

REPORT TO PLANNING COMMISSION

SUBJECT

..Title

Public Hearing: Action on Appeal of Architectural Review Committee Approval of a Mitigated Negative Declaration and Data Center Project Located at 2305 Mission College Boulevard

..Report

BACKGROUND

On April 18, 2018, the Architectural Review Committee (ARC) adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MND/MMRP) and approved a two-story 495,610 square foot data center on a 15.7 acre project site. The project includes the demolition of an existing office/R&D building. A total of 120 generators would be located within a generator yard west of the data center building and a new substation would be developed on the northwest corner of the site.

At this meeting two law firms presented information to the Committee regarding concerns with the project and the MND and asked the Committee to delay action or deny approval of the project.

On April 24, 2018, the firm representing Laborers International Union of North America, Lozeau Drury LLP, filed an appeal of ARC's actions. On April 25, 2018, the law firm representing the California Unions for Reliable Energy, Adams Broadwell Joseph & Cardozo (Adams Broadwell), also filed an appeal of ARC's actions. Both appeals were properly filed and paid for within seven calendar days of ARC's decision.

DISCUSSION

At the Architectural Review Committee meeting, representatives of Adams Broadwell & Joseph Cardozo and Lozeau Drury LLP (collectively the "Appellants") reiterated concerns about the project and MND as stated in the correspondence letters provided in the staff report packet. Following the public testimony, the ARC's discussion focused on the concerns raised and the environmental consultant from David J. Powers & Associates provided responses. Following the discussion, the ARC took action adopting the MND and approved the project with an amendment of condition of approval related to bicycle parking and storage.

The Appellants raised concerns related to the air quality and greenhouse gas emissions sections of the MND. The response to comments responded to these concerns, and the environmental consultant also provided a supplemental memo, both of which are attached to this report for further clarification.

In addition to the aforementioned concerns, Adams Broadwell also appealed on the basis that the City lacks permitting authority and that California Energy Commission (CEC) would need to review the project prior to the City. The CEC was included in the noticing for the review of the MND. Planning Staff did not receive a comment letter from

CEC. Additionally, the permitting authority of the California Energy Commission is not a CEQA issue.

Approval of the proposed data center would secure the purpose and intent of the City's Zoning Ordinance and the General Plan, in that the proposed data center project is a permitted use in the Light Industrial Zoning District, provides adequate onsite parking, would not increase congestion or hazards, and is in keeping with the scale and character of the industrial area.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration (MND) was prepared and a Notice of Availability was circulated for a 30-day period from March 5, 2018 to April 5, 2018 in accordance with California Environmental Quality Act (CEQA) requirements. An extension of the review period was approved to April 12, 2018. On the basis of the Initial Study/MND, it has been determined that the proposed action, with the incorporation of the mitigation measures described below, will not have a significant effect on the environment. Four organizations responded to the IS/MND: Adam Broadwell Joseph & Cardozo, Lozeau Drury LLP, Santa Clara Valley Transportation Authority, and Santa Clara Water District. Responses to comments were prepared by David J. Powers and are attached to this report and were reviewed and approved by the City Attorney's Office.

A response to the environmental concerns raised by both appellants has been prepared in coordination with the environmental consultants for the project, and the City Attorney's Office and is attached to this report. The summary of this response finds that there are no changes to the conclusions of the MND. As stated in the MND, all impacts associated with the proposed project are less than significant after mitigation; therefore, no additional mitigation measures are required. Consequently, the assertion by the appellants that the project requires the preparation of an Environmental Impact Report is unfounded.

FISCAL IMPACT

There is no impact to the City for processing the requested application other than administrative staff time and expense typically covered by processing fees paid by the applicant.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

On June 1, 2018, a notice of public hearing of this item was posted in at least three conspicuous locations within 300 feet of the project site and mailed to property owners within 300 feet of the project site. Planning Staff has not received public comments for this appeal.

ALTERNATIVES

1. Deny the appeal and uphold the Architectural Review Committee's adoption of the

Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program

2. Deny the appeal and uphold the Architectural Review Committee's approval of the data center project located at 2305 Mission College Boulevard, subject to conditions.
3. Approve the appeal and overturn the Architectural Review Committee's adoption the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
4. Approve the appeal and overturn the Architectural Review Committee's approval of the data center project located at 2305 Mission College Boulevard, subject to conditions.

RECOMMENDATION

..Recommendation

1. Deny the appeal and uphold the Architectural Review Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
2. Deny the appeal and uphold the Architectural Review Committee's approval of the data center project located at 2305 Mission College Boulevard, subject to conditions.

..Staff

Reviewed by: Reena Brilliot, Planning Manager

Approved by: Andrew Crabtree, Director of Community Development

ATTACHMENTS

1. Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
2. Architectural Review Committee Staff Report
3. Excerpt of Architectural Review Committee Meeting Minutes of 04/18/2018
4. Conditions of Approval
5. Response to Comments on MND
6. Appeal from Lozeau Drury LLP
7. Appeal from Adams Broadwell Joseph & Cardozo
8. Supplemental Memo
9. Resolution to Deny the Appeal and Uphold the Adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
10. Resolution to Deny the Appeal and Uphold the Architectural Review Committee Approval
11. Development Plans