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April 24, 2018

**Via Overnight Mail:**

Planning Division  
City Hall  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

**Via Email Only:**

Steve Le  
Planning Division  
Email: [sle@santaclaraca.gov](mailto:sle@santaclaraca.gov)

Re: **Appeal of the Adoption of a Mitigated Negative Declaration and Architectural Approval for 2305 Mission College Boulevard Data Center (PLN2017-12535 & CEQ2017-01034)**

Dear Planning Division:

We are writing on behalf of California Unions for Reliable Energy (“CURE”), Anthony Hernández and Edme Hernández (collectively, “Appellants”) to appeal the April 18, 2018 decision of City of Santa Clara (“City”) Architectural Committee (“Committee”) to adopt a Mitigated Negative Declaration (“MND”) and grant Architectural Approval for the 2305 Mission College Boulevard Data Center Project (“Project”). At the April 18, 2018 public hearing, the Architectural Committee accepted the City staff’s recommendation and adopted the MND and approved the Project subject to certain conditions.

The Project, proposed by PR III 2305 Mission College Boulevard, LLC, involves the construction of a 495,610 square-foot data center facility that would include 60 megawatts (“MW”) of informational technology power, a generator yard,

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an equipment yard for battery and electrical equipment, and parking. The Project would include 120 diesel-fueled engine generators to provide 75 MW of backup power generation capacity. The Project also proposes to construct a new 90 megavolt amps Silicon Valley Power electrical substation. The 15.7-acre Project site is located at 2305 Mission College Boulevard in the City of Santa Clara.

On April 12, 2018, CURE filed extensive comments on the deficiencies of MND, which were prepared with the assistance of technical expert Dr. Phyllis Fox, Ph.D, PE. CURE's comments, as well as Dr. Fox's comments and curricula vitae are incorporated by reference as if fully set forth herein and are attached to this letter as Attachment 1. Additionally, we appeared on behalf of CURE at the Committee's April 18, 2018 public meeting and provided oral comments on the Project. The written and oral comments must be included as part of the Project's record.

#### **I. Statement of Interest**

CURE is a coalition of labor organizations whose members construct, operate, and maintain powerplants and other industrial facilities throughout California. CURE encourages sustainable development of California's energy and natural resources. Environmental degradation destroys cultural and wildlife areas, consumes limited water resources, causes air and water pollution, and imposes other stresses on the environmental carrying capacity of the State. Environmental degradation also jeopardizes future jobs by making it more difficult and expensive for industry to expand in Santa Clara, and by making it less desirable for businesses to locate and for people to live and recreate in the area. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities for CURE's participating organizations and their members. CURE therefore has a direct interest in enforcing environmental laws and minimizing project impacts that would degrade the environment.

CURE's participating organizations and their members also live, recreate, work, and raise families in the City of Santa Clara and Santa Clara County. CURE, its participating organizations and their members stand to be directly affected by the Project's adverse environmental and health impacts. Members may also work on the Project itself, and would therefore be first in line to be exposed to any health and safety hazards that the Project may create.

Similarly, Anthony Hernández and Edme Hernández live in the City of Santa Clara and would be directly affected by the Project's environmental and health and safety impacts.

## **II. Basis for the Appeal**

Appellants raise three general grounds for this appeal. First, the City lacks permitting authority to approve the Project in the absence of a Small Power Plant Exemption, as required by the Warren Alquist Act, Public Resources Code section 25000 et seq. Second, the City failed to comply with the California Environmental Quality, Public Resources Code section 21000, et seq. and Title 14, California Code of Regulations section 15000 et seq. (collectively, "CEQA") when it adopted the MND and granted Architectural Approval for the Project. Third, the City lacks evidence to support its findings that the Project complies with the standards of design required for Architectural Approval set forth in the City Code.

First, the City lacks authority to approve the Project because it includes a thermal powerplant component – backup diesel generators – with a generating capacity greater than 50 megawatts (MW). Under the Warren Alquist Act, Public Resources Code section 25500, the California Energy Commission ("CEC") has exclusive jurisdiction to approve powerplants exceeding 50 megawatts of generating capacity. As seen in the case of other Santa Clara data center projects, diesel-fueled backup generators serving data center facilities are encompassed within the scope of the CEC's jurisdiction where the collective generating capacity exceeds 50 MW. The CEC may exempt thermal powerplants with a generating capacity of up to 100 MW if it finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility.<sup>1</sup> However, the granting of a Small Power Plant Exemption requires a CEC determination. Here, the project includes 120 diesel generators with a combined generating capacity of 75 MW and the Applicant has not obtained an SPPE, thus the Project remains subject to the powerplant siting jurisdiction of the CEC.

Second, the City's MND fails to comply with the requirements of CEQA. CURE's comments on the MND, including the expert comments submitted by Dr. Phyllis Fox, provide substantial evidence in support of a fair argument that the Project may result in potentially significant impacts on the environment. Specifically, CURE's comments provide substantial evidence supporting a fair

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<sup>1</sup> Pub. Resources Code § 25541.  
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argument that the Project may result in significant environmental impacts as a result of operational noise from emergency equipment; indirect greenhouse gas emissions; nitrogen oxide emissions from backup generator operation; and construction-related particulate matter. Planning Division staff offered limited responses to some of the issues raised in CURE's comments in the hours before the Committee hearing. However, the City's responses do not resolve the issues raised in CURE's comments.

The City's responses also wholly failed to respond to the comments submitted by Dr. Fox, which identified the following omissions in the MND and potentially significant and unmitigated impacts of the Project:

- The Project description is not adequate to evaluate environmental impacts.
- Greenhouse gas (GHG) emissions are significant and unmitigated.
- The air quality analyses are incomplete because they fail to include any air dispersion modeling of Project construction and operational emissions to verify compliance with ambient air quality standards.
- Ozone impacts were not evaluated and are likely cumulatively significant.
- Maximum daily PM10 and PM2.5 emissions during construction are significant and unmitigated.
- Maximum daily NOx emissions during construction are likely significant and unmitigated when discrepancies in the CalEEMod inputs are resolved.
- Operational emissions are underestimated and the IS/MND does not contain sufficient information to correct the omissions.
- Daily NOx emissions from routine emergency operation of the diesel generators are significant and unmitigated.
- Noise impacts during emergency operation are significant and unmitigated.
- Battery impacts were not disclosed or evaluated.
- Cumulative impacts were not evaluated for most impact areas.<sup>2</sup>

Dr. Fox's comment letter was also omitted from the City's Staff Report to the Architectural Committee despite being timely submitted.

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<sup>2</sup> Attachment 2. Letter from Collin McCarthy to Santa Clara Architectural Committee & Steve Le regarding 2305 Mission College Boulevard Data Center Project – Mitigated Negative Declaration and Architectural Approval (PLN2017-12535 and CEQ2017-01034)  
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Third, as explained in our April 18, 2018 letter to the Architectural Committee members, the Project's potentially significant and unmitigated impacts show that the Committee lacks substantial evidence to make the findings required to grant Architectural Approval under the Santa Clara City Code. Santa Clara City Code section 18.76.020, subsection (c), provides that the Committee must find that the Project is based on the following standards of architectural design, among others:

(2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of neighboring developments, and will not create traffic congestion or hazard.

...

(4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.<sup>3</sup>

As our comments on the MND demonstrate, substantial evidence shows that the Project may have several significant impacts on the environment notwithstanding the proposed mitigation measures. These impacts relate directly to the Project's potentially significant impacts on public health and the use and enjoyment of neighboring properties. The design and location of the proposed development and its relation to neighboring developments and traffic is such that it will unreasonably interfere with the use and enjoyment of neighboring developments. In addition, granting the approval may also materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of the Project, and be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

### III. Relief Requested

CURE requests that the City grant this appeal, rescind the April 18, 2018 Architectural Committee decision to adopt the MND and grant Architectural Approval. It is further requested that City abstain from considering any future

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<sup>3</sup> S.C.C.C. § 18.76.020(c) (Underline added).  
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approval of the Project until the Applicant obtains a Small Power Plant Exemption from the California Energy Commission, consistent with the Warren-Alquist Act and the CEC's implementing regulations. By doing so, the City and public can ensure that all adverse environmental and public health impacts of the Project are adequately analyzed, disclosed, and mitigated as necessary as is required by law. The City and the public can also ensure that the approval of this powerplant project proceeds in the manner directed by law.

#### **IV. Procedural Requirements for Appeals**

CURE has satisfied the procedural requirements for an appeal of a decision of the Architectural Committee as set forth in the Santa Clara City Code. City Code, section 18.76.020(h) states:

(h) In the event the applicant or others affected are not satisfied with the decision of the architectural committee, he may within seven days after such decision appeal in writing to the Planning Commission. Said appeal shall be taken by the filing of a notice in writing to that effect with the City Planner. The Planning Commission actions are appealable to the City Council in accordance with the procedures set forth in SCCC 18.108.060. The architectural committee may refer any application for architectural consideration to the Planning Commission for its decision with the same effect as if an appeal had been taken.

Here, the Architectural Committee made its decision on the adoption of the MND and approval of the Project on April 18, 2018. This letter and the attached appeal form constitute notice in writing of the appeal.

We have also enclosed a check for \$400.00 for the appeal fee for non-applicants.

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Thank you for your consideration of this appeal to the Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Collin S. McCarthy", with a long horizontal flourish extending to the right.

Collin S. McCarthy

CSM:ljl

Attachments