

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

cmccarthy@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

MILA A. BUCKNER
DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
COLLIN S. MCCARTHY
LINDA T. SOBCZYNSKI

June 19, 2018

Via Overnight Mail:

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

Via Email:

Steve Le, Planner
City of Santa Clara
sle@santaclaraca.gov

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

Dear Mr. Le:

We are writing on behalf of **California Unions for Reliable Energy (“CURE”)**, Anthony Hernández and Edme Hernández (collectively, “Appellants”) to appeal the June 13, 2018 decision of the City of Santa Clara (“City”) Planning Commission to deny Appellants’ appeal and uphold the adoption of a Mitigated Negative Declaration (“MND”) and grant Architectural Approval for the 2305 Mission College Boulevard Data Center Project (“Project”).

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, 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

4196-011j

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 the 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 Exhibit 1. Additionally, we appeared on behalf of CURE at the Committee's April 18, 2018 public hearing.

On April 18, 2018, the Architectural Committee adopted the MND and granted Architectural Approval for the Project over Appellant's objections.

On April 25, 2018, Appellants filed an appeal of the Architectural Committee's decision to adopt the MND and grant Architectural Approval for the Project. In addition to the Appeal Form, Appellants submitted a supplemental letter to the Planning Commission on June 13, 2018. We appeared on behalf of Appellants at the Planning Commission's June 13, 2018 public hearing at which the Commission denied the appeal and upheld the adoption of the MND and Architectural Approval for the Project.

The written and oral comments CURE has submitted to the City to date are incorporated fully in this appeal and must be included as part of the record for the Project.

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. Thus, 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 grounds for this appeal: (1) 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.; (2) the City failed to comply with the California Environmental Quality Act, 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; and (3) the City lacks evidence to support its findings that the Project complies with the City Code.

First, the City lacks authority to approve the Project. The California Energy Commission ("CEC") has exclusive jurisdiction to approve powerplants exceeding 50 megawatts of generating capacity, such as that included in the Project here.¹ The CEC has determined in the case of other Santa Clara data center projects that diesel-fueled backup generators serving data center facilities fall within the scope of the CEC's jurisdiction where the collective generating capacity exceeds 50 MW.²

¹ Pub. Resources Code § 25500.

² See Attachment 4 at pp. 13-22 (Attachment to June 13, 2018 letter from Collin McCarthy, Adams Broadwell Joseph & Cardozo to Planning Commission including email correspondence from Chris Davis, Siting Office Manager, California Energy Commission explaining jurisdiction).

While the CEC may issue a Small Power Plant Exemption (“SPPE”) to exempt thermal powerplants with a generating capacity of up to 100 MW after it finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility, no such exemption determination has been made in this case.³

Here, the Project includes 120 diesel generators with a combined generating capacity of 75 MW. The powerplant component is an integral part of the Project, upon which the data center depends to ensure an uninterrupted power supply. The Applicant has not obtained a SPPE, meaning the CEC has not made the necessary determination for the Project to proceed. Until a SPPE is obtained, the Project remains subject to the 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 argument that the Project may result in significant environmental impacts as a result of operational noise; indirect greenhouse gas emissions; nitrogen oxide emissions from backup generator operation; and construction-related particulate matter. CURE’s comment’s further establish that the City’s determination that the Project’s greenhouse gas emissions would be less than significant is not supported by substantial evidence. The City has provided responses to some of the issues raised in CURE’s comments, however, the City’s responses do not resolve the issues raised in CURE’s comments.

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 meets specified standards of architectural design, including:

³ Pub. Resources Code § 25541.

(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.⁴

Our comments on the MND set forth substantial evidence that the Project may have several significant impacts on the environment notwithstanding the proposed mitigation measures.⁵ 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, primarily due to the Project's potentially significant noise and air quality impacts.⁶ In addition, granting the approval will materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development, and will be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.⁷

III. RELIEF REQUESTED

Appellants respectfully request that the City Council grant this appeal and rescind the April 18, 2018 Architectural Committee decision to adopt the MND and grant Architectural Approval. It is further requested that the City abstain from

⁴ S.C.C.C. § 18.76.020(c) (Underline added).

⁵ See Attachment 1 at pp.14-19, 21-25, 27-28 (CURE comments on IS/MND setting forth substantial evidence that the Project may result in significant climate change, air quality, and noise impacts).

⁶ Attachment 2 at pp. 2-5 (Letter from Collin McCarthy, Adams Broadwell Joseph & Cardozo to Santa Clara Architectural Committee regarding 2305 Mission College Boulevard Data Center Project – Mitigated Negative Declaration and Architectural Approval (PLN2017-12535 and CEQ2017-01034)(Apr. 18, 2018)).

⁷ Id.

considering any future 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 powerplant projects proceed in the manner directed by law.

IV. ALL PROCEDURAL REQUIREMENTS HAVE BEEN SATISFIED

Appellants have satisfied all procedural requirements for an appeal of a decision of the Planning Commission 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.

City Code section 18.108.0060 states, in relevant part:

- (a) In case the applicant or others affected are not satisfied with the action of the Planning Commission, they may, within seven calendar days after rendition of the decision by the Planning Commission, appeal in writing to the City Council.
- (b) Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk and by the payment of an appeal fee as set forth by resolution of the City Council.

Here, the Planning Commission made its decision on the appeal on June 13, 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.

June 19, 2018
Page 7

Thank you for your consideration of this appeal.

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

Enclosures

CSM:ljl

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