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June 5, 2020

Sunnyvale Planning Commission  
Daniel Howard, Chair  
c/o Kelly Cha, Project Planner  
456 W. Olive Avenue  
Sunnyvale, CA 94086-3707

Subject: **Response to LiUNA Comments Regarding Proposed Hotel Project  
at 1296 Lawrence Road (# 20-0508)**

I represent Baywood Hotels in their application for new hotel in Sunnyvale. On June 2, 2020, the day of the scheduled Planning Commission public hearing on this hotel project, the Laborers International Union of North America (LiUNA) submitted a Letter and Studies 76 pages in length, demanding an Environmental Impact Report and additional studies based on allegations of potential formaldehyde exposure and potential bird fatalities, allegedly peculiar to this hotel.

We enclose specific responses from subject area professionals to the issues raised by the LiUNA letter. Illingworth & Rodkin respond to the air quality issues in Attachment A. David Burkett, Project Architect, goes over the bird safe design features in Attachment B. This note will briefly summarize the legal context which requires use of a CEQA exemption for Baywood Hotels project as recommended by your Staff.

### **Policy Background of Public Resources Code Section 21083.3**

In key part, PRC Sec. 21083 provides that for projects consistent with a general plan with a certified EIR (e.g. LUTE), application of CEQA will be limited to "*effects on the environment which are peculiar to the parcel or the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.*" Attachment C.

PRC Sec. 21083.3 was adopted to correct abuse of the CEQA process by project opponents who could always find an expert to challenge some detail of a project (such as formaldehyde or bird fatalities) and clear the "fair argument" standard to force an EIR, even where the agency had effective regulations in place to mitigate the alleged

“significant effect”. The result was an explosion of EIR’s and EIR lawsuits addressing policy issues which were already addressed in existing regulations and mitigation measures. The positive effect of PRC Sec. 21083.3 has been that it focuses agencies on developing generally applicable policies, rather than developing case by case and sometimes erratic “mitigations” on the same issue, and achieves more comprehensively the environmental preservation intended by CEQA.

### **Exemption Analysis by City Planning**

In applying PRC Sec. 21083.3, your Planning Staff prepared a 67 page environmental checklist going through each area of an initial study, and analyzing whether there were any peculiar impacts from the proposed hotel project not addressed in the LUTE EIR (the “Exemption Analysis”). This is the most thorough exemption analysis I have seen in many years as a land use attorney and city attorney. For reference, I attach the sections of the Exemption Analysis addressing Air Quality and Biological Resources, since those sections are at issue with the formaldehyde and bird fatality allegations (Attachment D). Within each issue on the Initial Study Checklist, the reader is referred to the section of the LUTE EIR where that issue is discussed and mitigated.

Regarding air quality, the Exemption Analysis refers the reader to LUTE EIR Sec. 3.5, where there is a discussion of toxic air contamination, and the Bay Area Air Management District regulations (p. 3-5-12). These regulations are adopted in Sunnyvale in the CalGreen Building Code. The CalGreen Code at Section 5.504.4.5 sets forth formaldehyde limits, which have been considerably tightened over the years. The CalGreen Code also sets forth mandatory air filtration standards for mechanically ventilated buildings at Section 5.504.5.3. Based on the adopted CalGreen Building Code, the Planning Commission can reasonably find that uniformly applied local and State regulations will reduce formaldehyde impacts of this hotel project to a less than significant level.

We could follow the same kind of document trail for the Bird Safe Building Design Guidelines, which are discussed in Section 3.9.3 of the LUTE EIR. More importantly, the applicant was provided with the Bird Safe Design Guidelines before detailed design got started, and the Guidelines were discussed throughout the iterations of the project design. As with any design issue, Staff weighed multiple considerations including energy efficiency and aesthetics in guiding the applicant to the final design, based on Staff’s conclusion the Bird Safe Design Guidelines are satisfactorily incorporated. For purposes of CEQA, bird safe design was considered and incorporated throughout the design process, and the environmental impact is reduced to a less than significant level. That is all that is legally required to use the CEQA Exemption, as it was intended.

Planning Commission, City of Sunnyvale  
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**Conclusion**

Your Staff has provided the Commission with the information necessary to justify their conclusion that the Baywood Hotel Project, as mitigated, will have a less than significant effect on the environment.

Sincerely,

*Peter MacDonald*

Peter MacDonald  
On behalf of Baywood Hotels

Cc: Paul Williams, Baywood Hotels  
Kamal Obeid, SE, PE  
David Burkett, AIA  
James Reyff

Attachments:

- A. Response to Comments on Air Quality Made by LiUNA, from James Reyff, Illingworth and Rodkin, Inc.
- B. Response to Comments on Bird Safe Design, David Burkett, AIA
- C. Public Resources Code Sec. 21083.3
- D. Excerpt of Air Quality and Biological Resources sections of Exemption Analysis

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# MEMO

Date: June 4, 2020

To: **Kamal S. Obeid, SE, PE**  
Landtech Consultants  
Civil & Structural Engineers  
3845 Beacon Avenue Suite D  
Fremont, CA 94538

From: **James Reyff**  
Illingworth & Rodkin, Inc.  
429 East Cotati Avenue  
Cotati, CA 94931

RE: 1296 Lawrence Station Road Hotel, Sunnyvale, CA  
Job#19-146

**SUBJECT:** Response to Comments on Air Quality Made by Lozeau Drury LLP

This memo addresses comments regarding indoor air quality for the 1296 Lawrence Station Road hotel project in Sunnyvale, CA made by Lozeau Drury LLP, dated June 2, 2020. Illingworth & Rodkin, Inc.(I&R) prepared the greenhouse gas (GHG) assessment<sup>1</sup> for this project and was asked by the applicant to respond to the indoor air quality comment.

**Claim: Substantial Expert Evidence Establishes a Fair Argument That the Project's Emissions of Formaldehyde May Have Significant Impacts on Future Employees.**

**Response:** The Commenter speculates that hotel workers would be exposed to substantial levels of formaldehyde that would outgas from building products. The Claim is incorrect for the reasons set forth below:

Although I&R did not conduct the Health Risk Assessment (HRA) for this project, I&R has completed many HRAs for other similar projects around the Bay Area. HRAs follow the BAAQMD CEQA Air Quality Guidelines in terms of identifying sources of containments and

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<sup>1</sup> Illingworth & Rodkin, Inc, *Hilton Home 2 Suites Hotel Greenhouse Gas Assessment*, August 20, 2019.

their environmental impacts. Therefore, the HRA evaluation focuses on impacts of the project on the environment and surrounding sensitive receptors (children, adults, and seniors).<sup>2</sup> Under this definition, the on-site and off-site workers are not considered a sensitive receptor. The health and safety of workers is regulated and overseen by the Occupation Safety and Health Administration (OSHA). In California, the State has an OSHA-approved State Plan that sets and enforces the proper standards needed to assure that working conditions are safe and healthy for all workers involved.

It should be noted that the project is not a unique source of formaldehyde emissions. Substantial sources of formaldehyde emissions from the project have not been identified.

The claims provided by the Commenter are speculative since they assume that the hotel project will have the median average of CARB Phase 2 Formaldehyde ATCM materials and have made general assumptions regarding exposure of workers in terms of their exposure level (workplace) and contaminant intake. The median levels are taken from a 2009 study of existing single-family homes. The Commenter is speculating that levels inside of the hotel that the workers would be exposed would be similar to those of the single-family homes in a study referenced by the Commenter<sup>3</sup>. That study only speculated on the sources of formaldehyde emissions, believing that they are from composite wood products. Sources of formaldehyde were not specifically identified or quantified. The report notes other sources as “combustion sources (e.g., tobacco smoking, cooking fireplaces, woodstoves), cellulose-based products such as acoustic ceiling tiles, and paints. Additional sources of formaldehyde include permanent-pressed fabrics and insulation made with urea formaldehyde resins.” In addition, the comment describes ventilation systems of older single-family homes and habitable rooms inside of homes rather than the project, which is a modern hotel. The commenter further goes on to speculate PM<sub>2.5</sub> levels at the project without providing any analysis of the sources or the levels within the project building.

As stated by the City in previous comments, the project is required to comply with the California Green Building Standards Code (CALGreen) Sections 4.504.5 and 5.504.4.5 and composite wood products used in the project must be compliant with the California Air Resource Board (CARB) Airborne Toxic Control Measures Phase II or Toxic Substances Control Act (TSCA) Title VI. These state codes along with Cal/OSHA are the main regulators for indoor formaldehyde levels.

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<sup>2</sup> Bay Area Air Quality Management District, *Recommended Methods for Screening and Modeling Local Risks and Hazards*. May 2012.

<sup>3</sup> Offermann, F. J. 2009. *Ventilation and Indoor Air Quality in New Homes*. California Air Resources Board and California Energy Commission, PIER Energy-Related Environmental Research Program. Collaborative Report. CEC-500-2009-085.



## Attachment 2.

**TO:** Kamal S. Obeid, SE,PE

**FROM:** David Burkett AIA.

**DATE:** June 5, 2020

**SUBJECT:** Incorporation of Bird Safe Design Guidelines into 1296 Lawrence Station Road Design

The project located at 1296 Lawrence station road is 1.1 acres in size and is currently developed with a one-story light industrial/office building. The site is located at the corner of Lawrence Station Road and Old Mountain View-Alviso Road, and shares driveway access from both streets with three immediately abutting parcels. Highway 237 is located north across Old Mountain View-Alviso Road.

The project includes demolition of the existing building and construction of a new six-story hotel with 128 rooms and attached two-level parking structure. The proposed hotel building is L-shaped and is sited towards the street frontages. Existing driveway locations will be maintained and are shared with the adjacent parcels. New sidewalks will be installed along both street frontages will provide a pedestrian connection to the new hotel building. The existing large redwood trees along the street frontage shall remain screening much of the building. The main pedestrian building entrance faces Lawrence Station Road. A covered guest drop-off area is provided behind the lobby with signage to properly direct vehicles. Parking is enclosed within the first and second floors of the building, with a ramp leading to the second floor behind the guest drop-off area. Minimal surface parking is also provided towards the back of the site. The architectural style is considered Contemporary and is distinctive from other buildings in the vicinity.

The building utilizes a variety of high-quality materials, such as Italian porcelain wall tiles, integrally colored stucco system, variegated blue metal panels, and tinted blue glass compliant with current California T-24 energy standards for U-values and SHGC values. Metal awnings and louvers help to provide material breaks along the building. We worked with city staff from the start of the project implementing designs that are consistent with the city of Sunnyvale Development standards including *Bird safe building design*. This is a Level 2 project, not located adjacent to a large body of water, or large open space. We incorporated bird safe design into

the initial proposal. City staff with their architectural consultant discussed bird safe features throughout the various iterations, concluding the final design is compatible with Bird Safe Building Design. It was acknowledged throughout the design process that City staff was balancing bird safe design issues with energy and aesthetic concerns. For example, it was understood that hotels in particular have a high rate of closed curtains in contrast of office buildings and the like, which does minimize potential bird impacts. Windows will be recessed at least 3 inches from the wall to create shadowing and depth, reduce wall mass and be thoughtfully located for visual value. This is not a design likely to confuse the average bird. The application of wall materials and window pattern is primary oriented horizontally and is a product on the collaborate design and design review process with city staff and city appointed architectural consultant. Vertical elements have also been incorporated, such as a curtainwall (glass) tower and aluminum wall paneling tower at the building corners. The first-floor materials and architectural projections help to create a strong building base with a pronounced building entry. The upper floors contain wall plane and material changes that help to add visual interest and reduce mass. Similar wall treatment continues up to create a well-defined top of building. Parking is mostly not visible from the street frontages and is attached to the hotel building at the rear. The same architectural language is continued along the parking structure façade. Natural building materials are more prominent in the rear facades where they face the existing one-story light industrial/office buildings and includes wood paneling and green walls. Staff and the City's architectural consultant, Larry Cannon, have worked with the us on the architectural design for over 2 year and throughout have implemented architectural design that complies with the Citywide Design Guidelines including Bird Safe Building Design Guidelines, Zoning regulations, LEED and Title 24 energy efficiency, Planning requirements, and City Development Standards.

**David Burkett, AIA**

Principal Architect

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**State of California**

**PUBLIC RESOURCES CODE**

**Section 21083.3**

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21083.3. (a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(c) Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan. However, all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.

(d) An effect of a project upon the environment shall not be considered peculiar to the parcel or to the project, for purposes of this section, if uniformly applied development policies or standards have been previously adopted by the city or county, with a finding based upon substantial evidence, which need not include an environmental impact report, that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

(e) Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with this section. As used in this section, "community



plan” means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(f) No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a public agency made at a public hearing pursuant to subdivision (a) with respect to the conformity of the project to the mitigation measures identified in the prior environmental impact report for the zoning or planning action, unless he or she has participated in that public hearing. However, this subdivision shall not be applicable if the local agency failed to give public notice of the hearing as required by law. For purposes of this subdivision, a person has participated in the public hearing if he or she has either submitted oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

(g) Any community plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (e) may be amended to comply with that criteria, in which case the plan shall be deemed a “community plan” within the meaning of subdivision (e) if (1) an environmental impact report was certified for adoption of the plan, and (2) at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state and is not the subject of pending litigation challenging its adequacy.

(Amended by Stats. 1992, Ch. 1102, Sec. 1. Effective January 1, 1993.)

### III. AIR QUALITY

Would the project:	<i>Where Impact was Analyzed in the LUTE EIR</i>	<i>Any Peculiar Impacts?</i>	<i>Any Impact Not Analyzed as Significant Effect in LUTE EIR?</i>	<i>Any Significant Off-Site or Cumulative Impact Not Analyzed?</i>	<i>Any Adverse Impact More Severe Based on Substantial New Information?</i>	<i>Do EIR Mitigation Measures or Uniformly Applied Development Policies or Standards Address/Resolve Impacts?</i>
a) Conflict with or obstruct implementation of the Bay Area Air Quality Management Plan (BAAQMD)'s Bay Area Clean Air Plan? How close is the use to a major road, highway or freeway?	<b>Draft EIR Setting pp. 3.5-1 to 3.5-13 Impact 3.5.1</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<b>Draft EIR Setting pp. 3.5-1 to 3.5-13 Impact 3.5.2, 3.5.3 and 3.5.8</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
c) Expose sensitive receptors to substantial pollutant concentrations?	<b>Draft EIR Setting pp. 3.5-1 to 3.5-13 Impact 3.5.4, 3.5.5, 3.5.6, and 3.5.8</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<b>Draft EIR Setting pp. 3.5-1 to 3.5-13 Impact 3.5.7</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>

#### Background

There have been changes in the regulatory setting related to Air Quality, described in LUTE Draft EIR Section 3.5, Air Quality, since certification of the EIR in April 2017, but these changes do not result in any new or more severe significant effects than were analyzed in the LUTE EIR.

#### Bay Area Air Quality Management District Clean Air Plan

On April 19, 2017, the Bay Area Air Quality Management District (BAAQMD) adopted an updated Clean Air Plan. Like the 2010 Clean Air Plan, the 2017 Clean Air Plan provides a regional strategy to protect public health and protect the climate. The 2017 Clean Air Plan updates the most recent Bay Area ozone plan, the 2010 Clean Air Plan, pursuant to air quality planning requirements defined in the California Health & Safety Code. To fulfill state ozone planning requirements, the 2017 control strategy includes all feasible measures to reduce emissions of ozone precursors — reactive organic gases (ROG) and nitrogen oxides (NOx) — and reduce transport of ozone and its precursors to neighboring air basins. In addition, the 2017 Clean Air Plan builds on the BAAQMD's efforts to reduce emissions of fine particulate matter and toxic air contaminants.

BAAQMD updated its CEQA Guidelines in May 2017. All CEQA impact thresholds applicable to land use development, such as the development contemplated by the LUTE, remain unchanged from the 2011 CEQA Guidelines.

Illingworth & Rodkin prepared the Hilton Home 2 Suites Hotel Greenhouse Gas Assessment on August 20, 2019. The report concludes that project operation and construction were found to be below thresholds of significance recommended by BAAQMD and use by the City.

## Discussion

- a. Impact 3.5.1 of the LUTE Draft EIR evaluated whether the LUTE would conflict with or obstruct implementation of the applicable air quality plan. The Bay Area Air Quality Management District's (BAAQMD) 2017 Update Clean Air Plan includes various control strategies to reduce emissions of local and regional pollutants and promote health and energy conservation. As stated in Impact 3.5.1, the LUTE and CAP 2.0 supports the goals, includes applicable pollutant control mechanisms, and is consistent with the 2010 Clean Air Plan. Therefore, this impact is considered less than significant.

No changes in the air quality conditions for the project site have occurred since approval of the LUTE. The project would be consistent with land use and zoning designations and would not include any development beyond that assumed and analyzed in the LUTE EIR. The project proposes removal of existing office building and construct a six-story hotel with 128 rooms. Therefore, the findings of the certified LUTE EIR concerning consistency with air quality plans remain valid and no further analysis is required.

- b. Impact 3.5.8 of the LUTE Draft EIR evaluated the cumulative impacts to air quality. The analysis noted that, while contribution of the LUTE to adverse impacts to air quality would be cumulatively considerable, the BAAQMD-recommended significance thresholds, as applied to each individual project, would be used to determine whether a project's contribution to a significant impact to air quality would be cumulatively considerable.

Impacts 3.5.2, 3.5.3 and 3.5.8 of the LUTE Draft EIR identified that implementation of the LUTE would result in short-term construction and long-term operation emissions that would substantially contribute to air pollution or result in a projected air quality violation. The City adopted Mitigation Measure 3.5.3 that requires construction projects to implement BAAQMD's basic construction mitigation measures as well as use construction equipment that is California Air Resources Board (CARB) Tier 3 Certified or better to address construction emissions. The LUTE Draft EIR identified that the LUTE would improve the viability of walking, biking, and transit that would reduce vehicle use. However, the LUTE EIR concluded that construction and operational air quality impacts of the implementation of the LUTE were significant and unavoidable under project and cumulative conditions (Impact 3.5.8).

Construction of the project would include demolition of the existing structures and associated site improvements. Demolition can generate dust and possible hazardous emissions due to the use of hazardous materials in older buildings. New construction could generate dust and particulate matter from soil disturbance. The use of heavy equipment for demolition and construction activities would generate exhaust emissions such as oxides of nitrogen (NOX), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), reactive organic gases (ROG), respirable particulate matter with an aerodynamic diameter of 10 microns or smaller (PM<sub>10</sub>), and fine particulate matter with an aerodynamic diameter of 2.5 microns or smaller (PM<sub>2.5</sub>). There is nothing peculiar about the project's demolition or construction or the project's parcel that would require non-standard demolition or construction techniques. The project would be subject to standard dust control and off-road equipment requirements to minimize construction related impacts.

As noted above, LUTE EIR Mitigation Measure 3.5.3 requires construction projects to implement BAAQMD's basic construction mitigation measures, which include the following dust control measures: (1) all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day; (2) all haul trucks transporting soil, sand, or other loose material off-site shall be covered; (3) all visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; (4) all vehicle speeds on unpaved roads shall be limited to 15

mph; (5) all roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used; and (6) post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours.

The Project would be required to implement Mitigation Measure 3.5.3, identified in the LUTE EIR, to reduce the air quality impacts of short-term construction. Also, Illingworth & Rodkin prepared the Hilton Home 2 Suites Hotel Greenhouse Gas Assessment on August 20, 2019. The report concludes that project operation and construction were found to be below thresholds of significance recommended by BAAQMD and use by the City, and therefore would not make a cumulatively considerable contribution to significant cumulative air quality impacts. Additionally, the project's land use and development intensities are consistent with the LUTE. Therefore, the findings of the certified LUTE EIR remain valid and no further analysis is required.

- c. Impacts 3.5.4, 3.5.5, 3.5.6, and 3.5.8 of the LUTE Draft EIR evaluated whether construction and operational activities would expose sensitive receptors to substantial pollutant concentrations of TACs. Sensitive receptors include residences, schools, medical facilities, family day cares, and places of worship. Construction-related TACs potentially affecting sensitive receptors include off-road diesel-powered equipment, and operational TACs include mobile and stationary sources of diesel particulate matter. Both impacts are identified in the LUTE EIR as potentially significant. Implementation of Mitigation Measure 3.5.5 and Mitigation Measure 3.5.6, in addition to BAAQMD permitting requirements, were determined in the LUTE EIR to provide adequate mitigation to reduce these impacts to less than significant under project conditions, but found that the LUTE's contribution to significant cumulative impacts would be cumulatively considerable (Impact 3.5.8).

The Project would not result in the regular use during operation of any TAC sources, such as regular and frequent visits by diesel-powered haul trucks. Project construction would involve the use of diesel particulate matter-emitting off-road construction equipment. Sensitive receptors in the vicinity of the project include multi-family residential development across from the Project site.

In compliance with LUTE EIR Mitigation Measure 3.5.5, the construction air quality emissions analysis prepared an assessment to analyze the health risks on the nearest sensitive receptor, as required by LUTE EIR Mitigation Measure 3.5.5. Results of the assessment indicate that the maximum concentration of PM<sub>2.5</sub> during construction would be below the BAAQMD significance threshold.

The Project would be consistent with land use and zoning designations and would not include any development beyond that allowed by the LUTE EIR. Therefore, the findings of the certified LUTE EIR concerning the exposure of sensitive receptors to substantial pollutant concentrations remain valid and no further analysis is required.

- d. Impact 3.5.7 of the LUTE Draft EIR identified that development associated with the LUTE could create objectionable odors affecting a substantial number of people. The LUTE Draft EIR concluded that implementation Mitigation Measure 3.5.7 would reduce this impact to less than significant.

The Project does not include any long-term uses that are considered to be sources of objectionable odors (e.g., landfill, wastewater treatment plant). Operation of the Project may include a limited number of diesel-fueled trucks delivering materials to the Project area; however, truck deliveries would be infrequent and not involve constant emissions of odorous diesel exhaust. Hotel land uses are not typically considered to be sources of objectionable odors and would not be subject to implementation of Mitigation Measure 3.5.7. Thus, the Project is not a source of objectionable odors and the surrounding development, which also consists of primarily light industrial and office uses, is not a source of objectionable odors, and there is no cumulative impact related to objectionable odors. Therefore, the findings of the certified LUTE EIR related to odors remain valid and no further analysis is required.

**Conclusion**

With the application of uniformly applied development standards and policies, the Project would have no (1) peculiar impacts, (2) impacts not analyzed in the LUTE EIR, or (3) significant off-site impacts and cumulative impacts not discussed in the LUTE EIR, and (4) there is no substantial new information indicating that an impact would be more severe than discussed in the LUTE EIR. Therefore, the conclusions of the LUTE EIR regarding air quality impacts remain valid and no additional analysis is required.

**IV. BIOLOGICAL RESOURCES**

Would the project:	<i>Where Impact was Analyzed in the LUTE EIR</i>	<i>Any Peculiar Impacts?</i>	<i>Any Impact Not Analyzed as Significant Effect in LUTE EIR?</i>	<i>Any Significant Off-Site or Cumulative Impact Not Analyzed?</i>	<i>Any Adverse Impact More Severe Based on Substantial New Information?</i>	<i>Do EIR Mitigation Measures or Uniformly Applied Development Policies or Standards Address/Resolve Impacts?</i>
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impacts 3.9.1 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impacts 3.9.2 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impact 3.9.2 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impacts 3.9.3 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impacts 3.9.4 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other	<b>Draft EIR Setting pp. 3.9-1 to 3.9-13 Impacts 3.9.4 and 3.9.5</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>N/A, impact remains less than significant</b>

	<i>Where Impact was Analyzed in the LUTE EIR</i>	<i>Any Peculiar Impacts?</i>	<i>Any Impact Not Analyzed as Significant Effect in LUTE EIR?</i>	<i>Any Significant Off-Site or Cumulative Impact Not Analyzed?</i>	<i>Any Adverse Impact More Severe Based on Substantial New Information?</i>	<i>Do EIR Mitigation Measures or Uniformly Applied Development Policies or Standards Address/Resolve Impacts?</i>
Would the project:  approved local, regional, or state habitat conservation plan?						

**Background**

No new information pertaining to biological resources has become available since the LUTE EIR was certified in April 2017. WRA prepared a Biological Resource Assessment Letter Report for the Project on March 22, 2018. During the site visit, one special-status species, Oak titmouse (*Baeolophus inornatus*), was observed. However, no sensitive vegetation, aquatic communities, or special-status plant species were found during the site visit and do not have potential to occur within the Project site.

According to information documented in the CNDDDB and USFWS for the Project site and its vicinity, 64 special-status wildlife species have been identified for the Mountain View, Milpitas, Cupertino and San Jose West USGS 7.5' Quadrangles. Most of the special-status species known from the vicinity occur in specific, native habitat types that do not occur within the Project site. Based upon the literature review, only four special-status species (white tailed kite, Oak titmouse, Nuttall's woodpecker, and Allen's hummingbird) have a moderate potential to occur within the Project area.

The site is located adjacent to a freeway in a highly urbanized area and is currently developed, mostly paved and contains seven protected sized trees. The site is not an active habitat for any known biological resource (special status plant species) but the tree can be a habitat for common nesting birds. Sunnyvale's standard conditions of approval will include the following:

1. Avoidance. Demolition and construction activities should be scheduled between September 1 and January 31 to avoid the nesting bird season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided.
2. Preconstruction/Pre-disturbance Surveys. If it is not possible to schedule demolition and construction activities between September 1 and January 31 then preconstruction surveys for nesting birds should be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. We recommend that these surveys be conducted no more than 14 days prior to the initiation of demolition/construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, grasslands, buildings) in and immediately adjacent to the impact areas for nests.
3. Buffers. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 ft for raptors and 100 ft for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.
4. Inhibition of Nesting. If construction activities will not be initiated until after the start of the nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates.

These conditions of approval for the Use Permit will become valid when the Project is approved. Conditions will be applicable during the demolition/construction of the Project. The Project contractor/applicant will be solely responsible for implementation and maintenance of these conditions of approval. The conditions of approval shall be incorporated into the construction plans. Protected sized trees are required to be replaced per the City's Tree Replacement Policy. The City's Tree Replacement Policy require a minimum of one 24" box or three 15-gallon trees for tree sizes removed between 12" to 18" diameter; one 36" box or two 24" box trees for tree sizes removed between 19" to 24" diameter; and one 48" or two 36" box or four 24" box trees for tree sizes removed over 24" diameter. The Project site has seven protected trees, which will remain on site (one will be relocated), and other 7 non-protected trees will be removed. Those non-protected trees are not subject to the City's Tree Replacement Policy; however, the Project proposes to plant 14 new 24-inch box trees on the Project site.

As identified in LUTE Draft EIR Impact 3.9.1, the urbanized portions of the city are largely built out and do not have large areas of natural habitat. Ruderal infill lots could support burrowing owl and Congdon's tarplant. Urban parks, open space, and riparian areas could support nesting birds. Active nests of all migratory birds, including raptors, are protected by state and federal law. Direct impacts on special-status species could occur as a result of construction of private development and/or public projects supporting future uses (e.g., trails). The LUTE policies and actions include protections that address natural habitat conditions in the city. The City of Sunnyvale is also required to comply with all applicable federal and state laws and regulations pertaining to species and habitat protection. This would include ensuring that nesting birds and raptors are not impacted during construction activities. Thus, the LUTE Draft EIR identified this impact as less than significant under project and cumulative conditions (Impact 3.9.5).

- a. LUTE Draft EIR Impact 3.9.2 and 3.9.5 address potential impacts to wetlands and other sensitive habitats from implementation of the LUTE. The analysis identifies that subsequent projects under the LUTE are required to comply with all applicable federal and state laws and regulations pertaining to species and habitat protection in addition to LUTE policies and actions and the City's Municipal Code. This impact was identified as less than significant under project and cumulative conditions (Impact 3.9.5).

The Project contains no riparian or other sensitive natural habitat community. Therefore, the findings of the certified LUTE EIR regarding biological impacts remain valid and no further analysis is required.

- b. LUTE Draft EIR Impact 3.9.2 and 3.9.5 address potential impacts to wetlands from implementation of the LUTE. The analysis identifies that subsequent projects under the LUTE are required to comply with all applicable federal and state laws and regulations pertaining to species and habitat protection in addition to LUTE policies and actions and the City's Municipal Code. This impact was identified as less than significant under project and cumulative conditions (Impact 3.9.5).

The Project contains no wetland resources. Therefore, the findings of the certified LUTE EIR regarding wetlands and waters of the United States remain valid and no further analysis is required.

- c. LUTE Draft EIR Impact 3.9.3 and 3.9.5 identified no significant impacts to wildlife movement as planned development of the city under the LUTE would occur within existing developed areas of the city and would not extend into wetlands and open space areas along San Francisco Bay that provide habitat and movement corridors for wildlife species in the region. In addition, creek and waterway corridors within the City (Stevens Creek, Calabazas Creek, and Moffett Channel) would be retained in their current condition under the Draft LUTE. This impact was identified as less than significant under project and cumulative conditions (Impact 3.9.5).

The project is located within an existing developed area, adjacent to a freeway and provides no wildlife movement corridors. Therefore, the findings of the certified LUTE EIR regarding migratory fish and wildlife movement and use of native wildlife nursery sites remain valid and no further analysis is required.



- d. As identified in Impact 3.9.4, the LUTE includes policies that support the objectives of the San Francisco Bay Plan and would not conflict with the City's tree protection provisions provided in Chapter 19.94 of the City's Municipal Code. Thus, no significant impacts were identified.

The Project will retain all seven protected trees, of which one will be relocated to accommodate truck route. The Project includes removal of seven non-protected trees, which requires no replacement trees. However, the Project plans to plant 14 new 24-inch box trees. The Project would comply with the City's tree requirements. Therefore, the findings of the certified LUTE EIR regarding consistency with local policies and ordinances protecting biological resources remain valid and no further analysis is required.

- e. The City is not located in a habitat conservation plan area. As a result, the LUTE EIR determined there would be no conflict with an adopted habitat conservation plan would occur, and no impact would result. Therefore, no significant impact was identified at under project or cumulative conditions. No new conservation plans have been adopted since approval of the LUTE. Therefore, the findings of the certified LUTE EIR concerning conflicts with adopted conservation plans remain valid and no further analysis is required.

#### **Mitigation Measures**

No significant biological resource impacts were identified in the LUTE EIR, and no mitigation measures were required.

#### **Conclusion**

With the application of uniformly applied development standards and policies, there are no (1) peculiar impacts, (2) impacts not analyzed in the LUTE EIR, and (3) significant off-site impacts and cumulative impacts not discussed in the LUTE EIR, and (4) there is no substantial new information indicating that an impact would be more severe than discussed in the LUTE EIR. Therefore, the findings of the certified LUTE EIR regarding biological resources remain valid and no further analysis is required.