

EXCERPT ARCHITECTURAL COMMITTEE MEETING MINUTES OF JUNE 19, 2019

8.A	File No.(s):	PLN2018-13128 and CEQ2018-01049
	Location:	1150 Walsh Avenue , a 3.32-acre parcel on the south side of Walsh Avenue approximately 1,055 feet east of Scott Boulevard, APN: 224-58-003; property is zoned Heavy Industrial (MH).
	Applicant:	Michael Downey, Gensler
	Owner:	Raging Wire Data Centers, Inc.
	Request:	Adoption of a Mitigated Negative Declaration (MND); and Architectural Review for the demolition of three, one-story industrial buildings totaling 37,443 square feet to construct a four-story, 160,450 square foot data center building, with back-up diesel generators, electrical substation, and site-improvements. <i>Project includes a Zoning Administrator Modification to increase maximum building height.</i>
	CEQA Determination:	Mitigated Negative Declaration (MND)
	Project Planner:	Debby Fernandez, Associate Planner
	Staff Recommendation:	Approve , subject to conditions

Associate Planner Debby Fernandez presented the project with recommendations for approval.

Following the staff presentation, Assistant City Attorney Alexander Abbe advised the Committee that immediately preceding the meeting, the City had received a late set of comments on the proposed Initial Study/ Mitigated Negative Declaration (IS/MND) from the law firm Adams Broadwell Joseph & Cardozo dated June 19, 2019 on behalf of their client, a group of labor unions using the acronym CURE ("California Unions for Reliable Energy"). Mr. Abbe indicated that he and environmental consultant Brianna Bohonok from Circlepoint had spent the first hour of the meeting reviewing the CURE letter, and had several responses to the comments.

First, CURE argued that the IS/MND failed to describe the entire project, because it did not analyze the possible future decommissioning of the data center, which CURE asserted would take place in 30 years. Mr. Abbe explained that the project before the Committee is the construction of the data center, not the demolition of it, and that the date of decommissioning or possible demolition of the data center is too speculative to analyze. CEQA does not require an analysis of speculative future events.

Next, CURE argued that the project improperly deferred mitigation, because it utilized plans to mitigate certain impacts, including a construction noise control plan and an emergency response evacuation plan. Mr. Abbe explained that under a 2011 case, *Oakland Heritage Alliance v. City of Oakland*, the City had the authority to devise specific measures later in the planning process. Mr. Abbe went on to explain that where impacts are of a type for which mitigation is known to be feasible, but practical considerations prohibit devising such measures early in the planning process, the lead agency can permissibly articulate specific performance criteria, and commit to devising mitigation measures that will satisfy those criteria. That is what the City did for all of the plans cited by CURE. Ms. Bohonok added that the plans take into consideration best practices, the site itself, the project itself, and the surrounding context. In response to the allegation that the plans did not contain performance criteria, Ms. Bohonok provided several examples of

performance criteria contained in the plans, including the following: temporary noise barriers must provide a minimum 5 dBA noise reduction; if pile driving is necessary, use acoustical blankets for sensitive receptors in the vicinity of the site; for vibration, there is an extensive list requiring identification of nearby sensitive structures located within 100 feet of any pile-driving activities and within 25 feet of any other construction activities, and various requirements to monitor such buildings.

Third, CURE asserted that the IS/MND underestimated emissions of nitrous oxides (NO_x). Mr. Abbe explained that the NO_x emissions were calculated using the widely utilized California Emissions Estimator Model (CalEEMod), which projected that workers would travel an average of eight miles for round trips. CURE asserted that the round trip projection was low, and that a more realistic projection would be 80 miles. Mr. Abbe pointed out to the Committee that this would mean that the average worker in Santa Clara would live further away than Gilroy. Although the CURE letter claimed that there was “evidence” to support an 80-mile round trip, the “evidence” they provided was a 2013 article in the Palo Alto Weekly newspaper, citing 2011 U.S. Census data; moreover, according to that article, only two percent of commuters in the Bay Area had “mega commutes” of the sort indicated by the CURE letter. The average travel time in 2011 in Santa Clara County was actually 24.7 minutes, making the 80-mile estimate in the CURE letter simply untenable.

The CURE letter also asserted that the IS/MND understated NO_x emissions because it did not account for emergency operations during power outages. Mr. Abbe pointed out that CEQA does not require an analysis of unexpected, emergency conditions. Nevertheless, he went on to explain that even if the additional emissions were included, the total NO_x emissions would still be below the threshold of significance. If all generators were operated for the maximum of 50 hours per year, the daily emissions would be approximately 50.1 pounds of NO_x per day. If, as the CURE letter suggests, the City took into account emergency operations of approximately one hour per year, the emissions would be approximately 51 pounds of NO_x per day. Either way, the impact is less than the threshold of significance, which is 54 pounds per day.

The CURE letter next argued that NO_x emissions were understated because the City should have used historical information from 2013-2017 about the emissions from a natural gas-fired plant. Mr. Abbe clarified that the City was relying upon current data, rather than historical data. Ms. Bohonok added that the City’s electric utility, Silicon Valley Power (SVP) is required to reduce its emissions over time, and is in the progress of moving toward a larger mix of renewable sources such as wind and solar. As a result, the more-current 2017 data utilized by the IS/MND reflected lower emissions than what the historical data in the CURE letter. Offsite indirect emissions are too speculative for a CEQA document to evaluate.

The CURE letter then cited to the fact that the IS/MND indicated that future SVP facilities would be subject to separate CEQA review and permitting, but that the IS/MND did not provide evidence to support that. Mr. Abbe explained that the construction of a power plant would constitute a project under CEQA, and that there was no need to recite the basic tenets of CEQA in the IS/MND. Ms. Bohonok added that existing SVP facilities have already gone through CEQA review, and future facilities would be subject to a robust environmental review process from the California Energy Commission.

The CURE letter also argued that the IS/MND’s analysis of air quality impacts was incomplete, given the previously-stated concerns about underestimating NO_x emissions. Mr. Abbe again explained that because NO_x emissions were accurately calculated, no further analysis was required.

The CURE letter next criticized the City's use of Bay Area Air Quality Management District (BAAQMD) Guidelines in its evaluation of particulate matter and fugitive dust. Mr. Abbe explained that the City uses the BAAQMD Guidelines in its evaluation of particulate matter and fugitive dust, and that under those Guidelines, a project that follows Best Management Practices (BMPs) in the CEQA Guidelines is presumed to have a less-than-significant impact. CURE argued that the project would have a significant impact related to fugitive dust if the City employed "quantitative levels of significance used by other air districts." Mr. Abbe explained that as the lead agency on the Project, the City sets its own thresholds of significance, and the City has consistently utilized the BAAQMD Guidelines for analysis of particulate matter and fugitive dust. Ms. Bohonok then explained several of the BAAQMD BMPs, and how they were effective.

The CURE letter argued that hazards from the data center's use of batteries would be significant and unevaluated, and that should there be a facility fire, the materials used in batteries would be difficult to extinguish. Ms. Bohonok explained that there are many data centers in Santa Clara, and that as with those other data centers, the Santa Clara Fire Department evaluated this project, and indicated that it would have adequate resources to serve the project in the event of a fire. Later in the meeting, the applicant also added that the project complies with current Fire Code requirements to provide "2-hour" rooms for batteries, and the Santa Clara Fire Department verified that the design complied with current fire code requirements.

The last CEQA argument in the CURE letter was that the City improperly relied upon statewide emissions targets when it concluded that greenhouse gas emissions would be less than significant. Mr. Abbe explained that the City was not relying upon the statewide targets; instead, the calculated Citywide emissions would be substantially lower than the statewide targets.

The applicant then gave a detailed presentation on the project design and responded to questions from the Committee regarding fire access and fire prevention features in the design of the facility.

The Committee then opened the meeting to public comment at which time Esmail Rahimian, adjacent property owner of 1180 Walsh Avenue raised questions regarding the project boundaries and proposal for treatment of an existing tree that straddles the properties, potential for batteries to leak, and location of SVP facilities from his property. The applicant confirmed that the project site had been surveyed and that the tree is located on the project site and would be replaced at a 2:1 on-site; the batteries are enclosed and include fail safe measures in the design; and spoke to the distance of the SVP facilities serving the development in relation to the 1180 Walsh Avenue property. Mr. Yair Chaver, of Adams Broadwell Joseph & Cardozo, followed with the assertion that the MND is insufficient and that there are significant impacts associated with the project that require the preparation of Environmental Impact Report. The Committee then closed the public hearing.

Motion/Action: Motion to approve was made by Planning Commissioner Steve Kelly, seconded by Planning Commissioner Anthony Becker to adopt the MND and MMRP and approve architectural review of the project (2-0-0-0).