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument/78205/637696335075970000>

²⁶ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

Comment B.18: The IS/MND’s Analysis of the Project’s Greenhouse Gas Impacts is not supported by substantial evidence.

Response B.18: This appeal comment is broad in nature and does not point to a specific flaw in the IS/MND’s analysis of greenhouse gas impacts nor does it provide any evidence supporting the claim that the IS/MND analysis of the project’s greenhouse gas impacts is not supported by substantial evidence. As discussed in Section 4.8 of the IS/MND, the project is consistent with the City’s 2030 Greenhouse Gas Reduction Strategy and would therefore have a less than significant impact to GHG emissions. The completed San José Greenhouse Gas Reduction Strategy Consistency Checklist (see Table 4.8-1) is substantial evidence supporting the IS/MND’s conclusions.²⁷ Responses to comments received during the public circulation period discussing greenhouse gas impacts are provided in the document titled “Response to Public Comments and Text Changes” under Response B.23, B.27, and B.68.²⁸ This comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant environmental impacts. Therefore, no further response is required.

Comment B.19: The Project also violates the City’s General Plan including but not limited to: Inconsistency with the City’s General Plan, in particular, the Environmental Resources section, and Council Riparian and Bird Safety Policy 6-34.

Response B.19: This comment is broad in nature and does not provide any evidence supporting the claim that the project violates the City’s General Plan Environmental Resources section, or Council Riparian and Bird Safety Policy 6-34. To the contrary, the City staff has concluded that the project does comply with the General Plan and with the aforementioned Council Policy, and an agency is afforded substantial deference in determining a project’s consistency with applicable policies of that agency. Responses to comments received during the public circulation period discussing City Council Policy 6-34 (Riparian Corridor Protection and Bird-Safe Design) are provided in the document titled “Response to Public Comments and Text Changes” under Response B.11, B.41, and B.46²⁹, as well as in the memorandum titled “WRA Alviso Hotel Response to Comments”.³⁰ This comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant environmental impacts. Therefore, no further response is required.

²⁷ City of San José. Alviso Hotel Initial Study/Mitigated Negative Declaration. October 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument/78205/637696335075970000>

²⁸ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

²⁹ City of San José. Response to Public Comments and Text Changes. March 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/83596/637836420352030000>

³⁰ City of San José. WRA Alviso Hotel Response to Comments. April 2022

<https://www.sanjoseca.gov/home/showpublisheddocument/84658/637859783827270000>

Comment B.20: And finally, Conditions of Approval are insufficient to ensure that mitigation is feasible.

Response B.20: This appeal comment is broad in nature and does not point to a specific flaw in the IS/MND regarding conditions of approval nor does it provide any evidence supporting the claim that conditions of approval are insufficient to ensure that mitigation is feasible. Conditions of approval are standard practice in the City of San José, and the mitigation measures incorporated into the project will be monitored for successful implementation as outlined in the Mitigation, Monitoring, and Reporting Program adopted for the project. This comment does not provide substantial evidence that Conditions of Approval are insufficient to ensure that mitigation is feasible and fully enforceable.

C. Laborers International Union of North America – Local Union 270 (dated April 25, 2022)

Comment C.1: Please see attached.

Response C.1: The appellant attached a previously submitted comment letter dated April 5, 2022. This comment letter was responded to in the memorandum titled “WRA Alviso Hotel Response to Comments”.³¹ This comment does not provide substantial evidence supporting a fair argument that the project, after mitigation, would result in significant environmental impacts. Therefore, no further response is required.

³¹ City of San José. WRA Alviso Hotel Response to Comments. April 2022
<https://www.sanjoseca.gov/home/showpublisheddocument/84658/637859783827270000>

