



Planning and Inspection Department

Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
Ph: (408) 615-2450

Appeal Form

Instructions

Use this form to appeal a decision of the Architectural Review Committee or Planning Commission. **All appeals must be filed in the Planning Division within seven calendar days of the action being appealed.**

Appeals from the Architectural Review Committee are made to the Planning Commission and will be set for hearing on the next available Planning Commission agenda. Appeals from the Planning Commission are made to the City Council and will be placed on the subsequent City Council Agenda to set a hearing date. Please contact the Planning Division at the number listed above with any inquiries about the process.

Please print, complete, and sign this form before mailing or delivering to the City, along with the fee payment, and supporting documentation, letters, etc. (if any).

Appeal Fees

Appeal Fees are set by the Municipal Code of the City of Santa Clara and are subject to annual review. Please call the Planning Division for the current Appeal Fee. **Fee payment must be received by the City of Santa Clara before this form submittal can be certified as complete.**

Appeal fees may be paid by cash, check, or with VISA, MasterCard, or American Express, at the Permit Center at City Hall. Alternatively, checks or money orders made payable to City of Santa Clara can be mailed or delivered to Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara, California 95050.

Appellant Declaration

Name: Adams Broadwell Joseph & Cardozo
Street Address: 601 Gateway Blvd. Ste. 1000
City, State, Zip Code: South San Francisco, CA, 94080
Phone number: (650) 589-1660
E-mail address: ychaver@adamsbroadwell.com

In accordance with the provisions of the Municipal Code of the City of Santa Clara, I hereby appeal the following action of the:

☒ Architectural Review Committee ☐ Planning Commission

at it's meeting of June, 19, 2019
(date)

Agenda Item No.: 8.A

File No.(s): PLN2018-13128 and CEQ2018-01049

Address:/APN(s): APN: 224-58-003

Appellant Statement

(If more space is required, attach a separate sheet of paper.)

Action being appealed:

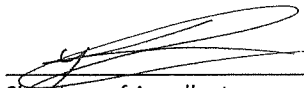
Please see attached letter

Reason for Appeal:

Please see attached.

Certification of Authenticity

Beware, you are subject to prosecution if you unlawfully submit this form. Under penalty of law, transmission of this form to the City of Santa Clara is your certification that you are authorized to submit it and that the information presented is authentic.



Signature of Appellant

6/25/19

Date

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 26, 2019

By Hand-Delivery

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

BY FAX

**Re: Appeal of the Adoption of a Mitigated Negative Declaration
and Architectural Approval for Raging Wire SV1 Data
Center (PLN2018-13128 and CEQ2018-010494)**

Dear Planning Commission:

We are writing on behalf of California Unions for Reliable Energy ("CURE") to appeal the June 19, 2019 decision of City of Santa Clara ("City") Architectural Committee to adopt a Mitigated Negative Declaration ("MND") and grant Architectural Approval for the 1150 Walsh Avenue Raging Wire SV1 Data Center ("Project").

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 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

4577-013acp

June 26, 2019

Page 2

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, we submitted comments on the Initial Study and MND (“IS/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. Our Comment Letter also showed that the IS/MND fails as a matter of law to address energy impacts as required under CEQA. 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.

At the June 19, 2019 public hearing, the Architectural Committee adopted the MND and approved the Project. We request that the Planning Commission reverse the Architectural Committee adoption of the IS/MND and the architectural approval.

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

4577-013acp

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. BASIS FOR THE APPEAL

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.¹ This standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.² As a matter of law, substantial evidence includes both expert and lay opinion based on fact.³

As we have shown in our Comment Letter, there is substantial evidence that the project may cause significant environmental effects. The City's Response to Comments ("RTC") failed to rebut this presumption, and instead attempted to dismiss our comments by stating that the City provides substantial evidence to support its conclusions. However, even if other substantial evidence supports a different conclusion, the agency nevertheless must prepare an EIR under CEQA.⁴

a. 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

¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

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

³ 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).

⁴ *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.

4577-013acp

lessen any significant effects that the project would have on the environment.”⁵ Further, these mitigation measures must be enforceable,⁶ and identified during the environmental review process:

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.⁷

As we explained in our letter to the Architectural Committee the IS/MND relies on a number of plans to mitigate impacts but defers preparation of the mitigation to the future. During the June 19, 2019 Architectural Committee hearing, the City argued that CEQA permits such a deferral as long as the IS/MND adopts specific performance standards the mitigation will achieve. The City and the applicant’s representative pointed to actions in a few of these plans, such as the noise control and vibration monitoring plan, arguing that the City was in compliance with CEQA. However, there are two reasons the City’s mitigation fails to comply with CEQA.

First, a number of these deferred plans, such as the Construction Noise Control Plan,⁸ Construction Plan,⁹ Construction Vibration Monitoring Plan,¹⁰ Construction Contingency Plan,¹¹ and Risk Management Plan,¹² do not in fact provide specific performance standards. Second, the City, even in the rebuttal at the Architectural Committee hearing, did not show that it was not practical or infeasible to include these specific details at the time of environmental review.

⁵ 14 C.C.R. § 15021(a)(2)

⁶ 14 C.C.R. § 15126.4(a)(2).

⁷ 14 C.C.R. § 15126.4(a)(1)(B). (emphasis added).

⁸ IS/MND, at p. 80.

⁹ *Id.*, at p. 81.

¹⁰ *Id.*, at p. 84.

¹¹ *Id.*, at p. 85.

¹² *Id.*, at p. 60.

For example, as part of Mitigation Measure NOI-1 to address noise impacts, the IS/MND provides that if “[s]tationary noise-generating equipment, such as air compressors or portable power generators,” must be located near sensitive receptors, “[a]dequate muffling ... shall be [sic] to reduce noise levels at the adjacent sensitive receptors.”¹³ However, the IS/MND does not include the performance standard needed to reduce noise to levels less than significant, nor does it show why such performance standards could not have been included at the time of environmental review. NOI-1 also states that “[a]lternatives to driven piles for the foundations” will be evaluated,¹⁴ but does not show why such alternatives could not have been evaluated at the time of environmental review.

Similarly, the deferred Construction Plan proposed in the IS/MND states that the construction plan “[s]hall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.”¹⁵ However, the IS/MND fails to provide specific performance standards, or show why such a procedure must be determined at a later time.

To address vibration impacts, the IS/MND proposes a Construction Vibration Monitoring Plan.¹⁶ However, the measures are all deferred to the future, and do not provide performance standards to be achieved to ensure potential impacts from vibration would be reduced to less than significant. Furthermore, the IS/MND does not demonstrate that it was impractical or infeasible to provide details at the time of environmental review.

As a last example, the IS/MND defers completion of a Risk Management Plan. The IS/MND states in relation to potential leaks from the fuel storage tanks for the backup generators that “[a] Risk Management Plan would be required for the project to ensure the storage tanks are maintained and operated in a way that minimizes the risk of release.”¹⁷ No specific performance standards are provided in the IS/MND, and the IS/MND does not show why it was impractical or infeasible to provide a detailed mitigation plan.

¹³ *Id.*, at p. 81.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, at p. 83.

¹⁷ *Id.*, at p. 60.

4577-013acp

As we show, the IS/MND defers these mitigation measures, and does not provide evidence that it was not practical or infeasible to include these specific details at the time of environmental review. Therefore, the City impermissibly defers identification of feasible mitigation measures, rendering the IS/MND incomplete.

Therefore, because the IS/MND does not identify feasible mitigation measures at this time, substantial evidence supports a fair argument that the Project may have significant, unmitigated impacts.

b. Operational NOx Emissions are Significant and Unmitigated

In our Comment Letter, we explained that the IS/MND failed to accurately account for operation NOx emissions. The RTC responses 4-16 and 4-18 clarify some of the emissions sources. However, the Project's NOx emissions remain significant even after accounting for the City's responses.

The City argues that our analysis is speculative, and does not show impacts above levels of significance. For example, the City 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. It further argues that emissions from power plants supplying power to SVP are too speculative. The City concludes therefore that the IS/MND appropriately did not evaluate NOx emissions from use of the emergency backup generators or from off-site emissions sources.¹⁸

However, substantial evidence shows the average number and duration of outages at SVP can be used to provide reasonably foreseeable estimates of NOx emissions.¹⁹ The City conceded that use of backup generator can be forecast, but that only an additional 0.36 tons/year of NOx would be added to Project impacts. However, substantial evidence shows that even one 24-hour period requiring the use of all power generators during a power outage is foreseeable and not speculative, and would result in an additional 4.8 tons/year of NOx emissions.

Further, the City argues that indirect off-site NOx emissions cannot be predicted with reasonable certainty because Dr. Fox's analysis 1) erroneously

¹⁸ RTC 4-19.

¹⁹ Fox Rebuttal Letter, at p. 4.

4577-013acp

assumes that all electricity would be obtained from SVP and 2) erroneously relies on a natural gas-fired power plant as the source for all of the electricity required for the project.

First, the City does not provide any evidence showing that the Project will obtain energy from any other sources beyond SVP. Second, as explained by Dr. Fox, her calculation assumes that only 24% of SVP's power would be supplied by the natural gas-fired plants, not 100%.²⁰ We have shown that SVP's reliance on 24% of energy from gas-fired plants would increase total operation NOx emissions to a total of 1.26 ton/year and off-site daily emissions to 6.9 lb/day, which, when added to other NOx emissions, exceed significance thresholds relied on by the IS/MND. Dr. Fox's analysis shows that in total, NOx emissions from the Project would amount to 12.8 tons/year, or 70.7 lb/day, both of which exceed the significance threshold used in the IS/MND.

Thus, substantial evidence supports more than a fair argument that the Project may have significant environmental impacts, and that the City must prepare an EIR.

c. Air Quality Analysis is Incomplete

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.²¹ The RTC responds that the Project will not impact ozone concentrations because the NOx emissions would be below a level of significance.²² However, as shown above, the Project's emissions will exceed the threshold of significance. The City dismissed this information in its rebuttal to our NOx emissions analysis. However, as just shown, the City's rebuttal was without merit.

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

²⁰ *Id.*, at p. 5.

²¹ Comment Letter, at p. 25.

²² RTC 4-39.

4577-013acp

d. Particulate Matter Emissions are Significant and Unmitigated

In our Comment Letter, we explained that the Project will have significant impacts on air quality and that emissions of particulate matter (“PM”) were underestimated, significant, and unmitigated.²³ The IS/MND uses the Bay Area Air Quality Management District (“BAAQMD”) CEQA Guidelines to support its conclusion that the Project would result in 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.²⁴ As Dr. Fox explained, the IS/MND falsely assumes that implementing these fugitive dust measures will effectively reduce PM emissions to a less than significant environmental impact.²⁵

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.²⁶ However, we have shown that fugitive dust PM emissions from the Project may have a significant environmental impact.²⁷

Furthermore, we have shown that the 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.²⁸

Implementing BAAQMD’s BMP’s cannot guarantee that PM emissions will not have an adverse impact. Where evidence exists that a Project would have an impact, even where a project falls within thresholds of significance adopted by a

²³ Comment Letter, at p. 27.

²⁴ *Id.*, at p. 29.

²⁵ *Id.*, at p. 30.

²⁶ Fox Rebuttal Letter, at p. 7.

²⁷ *Id.*

²⁸ *Id.*, at p. 8.

4577-013acp

lead agency, the lead agency must assess the actual impact of the project.²⁹ In this case, the IS/MND does not evaluate fugitive dust PM emissions generated during construction, instead relying on BAAQMD's BMP list for controlling fugitive dust generally.

Therefore, there is substantial evidence supporting a fair argument that the Project will have significant impacts on air quality.

e. 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 provided evidence that hazardous material impacts can be significant during battery transport, use and disposal, and that lithium-ion battery fires are extremely dangerous.³⁰ We further noted that the IS/MND does not address these issues, or provide sufficient information, such as the number of batteries and the storage configuration, for the public or decision-makers to effectively evaluate the Project's impacts.³¹

The City 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 batteries would be "[t]ransported 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."³²

The RTC does not provide any evidence to support these contentions, failing to provide 1) analysis of reasonably foreseeable events such as fire at the data center, and 2) SCFD's experience and ability in fighting fires of this type. Dr. Fox explains that lithium-ion battery fires are extremely difficult to suppress. Dr. Fox also provides substantial evidence to support the dangers unique to these kinds of

²⁹ *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344, 1381-1382. (Analysis of impacts from expansion of the Metropolitan Oakland International Airport concluded noise impacts below significance. The Court held that a conclusion derived without meaningful analysis is insufficient.)

³⁰ Comment Letter, at p. 8.

³¹ *Id.*

³² RTC 4-10.

4577-013acp

fires.³³ 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.”³⁴ The IS/MND and the RTC fail to do this.

During the Architectural Committee Meeting, the City argued that SCFD has signed off on the project, and that because there are many data centers in Santa Clara, the fire department has knowledge and experience with these issues. While this may be the case, it is still true that the IS/MND and the RTC simply state that there is no call for concern without providing any information for decision-makers and the public to evaluate this issue.

f. The City Failed to Evaluate Energy Impacts Under CEQA Requirement.

The City argues it need not analyze all energy impacts. The City is wrong. CEQA has required an analysis of energy impacts for over 40 years.³⁵

In our Comment Letter, we explained that the IS/MND violates CEQA as a matter of law because it fails to evaluate all of the Project’s energy impacts.³⁶ CEQA Section 21100(a)³⁷ requires agencies to prepare analysis of the Project’s impact on energy use.³⁸

CEQA §21100(a) requires agencies to prepare an environmental impact report on any project which may have a significant impact on the environment. Subdivision (b)(3) requires that the EIR must include mitigation measures to, among others, “[r]educe the wasteful, inefficient, and unnecessary consumption of energy.” In order to determine whether a project

³³ Fox Rebuttal Comments, at p. 10.

³⁴ *Id.*, at p. 12.

³⁵ *People v. County of Kern* (1976) 62 Cal.App.3d. 761. *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912. *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173. *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256.

³⁶ Comment Letter, at p. 30.

³⁷ 14 PRC § 21100

³⁸ Comment Letter, at p. 30.

4577-013acp

may have significant energy impacts, the lead agency must conduct an energy study.³⁹

The amended CEQA Guidelines Section 15126.2 subd. (b) merely elaborates on the energy impact analysis required by CEQA.⁴⁰

With respect to the amendments, which elaborate on CEQA's long-standing requirement to analyze energy impacts, the City argues that according to CEQA Guidelines Section 15007(d) it has 120 days past the effective date of the amended guidelines to comply with those amendments. The City states "[h]ere, the new provisions on energy impacts in Guideline Section 15126.2(b) and the Appendix G checklist had an operative date of December 28, 2018, 2018, and therefore they took effect on April 27, 2019".⁴¹

Even if the City desires to take 120 days to comply with the amended Guidelines, the CEQA Statute itself requires analysis of a project's total energy impacts on the environment. Therefore, notwithstanding City's argument, the City must analyze all phases of the Project for its energy impacts. This is necessary to provide decision-makers and the public the ability to fully evaluate Project impacts. Therefore, the City must provide an analysis of energy impacts from all phases of the Project.

g. The City Failed to Conduct the Legally Required Analysis of Greenhouse Gas ("GHG") Impacts

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 The RTC's response consists mostly of a re-iteration of the IS/MND wording describing SVP's Integrated Resource Plan and the fact that since the Project will receive energy from SVP, its GHG emissions would be less than significant.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ RTC 4-49.

⁴² IS/MND, at p. 50.

4577-013acp

Our Comment Letter explained 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. Regardless of these future reductions relative to the 2017 baseline levels in the IS/MND, the Project will still emit 32,600 metric tons of CO₂e in year 2020 and 21,279 metric tons of CO₂e in year 2030, relying only on SVP's projected reductions. The IS/MND does not explain how the Project itself will implement measures to directly reduce GHG emissions.

Our Comment Letter further noted that relying on SVP's Integrated Resource Plan is not appropriate because the IRP is wrong, and that SVP's actual emissions rate would be 465 pounds of CO₂ per megawatt hour, as opposed to 348 pounds of CO₂ per megawatt hour used by the IS/MND.⁴⁵ The RTC responded that the IS/MND undertook a "good faith" effort to evaluate GHG emissions relying on SVP's projections. However, we addressed this response in our comments to the Architectural Committee, stating that since we pointed out this issue in our Comment Letter, the City cannot state that the analysis is a "good faith" effort since it has been alerted to this issue. The City is simply ignoring the legally required analysis and evidence provided.

Further, the RTC asserts that the only ability the Project has to address GHG emissions is to "[s]upport statewide GHG reduction efforts through energy efficiency...."⁴⁶ 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."⁴⁷

However, because the RTC does not provide actual evidence of reduced GHG emissions from the Project and how the Project will not contribute to cumulative impacts in the region, this does not provide substantial discussion showing that the Project's GHG emissions will not be significant.

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

⁴⁴ Comment Letter, at p. 19.

⁴⁵ *Id.*, at p. 21.

⁴⁶ RTC 4-29.

⁴⁷ *Id.*

4577-013acp

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)(4) provides that to approve a project, the Committee must find that the Project cannot "[m]aterially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development."⁴⁸

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

First, Project construction and operations may cause significant air quality impacts due to NOx emissions. 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)(4).

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

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.

⁴⁸ S.C.C.C. § 18.76.020(c).

4577-013acp

June 26, 2019

Page 14

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.

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 City's analysis in the IS/MND and RTC do 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. RELIEF REQUESTED

CURE requests that the Planning Commission grant this appeal, rescind the June 19, 2019 Architectural Committee decisions to 1) adopt the IS/MND and 2) grant Architectural Approval. We further request that the City conduct further analysis on the Project's environmental impacts as described above. 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.

V. 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.

June 26, 2019

Page 15

Here, the Architectural Committee made its decision on the adoption of the MND and approval of the Project on June 19, 2019. This letter and the attached appeal form constitute notice in writing of the appeal.

We have also enclosed a check for \$434.52 for the appeal fee for non-applicants.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Yair Chaver', with a large, sweeping flourish extending to the right.

Yair Chaver

YC:acp

4577-013acp