
**SV1 DATA CENTER
1150 WALSH AVENUE**

Response to Comments:

Comments Received on the 1150 Walsh Data Center Final MND and RTC

City File No: PLN2018-13128, CEQ2018-01049

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RESPONSE TO COMMENTS

The City of Santa Clara Planning Division provided a 30-day public comment period for the IS/proposed MND for the 1150 Walsh Avenue Data Center Project beginning on March 6, 2019 and ending on April 5, 2019. Five written comment letters were received during the public circulation period, including a comment letter from Adams Broadwell Joseph & Cardozo (Adams Broadwell) on behalf of California Unions for Reliable Energy (CURE). As required by California Environmental Quality Act (CEQA), responses were prepared to address comments received on the IS/proposed MND (Pub. Res. Code §21091(d); CEQA Guidelines §15073) and provide responses to the comments prior to consideration of adopting the IS/proposed MND (Pub. Res. Code §21092.5 (b)). Responses were prepared in a “Response to Comments” document provided as an attachment to the Final MND.

On June 19, 2019, the City’s Architectural Review Committee conducted a public hearing to review and consider adoption of the IS/MND and project approval. Immediately preceding the hearing, on June 19, 2019, a rebuttal to the Response to Comments document was submitted by Adams Broadwell on behalf of CURE. This rebuttal letter largely contained a reiteration of items listed in the original comment letter submitted to the City during the public review period. During the hearing, the City provided a verbal summary of the contents of the rebuttal letter and verbal responses to items contained in the letter, as reflected in the minutes of that meeting. The Architectural Review Committee adopted the IS/MND and approved the project at that meeting.

On June 26, 2019, Adams Broadwell appealed the Architectural Review Committee’s adoption of the IS/MND and architectural approval of the project. The written appeal included an attachment which reiterated items presented in the initial comment letter and subsequent rebuttal letter.

This second Response to Comments document has been prepared to address items listed in the June 19 and June 26 letters submitted to the City by Adams Broadwell. Copies of both letters are included as attachments. For ease of navigation, a unique identifier has been assigned each substantive item in the two letters – i.e., “AB-1”, “AB-2”. This numbering system has been selected to avoid confusion with the comment numbering used in the original Response to Comments document. Where Adams Broadwell’s subsequent letters repeat information or comments provided in their original comment letter, this document refers the reader to the City’s original Response to Comments document. The original Response to Comments document is available on the City’s website at <http://santaclaraca.gov/home/showdocument?id=64292> and is also included here as an attachment.

Response to June 19 Comment Letter

AB-1 Please refer to Response 4-30 in the Response to Comments Document, which is attached to the Mitigated Negative Declaration as Exhibit B and is also provided as an attachment to this document.

The project description and CEQA analysis completed for the project reasonably includes the whole of the action. CURE asserts that the whole of the project has not been analyzed because

possible future decommissioning of the data center is not included in the Initial Study. CURE asserts the data center would be decommissioned in 30 years. The project being evaluated is the construction and operation of the data center, and the future date of decommissioning or possible future demolition of the data center is too speculative to analyze. CEQA does not require an analysis of speculative future events.

Specifically, decommissioning of the data center is speculative because the project applicant has not proposed any decommissioning or demolition, the applicant owns the land and therefore there is not a ground lease with expiration date, and the data center building and base infrastructure would reasonably have a useful life beyond 30 years as is common with industrial buildings throughout the South Bay.

Finally, as described in Response 4-30, it can be reasonably assumed that 1) decommissioning would require permits, which would include permit conditions typical for decommissioning of industrial buildings, and 2) if decommissioning requires a subsequent discretionary approval, an evaluation of whether project changes have occurred which would result in new or greater impacts would be required at the time of decommissioning.

- AB-2 CURE asserts that the IS/MND improperly deferred mitigation because it utilized plans to mitigate certain impacts, including a Construction Noise Control Plan and Construction Vibration Monitoring Plan. The City has the authority to devise specific measures later in the planning process. 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.¹ That is what the City has done by requiring preparation of the plans cited by CURE. The performance criteria set in the mitigation measures require the plans take into consideration best practices, the site itself, the project itself, and the surrounding context. Examples of performance criteria contained in the plans include 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.

Additionally, CURE refers to the Risk Management Plan requirement as deferred mitigation. In fact, the preparation of this plan is not mitigation, but is required separately from and in addition to CEQA analysis. An excerpt from the IS/MND is provided below:

The Hazardous Materials Division also administers the California Accidental Release Prevention Program within Santa Clara. The program requires assessment of hazard

¹ *Oakland Heritage Alliance v. City of Oakland*, 195 Cal. App. 4th 884 (Cal. Ct. App. 2011)

potential from the storage of hazardous materials on-site and the implementation of a Risk Management Plan to minimize the risk of accidental release. The fuel storage tanks would pose a risk to soils if an accidental release of fuel occurred. 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. In the event of an accidental release, the Hazardous Materials Division would oversee required cleanup and remediation as required by local, state and federal regulation.

Similarly, CURE refers to the Emergency Response and Evacuation Plan as deferred mitigation. In fact, the preparation of this plan is not mitigation, but is a state requirement separate from and in addition to CEQA analysis. An excerpt from the IS/MND is provided below:

[The] project applicant would be required to prepare an emergency response and evacuation plan, conduct hazardous materials training (including remediation of accidental releases, including diesel fuel), and notify employees who work in the vicinity of hazardous materials, in accordance with federal Occupational Health and Safety Administration (OSHA) and California Division of Occupational Safety and Health (Cal OSHA) requirements.

- AB-3 Please refer to Responses 4-13 and 4-14 for improper baseline, 4-15 for mobile source emissions, 4-16 for mobile source emissions and building size, 4-17 for building size, 4-18 for emergency generator use, and 4-20 for offsite power generation. See Responses AB-4, AB-5, and AB-6 below for further information.
- AB-4 CURE asserts that the IS/MND underestimated emissions of nitrous oxides (NOx) from mobile source emissions by using a short trip length. NOx emissions provided in the IS/MND were calculated using the widely utilized California Emissions Estimator Model (CalEEMod), which projected that workers would travel an average of 8 miles for round trips. CURE asserted that the round-trip projection was low, and that a more realistic projection would be 80 miles. 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 provided was a 2013 article from the Palo Alto Weekly newspaper, citing 2011 U.S. Census data; moreover, according to the article, only 2 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 24.7 minutes, making the 80-mile estimate in the CURE letter simply untenable.
- AB-5 Please refer to Response 4-18. CURE asserts that the IS/MND understated NOx emissions because it did not account for emergency operation of the backup generators during power outages. CEQA does not require an analysis of unexpected, emergency conditions. Nevertheless, even if the additional emissions were included, the total NOx 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 NOx 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 NOx per day. Either way, the impact would be below the threshold of significance, which is 54 pounds per day.

- AB-6 Please see Response 4-20. CURE points out that their estimation of NOx emissions assumes that 24 percent of SVP's power would be generated from gas-fired power plants. The 24 percent figure refers to SVP's power supply mix in 2013. As stated in the IS/MND and RTC, the IS/MND analysis uses the most current available data supplied by SVP that reflects their actual power mix. Using an outdated power mix when more accurate and current information is available would be in opposition to the use of proper baseline, and the City's analysis uses appropriate data. Additionally, as described in the IS/MND, SVP is required to reduce its consumption of fossil fuels over time based on the state's Renewable Portfolio Standard.

The project would only have power utility connections to SVP, and no electricity would be generated on site. These project attributes are clearly described in the IS/MND. Therefore, the project will not obtain electricity from any other sources, and electrical power supply to the project is not unclear or ambiguous.

The CURE letter cites to the fact that the RTC indicated that future SVP facilities would be subject to separate CEQA review and permitting, but that the RTC did not provide evidence to support that. As defined in the CEQA Guidelines, the construction of a power plant would constitute a "project" under CEQA (Public Resources Code Section 21065, CEQA Guidelines Section 15378). Existing SVP facilities have already been evaluated under CEQA, and future facilities would be subject to a robust environmental review process from the California Energy Commission (see Title 20 of the California Code of Regulations).

- AB-7 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in in the attached RTC, NOx emissions were calculated accurately and reasonably for the project and are below the threshold of significance.

- AB-8 Please refer to response 4-12. CURE questions the City's use of Bay Area Air Quality Management District (BAAQMD) Guidelines in its evaluation of particulate matter and fugitive dust. The City has elected to use BAAQMD Guidelines in its evaluation of particulate matter and fugitive dust, and 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 posits that the project would have significant impact related to fugitive dust if the City employed "quantitative levels of significance used by other air districts." As the lead agency on the Project, the City sets its own thresholds of significance. The City has consistently utilized the BAAQMD Guidelines for analysis of particulate matter and fugitive dust. Further, BAAQMD in their expertise as the regional air management district is a qualified source of Best Management

Practices. CURE asserts that BAAQMD guidelines are “ineffective”, when in fact BAAQMD has seen steady success in improving Bay Area air quality since its inception.²

- AB-9 Please refer to Response 4-10. CURE asserts that hazards from the data center's use of batteries would be a significant hazard, that the potential hazard of batteries is unevaluated, and that the materials used in batteries would be difficult to extinguish in the event of a fire. The Santa Clara Fire Department (SCFD) evaluated this project and indicated that it would have adequate resources to serve the project in the event of a fire. The project type (data center) is not unique in Santa Clara, and in fact there are several data centers within the City and within SCFD's service area. Therefore, SCFD is well-versed in reviewing and evaluating fire risk associated with data center projects. At the Architectural Committee hearing, the project applicant provided the additional detail 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.
- AB-10 Please refer to Responses 4-28 through 4-31. As described in the RTC, the IS/MND does not use statewide average targets as a threshold of significance, but takes into consideration the types of GHG emission generation that would be associated with the project, and then considers 1) the specific reduction required for that category of GHG emission in order to meet the statewide overall reduction goal of 40 percent below 1990 levels by 2030, as described in the 2017 Climate Change Scoping Plan, and 2) how the project can reduce the types of GHG emissions that would be associated with project operation. The IS/MND does not use the overall SB 32 reduction of 40 percent as a threshold of significance, nor does it assume that specific statewide reduction targets set for on-site/project-level GHG emission generation (such as black carbon) represent the appropriate level of GHG emission reduction for this project specifically.
- AB-11 Please see Response AB-11 above. CURE argues that the IS/MND analysis should have disregarded actual carbon intensity data provided by SVP and instead should use a higher carbon intensity number estimated by their consultant. They state that a higher carbon intensity number should be used because SVP's Integrated Resource Plan (IRP) exceeds the *minimum* requirements for renewable energy. Effectively, CURE suggests that the City should ignore accurate data provided by SVP in favor of speculative data prepared by an unaffiliated party, and in addition, should ignore the fact that SVP has taken steps to go above and beyond renewable power requirements. The City's analysis uses accurate, reasonable, and reliable data for carbon intensity and has chosen appropriate data sources.
- AB-12 Please refer to Response 4-1. As discussed in the IS/MND, RTC, and this document, the project would not result in significant environmental impacts, including impacts related to public health.

² <http://www.baaqmd.gov/about-the-air-district/history-of-air-district>

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- AB-13 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in the attached RTC, NOX emissions were calculated accurately and reasonably for the project and are below the threshold of significance.
- AB-14 Please refer to Responses 4-28 through 4-31, and Response 4-25 for construction-period GHG emissions. As discussed in the IS/MND, RTC, and this document, the project would not result in significant environmental impacts, including impacts related to GHG emissions.
- AB-15 Please refer to Response 4-1. As discussed in the IS/MND, RTC, and this document, the project would not result in significant environmental impacts.

Response to June 26 Comment Letter

- AB-16 CURE asserts that their letters have provided substantial evidence that the project may result in a significant impact to the environment. In the IS/MND, RTC, and this document, the City has provided substantial evidence that the project would not result in a significant environmental impact. The City has provided clarifications, corrections to information provided by CURE, and additional information for the record that further substantiates the conclusions of the IS/MND.

As described in CEQA Guidelines Section 15384:

‘Substantial evidence’ as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

CURE’s comments on the project with regard to significant environmental impacts rely on a combination of argument, speculation, evidence which is erroneous, and opinion, as described in the RTC and this document.

- AB-17 Please see response AB-2 above. For practical reasons including 1) phases of project implementation which occur after project approval (such as the selection of construction contractors and sourcing of materials) and 2) the inherent amount of uncertainty associated with connecting CEQA analysis to fine-grained on-the-ground construction activities (such as precisely where onsite individual pieces of construction equipment would be placed), it would be burdensome to the applicant and counteractive to the City’s goals and responsibilities of public interest to constrain a project by issuing limiting or restrictively detailed mitigation measures. For this reason, performance criteria are provided.

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- AB-18 Please refer to Response AB-17 above.
- AB-19 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in in the attached RTC, NOX emissions were calculated accurately and reasonably for the project and are below the threshold of significance.
- AB-20 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in in the attached RTC, NOX emissions were calculated accurately and reasonably for the project and are below the threshold of significance.
- AB-21 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in in the attached RTC, NOX emissions were calculated accurately and reasonably for the project and are below the threshold of significance.
- AB-22 Please refer to Response AB-8 above.
- AB-23 Please refer to Response AB-9 above.
- AB-24 Please refer to Response 4-49. CURE correctly states that CEQA has included energy as a topic for analysis prior to the 2019 Guidelines. However, the prior requirement applied to EIRs only (PRC Section 21100(a)), not Mitigated Negative Declarations.
- AB-25 Please refer to Responses AB-10 and AB-11 above, including the original RTC responses.
- AB-26 Please refer to responses AB-3 through AB-6 above, including the original RTC responses. As stated above in in the attached RTC, NOX emissions were calculated accurately and reasonably for the project and are below the threshold of significance.
- AB-27 Please refer to Responses 4-28 through 4-31, and Response 4-25 for construction-period GHG emissions. As discussed in the IS/MND, RTC, and this document, the project would not result in significant environmental impacts, including impacts related to GHG emissions.