

Received @ AC mtg
6-19-19

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

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

ychaver@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
YAIR CHAVER
SARA F. DUDLEY
THOMAS A. ENSLOW
ANDREW J. GRAF
TANYA A. GULESSERIAN
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

June 19, 2019

Via Email and Hand Delivery

ITEM 8.A

ATTN: Architectural Committee
Mr. Lance Saleme
Mr. Anthony Becker
1500 Warburton Avenue
Santa Clara, CA 95050
Email: lsaleme@santaclaraca.gov
Email: abecker@santaclaraca.gov
Architectural Committee: Planning@santaclaraca.gov.

**Re: Raging Wire SV1 Data Center Project – Mitigated
Negative Declaration and Architectural Approval (PLN2018-13128
and CEQ2018-010494)**

Dear Architectural Committee Members:

We are writing on behalf of **California Unions for Reliable Energy (“CURE”)** to urge the Architectural Committee (“Committee”) to deny the Initial Study and proposed Mitigated Negative Declaration (“IS/MND”) and Architectural Approval for the Raging Wire SV1 Data Center Project (“Project”). The 3.32-acre project site is located in the City of Santa Clara (“City”). The project site is within City limits north of Highway US 101 and west of the Norman Y. Mineta San Jose International Airport (“SJC”). The Project, which is proposed by Raging Wire Data Centers, Inc., involves the demolition of three currently vacant single-story light industrial buildings, paved surfaces, and surface parking areas. These elements would be removed and replaced with a new 67 foot-tall, four-story 160,450 square-foot data center. The data center would have 27-megawatt (“MW”) connections to Silicon Valley Power (“SVP”) service and would use a daily average of approximately 22 MW. The Project would also have one 1,000-kilowatt (“KW”) backup diesel generator with an associated 2,000-gallon fuel tank, and ten 3,250-KW backup diesel generators with associated 6,500-gallon fuel tanks. The generators and fuel tanks will be placed outdoors on the eastern side of the data center. The Project will

4577-012acp

June 19, 2019

Page 2

further include 18 chillers that will be located on the rooftop, and a new electrical substation to be constructed on the western portion of the Project site. Additionally, the Project would include uninterruptable power supplies (UPS) and deep-cycle (DC) plant energy equipment (lithium batteries) for additional backup power. Batteries would provide enough energy to cover the critical load of 16 MW in the event of a power failure. The Project is expected to be constructed over a period of 26 months.

On April 5, 2019, our firm submitted comments on behalf of CURE on the Initial Study and MND prepared for the Project (“Comment Letter”). Our comments were prepared with the assistance of technical experts Dr. Phyllis Fox, Ph.D, CEQ, PE, DEE, and Dr. Robert Earle, PhD. As detailed therein, we identified potentially significant and unmitigated impacts due to nitrogen oxide (NOx) emissions from the Project’s backup diesel generators and greenhouse gas (GHG) emissions. Dr. Fox’s comments further demonstrated that fugitive dust emissions generated during the Project’s construction phase may also cause significant air quality impacts. Based on these potentially significant and unmitigated impacts, as well as other deficiencies in the Initial Study, our comments concluded that the MND in its current form and substance violates CEQA and that substantial evidence supports a fair argument that an Environmental Impact Report is required for the Project. Our previous comments on the Initial Study and MND are incorporated in this letter by reference.

In June 2019, the City provided responses to the IS/MND comments (“RTC”), including our Comment Letter. However, the City’s responses are problematic and are partially addressed by letters provided by Ms. Fox and Mr. Earle, attached here as Attachments 1 and 2.¹

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

¹ Attachment 1, Phyllis Fox, RTC Rebuttal Letter; Attachment 2 Robert Early, RTC Rebuttal Letter.
4577-012acp

June 19, 2019

Page 3

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.

II. CEQA REQUIRES THAT AN ENVIRONMENTAL IMPACT REPORT BE PREPARED FOR THE PROJECT

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. The "fair argument" standard reflects this presumption. The fair argument standard is an exceptionally low threshold favoring environmental review in an EIR rather than a negative declaration.² This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.³ As a matter of law, substantial evidence includes both expert and lay opinion based on fact.⁴ Even if other substantial evidence supports a different conclusion, the agency nevertheless must prepare an EIR.⁵ As we have shown in our Comment Letter, there is substantial evidence that the project **may** cause detrimental environmental effects. The RTC fails to rebut this presumption, and instead attempts to dismiss our comments by stating that it provides substantial evidence to support its conclusions. Below we rebut some of the RTC's assertions.

² *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

³ 14 C.C.R. § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931.

⁴ PRC § 21080(e)(1) (For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."); 14 C.C.R. § 15064(f)(5).

⁵ *Arviv Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

4577-012acp

a. The IS/MND Fails to Describe the Entire Project

CEQA mandates that lead agencies must include in a project description the “whole of an action” which is being approved, including *all* components and future activities that are reasonably anticipated to become part of the project.⁶ This includes, but is not limited to, “later phases of the project, and any secondary, support, or off-site features necessary for its implementation.”⁷ The requirements of CEQA cannot be avoided by chopping a large project into many little ones or by excluding reasonably foreseeable future activities that may become part of the project.⁸ The City, as the lead agency, must fully analyze the whole of the project in a single environmental review document and may not piecemeal or split the project into pieces for purposes of analysis. Nevertheless, the IS/MND fails to adequately describe Project decommissioning activities and fails to analyze impacts of decommissioning activities. Instead, the IS/MND defers analysis and creation of a Decommissioning Plan to post-Project approval. As a result, the IS/MND fails to describe the full scope of the Project being approved in the IS/MND, and fails to disclose the full range and severity of the Project’s significant environmental impacts. This violates CEQA’s fundamental requirement that an environmental review must fully inform the public of a project’s environmental consequences. For this reason, every phase of the Project must be assessed with the same level of specific details.

CEQA requires that before a negative declaration can be issued, the initial study must “provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment.”⁹ In our Comment Letter we provided substantial evidence supporting a fair argument that the IS/MND failed to disclose information on several components of the Project.¹⁰

As noted in our Comment Letter, the IS/MND fails to address environmental impacts of decommissioning of the Project in 30 years.¹¹ The RTC stated that

⁶ 14 CCR §15378 (emphasis added).

⁷ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84.

⁸ Pub. Resources Code § 21159.27 (prohibiting piecemealing); *see also, Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370.

⁹ 14 C.C.R. § 15063(c)(5).

¹⁰ Comment Letter, at p. 6.

¹¹ Comment Letter, at p. 24.

attempting to determine Project operations in 30 years is too speculative, there is an assumption that decommissioning will require a permit, and that such permit would reasonably include evaluation of environmental impacts.¹² However, this presumption is unsubstantiated by any evidence in the record.

b. The IS/MND Violates CEQA Because it Defers Mitigation

CEQA states that “[a] public agency should not approve a project as proposed if there are feasible ... mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.”¹³ Further, these mitigation measures must be enforceable,¹⁴ and identified during the environmental review process. Further:

Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.¹⁵

In this case, the IS/MND relies on a number of plans to mitigate impacts that would be prepared in the future, including: Construction Noise Control Plan,¹⁶ Construction Plan,¹⁷ Construction Vibration Monitoring Plan,¹⁸ Construction Contingency Plan,¹⁹ Risk Management Plan,²⁰ and Emergency Response and Evacuation Plan.²¹ The IS/MND defers these mitigation measures, and does not provide evidence that it was not practical or infeasible to include these specific

¹² RTC 4-37.

¹³ 14 C.C.R. § 15021(a)(2)

¹⁴ 14 C.C.R. § 15126.4(a)(2).

¹⁵ 14 C.C.R. § 15126.4(a)(1)(B).

¹⁶ IS/MND, at p. 80.

¹⁷ *Id.*, at p. 81.

¹⁸ *Id.*, at p. 84.

¹⁹ *Id.*, at p. 85.

²⁰ *Id.*, at p. 60.

²¹ *Id.*

June 19, 2019

Page 6

details at the time of environmental review. Therefore, the City impermissibly defers feasible mitigation measures, rendering the IS/MND incomplete.

Thus, because feasible mitigation measures have not been included there is substantial evidence in the record to support a fair argument that the Project may have significant impacts

c. Operational NOx Emissions are Significant and Unmitigated

In our Comment Letter, we noted that the IS/MND failed to accurately account for operation NOx emissions, based on (1) use of wrong baseline; (2) underestimation of mobile source commuter emissions; (3) underestimation of energy use due to use of wrong building size; (4) failure to include emissions from use of generators to supply emergency power; (5) failure to include emissions from off-site power generation.²² In part, the RTC responds to our Comment Letter in 4-16 and 4-18. However, as Dr. Fox notes, the Project's NOx emissions remain significant even after accounting for the RTC responses.

For example, Dr. Fox notes that while the RTC used CalEEMod default values for mobile commuter emissions based on project area size to arrive at an average 8-mile round trip²³, the IS/MND didn't provide evidence that the default values were applicable to the Project. On the other hand, Dr. Fox provided substantial evidence supporting a fair argument that actual anticipated mobile source commuter emissions would be higher by basing her analysis on a number of sources. According to Dr. Fox's estimates, a more realistic distance would be a 80-mile round trip; a distanced supported by evidence.²⁴

Additionally, the RTC argues that evaluating the impact of actual use of the emergency generators is too speculative, and that there is no way to reliably predict if and when power outages may occur, and how long they would last – and therefore the IS/MND did not evaluate NOx emissions from use of the emergency backup generators.²⁵ However, as Dr. Fox points out, while it may not be possible to predict with accuracy when such events might happen and for how long, Dr. Fox used evidence to support average number and duration of outages at SVP between the

²² Comment Letter, at p. 10.

²³ RTC 4-16.

²⁴ Fox Rebuttal Letter, at p. 3.

²⁵ RTC 4-19.

years of 2013 and 2017 to provide reasonably foreseeable estimates of NOx emissions due to power outages.²⁶

Finally, the RTC states that indirect off-site NOx emissions cannot be predicted with reasonable certainty because SVP purchases energy from a number of sources, and that Dr. Fox's analysis assumes that all electricity would be obtained from SVP and that all of the electricity required for the project would be generated by a natural gas-fired power plant.²⁷ The RTC is wrong.

First, the RTC does not provide any evidence showing that the Project will obtain energy from any other sources.

Second, as explained by Dr. Fox, her analysis is based on historical information, and that her calculation assumes that only 24% of SVP's power would be supplied by the natural gas-fired plant.²⁸ Based on Dr. Fox's calculations, these assumptions would increase total operation NOx emissions to 18.4 ton/year and off-site daily emissions to 93.1 lb/day, both of which exceed the significance thresholds used by the IS/MND. Therefore, the RTC doesn't negate the substantial evidence supporting a fair argument that the Project would have significant environmental impacts.

Finally, the RTC states that SVP facilities are subject to separate CEQA review and permitting by the appropriate regional air district, including mitigation measures for air quality impacts, and that the project would not require or result in the construction or expansion of power-generating facilities that result in increased air pollutant emissions. However, the RTC does not provide any evidence to substantiate this claim.

Thus, we have shown that there is more than a fair argument showing that the Project may have significant environmental impacts, and that the City must therefore prepare an EIR.

d. Air Quality Analysis is Incomplete

²⁶ Fox Rebuttal Letter, at p. 4.

²⁷ RTC 4-20.

²⁸ Fox Rebuttal Letter, at p. 5.
4577-012acp

June 19, 2019

Page 8

In our Comment Letter, we explained that the IS/MND failed to fully account for the Project's construction and operational emissions impacts on ambient ozone concentrations.²⁹ The RTC responds that the Project will not impact ozone concentrations because the ozone precursor emissions of Reactive Organic Gases ("ROG") and NOx would be below significance.³⁰ However, Dr. Fox explains that under her revised NOx calculations (see above) the Project will exceed the threshold of significance.

Therefore, there is substantial evidence supporting a fair argument that the Project may have significant impacts on ozone concentrations.

e. Particulate Matter Emissions are Significant and Unmitigated

In our Comment Letter, we noted that the Project will have significant impacts on air quality and that emissions of particulate matter ("PM") were underestimated, significant, and unmitigated.³¹ The IS/MND uses the Bay Area Air Quality Management District ("BAAQMD") CEQA Guidelines to support less than significant impacts from fugitive dust. These guidelines state that by adopting standard control measures, a project would automatically reduce fugitive dust emissions to less than significant.³² As Dr. Fox explained, this is not a quantitative PM threshold, and falsely assumes that implementing these measures will effectively reduce PM emissions to a less than harmful environmental impact.³³

The RTC asserts, without providing evidence, that implementing "standard" control measures, will adequately reduce impacts, without attempting to quantify levels of fugitive dust PM emissions.³⁴ However, in this case, Dr. Fox evaluated fugitive dust PM emissions from the Project and compared them to quantitative levels of significance used by other air districts, providing evidence that fugitive dust PM emissions from the Project would exceed levels of significance.³⁵

²⁹ Comment Letter, at p. 25.

³⁰ RTC 4-39.

³¹ Comment Letter, at p. 27.

³² Comment Letter, at p. 29.

³³ Comment Letter, at p. 30.

³⁴ Fox Rebuttal Letter, at p. 7.

³⁵ *Id.*

Furthermore, Dr. Fox has argued that control measure proposed by the BAAQMD's CEQA guidelines are ineffective at controlling fugitive dust PM emissions, stating:

[t]wo of the proposed fugitive dust mitigation measures do not mitigate fugitive dust, but rather exhaust emissions; most of the proposed mitigation measures are not enforceable on the applicant; one is not valid mitigation as it is required by state law; and some only apply during working hours, which ignores windblown dust from disturbed soils during nonworking hours.³⁶

Therefore, Dr. Fox has provided substantial evidence supporting a fair argument that the Project will have significant impacts on air quality.

f. Hazards from Battery Use are Significant and Unevaluated

The Project proposes to use lithium batteries for additional backup power in the case of a power outage to supply electricity during the transition to the backup generators. In our Comment Letter we noted that hazardous material impacts can be significant during battery transport, use and disposal, and that lithium-ion battery fires are extremely dangerous.³⁷ We further noted that the IS/MND does not address these issues, or provide sufficient information, such as number and storage configuration, for the public or decision-makers to effectively evaluate the Project's impacts.³⁸

The RTC didn't address these concerns, and argued simply that the type of batteries to be selected by the Project proponent would not affect the hazards analysis in the IS/MND, that transport of the batteries would be "transported to the site along major roads and highways as is typical for construction projects including data centers," and that the Santa Clara Fire Department ("SCFD") would serve the Project which "does not present a unique or unusually high fire risk."³⁹

The RTC does not provide any evidence to support these contentions, failing to evaluate reasonably foreseeable events such as fire at the data center, and SCFD's experience and ability in fighting fires of this type. Dr. Fox notes that

³⁶ *Id.*, at p. 8.

³⁷ Comment Letter, at p. 8.

³⁸ *Id.*

³⁹ RTC 4-10.

4577-012acp

June 19, 2019

Page 10

lithium-ion battery fires are extremely difficult to suppress, and provides substantial evidence to support the dangers unique to these kinds of fires.⁴⁰ Dr. Fox further notes that such hazards should be analyzed by “[i]dentifying all feasible failure modes, identifying the specific chemicals and the rates at which they could be released during each failure mode, and estimating chronic, acute, and cancer impacts at the locations of sensitive receptors.”⁴¹ The IS/MND and the RTC fail to do this.

Dr. Fox cites a number of sources to support her analysis, providing substantial evidence to support a fair argument that the Project may have significant hazards impacts. Therefore, the City cannot adopt the proposed MND, and must conduct full environmental review for the Project.

g. The City’s Response to Project Greenhouse Gas (“GHG”) Impacts Analysis are Insufficient

The IS/MND states that the Project will be consistent with statewide GHG reduction goals stating the “[p]roject’s indirect GHG emissions from electricity under baseline conditions would be 28 percent below the 2016 statewide average rate of GHG emissions from electricity. Moreover, project emissions would be reduced by over 46 percent compared to baseline (2017) conditions by 2030.”⁴²

Our Comment Letter noted that under relevant case law,⁴³ limiting discussion to a project’s consistency with statewide GHG reductions goals is not sufficient by itself, and that substantial discussion of the applicability of the statewide goals to the specific project is required.⁴⁴ Neither the IS/MND nor the RTC address this issue. The RTC’s response consists mostly of a re-iteration of the IS/MND wording describing SVP’s IRP and the fact that since the Project will receive energy from SVP, it’s GHG emissions would be less than significant.

Further, the RTC provides what it considers key features of the 2017 Scoping Plan associated with SB32 relevant to the Project:

- Achieving a 50-percent Renewable Portfolio Standard (RPS) by 2030,

⁴⁰ Fox Rebuttal Comments, at p. 10.

⁴¹ Fox Rebuttal Comments, at p. 12.

⁴² IS/MND, at p. 50.

⁴³ *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal. 4111 204.

⁴⁴ Comment Letter, at p. 19.

4577-012acp

- Reducing man-made black carbon emissions by 50 percent by 2030,
- Greatly increase the number of electric vehicles on the road and reduce oil demand in half, and
- Develop fuels with an 18-percent reduction in carbon intensity.

Yet, the RTC asserts that the only aspect in its capacity is to “[s]upport statewide GHG reduction efforts through energy efficiency....”⁴⁵ The RTC concludes on this issue “[b]ased on the inherent energy efficiency of the project design and the power mix that would be provided to the project, which currently meets the state’s renewable portfolio standard, indirect GHG emissions would not represent a significant impact.”⁴⁶

However, this does not provide substantial discussion showing that the Project’s GHG emissions will not be significant.

Furthermore, Dr. Earle noted that IS/MND’s “good faith” reliance on SVP’s Integrated Resource Plan (“IRP”) for calculating the Project’s indirect GHG emissions is misplaced, and leads to an underestimate of GHG emissions. The RTC responds to Dr. Earle’s comments by stating:

Indirect GHG emissions from SVP power generation were estimated based on actual emissions rates provided by SVP from the most recent available data (2017) and future emissions rates predicted by SVP based on their current and planned renewable portfolio, consistent with their adopted strategic plan and consistent with statewide regulatory requirements. This constitutes substantial evidence that the rates used in the IS/proposed MND are reasonable and demonstrates a good faith effort to predict indirect GHG emissions attributable to the project.⁴⁷

However, this response does not address our Comment Letter. There, Dr. Earle provided analysis that the estimated 348 lbs-CO₂/MWh generated by SVP as a whole in 2020 is likely too low because the SVP’s IRP uses an emissions rate for market purchases far below that mandated by the California Energy Commission (“CEC”).⁴⁸ Dr. Earle shows that by applying the emissions rate mandated by the

⁴⁵ RTC 4-29.

⁴⁶ RTC 4-29.

⁴⁷ RTC 4-31.

⁴⁸ Earle Rebuttal Letter, at p. 1.

4577-012acp

June 19, 2019

Page 12

CEC the Project would result in an emissions rate of 465 lbs-CO₂/MWh. Further, Dr. Earle showed that SVP's IRP may not meet SB350 statewide requirements because the IRP fails to count emissions generated from its market purchases. This is contrary to the RTC's assertion that the emissions rates predicted by SVP are consistent with statewide regulatory requirements, as noted in comment 4-31.

In sum, there is substantial evidence supporting a fair argument that the Project will have significant GHG impacts, necessitating an EIR. Therefore, we urge the Committee not to approve the architectural review.

III. 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 18.76.00 provides that one of the Committee's purposes is to "[m]aintain the public health, safety and welfare;" Furthermore Section 18.76.020, subsection (c), provides that to approve a project, the Committee **must** find that the Project is based on the following standards of architectural design, among others:

(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.⁴⁹

As our comments on the MND explain, substantial evidence supports a fair argument that the Project may have several significant impacts on the environment. These impacts, which directly relate to the Project's potential impacts on public health and the use and enjoyment of neighboring properties, are also such that the Committee cannot properly make the above findings based on the current Project proposal.

a. The Project's Air Quality Impacts Will Have Adverse Impacts on Persons Residing or Working in The Neighborhood

⁴⁹ S.C.C.C. § 18.76.020(c).
4577-012acp

First, Project construction and operations may cause significant air quality impacts due to NOx emissions. In this case, the IS/MND underestimated NOx emissions for a variety of reasons as explained in our comments. Including all emissions sources, Dr. Fox estimated that an additional 1.26 tons per year of NOx emissions should be added to Project impacts. In her conclusion, Dr. Fox estimated that NOx emissions would exceed the NOx emissions thresholds of significance used by the IS/MND. NOx emissions are a precursor to ozone, and ground-level ozone is known to contribute to a number of adverse public health impacts, including: causing difficulty breathing; aggravating lung diseases such as asthma, emphysema, and chronic bronchitis; and making the lungs more susceptible to infection, among others harmful effects. Therefore, as we show, the Project's actual NOx emissions would have adverse impacts on the public living or working nearby, and cannot be found to be consistent with Santa Clara City Code Section 18.76.020, subsection (c).

b. The Project's Greenhouse Gas Emissions Impacts Will Have Adverse Impacts on Persons Residing or Working in The Neighborhood

Second, as our comments on the IS/MND further explain, GHG emissions resulting from the Project's operations may exceed the BAAQMD's numeric threshold of significance for land use projects, particularly when the Project's substantial electricity demand is accounted for. The IS/MND concludes that the Project's GHG emissions would have a less than significant impact on the environment because 1) GHG emissions from both the construction and operation phase would be below the threshold of significance, and 2) the Project "[w]ould not conflict with an applicable local plan, policy, or regulation adopted for the purpose of reducing the emission of GHGs."

First, the IS/MND underestimates the amount of GHG emissions since it does not evaluate GHG emissions from the construction phase. Second, the IS/MND's reliance on SVP's proposed future reductions in GHG emissions, does not by itself provide evidence that GHG emissions will be in fact reduced by the amount the IS/MND claims, and in fact as shown above, it is likely that GHG emissions will be higher than estimated in the IS/MND.

The IS/MND further fails to support its conclusions of no significant impact by stating that the Project is consistent with state and local GHG reduction goals – however, the IS/MND does not discuss the applicability of the statewide goals to the

June 19, 2019

Page 14

Project, or how the amount of GHG's emitted from the Project will go towards meeting the statewide goals. The IS/MND simply asserts that since the Project is projected to reduce GHG emissions in the future by percentages that are consistent with the statewide goals for GHG emission reductions, such reductions are sufficient to support the contention that the Project's GHG emissions would not be significant. This argument is circular, and is insufficient without supporting evidence showing that the particular project will not cause a significant contribution, either individually or cumulatively, to GHG emissions.

Therefore, and as explained in more detail in our IS/MND comments and above, the IS/MND fails to show that GHG emissions are below the adopted threshold of significance, or establish that the Project's consistency with these plans and programs will ensure that the Project's reasonably foreseeable incremental contribution to global climate change is not cumulatively considerable.

Climate change is an impact that not only adversely affects those in the immediate vicinity of the Project, but all Californians in the form of increased drought, wildfires, and rising sea levels. Thus, approval of the Project in its current form may also adversely affect public welfare in this regard.

c. The Project is inconsistent with Santa Clara City Code Section 18.76.00

The project is located less than half a mile northeast of dense City of Santa Clara residential neighborhoods, and is surrounded by office buildings and other industry. The Committee cannot adopt the MND or find in support of architectural approval for the Project since the Project will have an adverse impact on individuals living or working in the Project's neighborhood. For the reasons above, we urge the Committee not to adopt the IS/MND or approve the Project at this time. The City's analysis in the Initial Study and MND does not support a finding that the Project approval will not materially affect adversely the welfare of persons residing or working in the neighborhood of the Project.

IV. CONCLUSION

We have provided in our comments substantial evidence supporting a fair argument that the Project's environmental impacts on air quality and GHG may be significant, and that the IS/MND fails to describe the Project in its entirety. We further show that because the Project will have significant impacts, the


4577-012acp

June 19, 2019

Page 15

Architectural Committee cannot make findings consistent with Section 18.76.020. Based on the evidence provided, we urge the Committee to deny approval of the Project as currently proposed, and require that an EIR be prepared.

Sincerely,



Yair Chaver

YC:acp

Attachments

4577-012acp