



Legislation Details (With Text)

File #: 21-1316 **Version:** 1 **Name:**
Type: Public Hearing/General Business **Status:** Agenda Ready
File created: 12/14/2020 **In control:** Planning Commission
On agenda: 1/27/2021 **Final action:** 1/27/2021
Title: Public Hearing: Action on the Appeal of the Development Review Hearing Adoption of a Mitigated Negative Declaration and Architectural Approval of a Data Center Project Located at 1111 Comstock Street

Sponsors:

Indexes:

Code sections:

Attachments: 1. MND, Mitigation Monitoring and Reporting Program (MMRP), and Response to Comments (RTC) Received on the MND, 2. DRH Staff Report of November 4, 2020, 3. Excerpt DRH Meeting Minutes of November 4, 2020, 4. Appeal of the DRH Action of November 4, 2020, 5. Resolution to Deny the Appeal and Uphold the Development Review Hearing Adoption of the MND and MMRP, 6. Resolution to Deny the Appeal and Uphold the Development Review Hearing Approval of the Data Center Project, 7. Conditions of Approval, 8. Development Plans, 9. PMM - Staff Presentation, 10. PMM Correspondence - Adams Broadwell Joseph & Cardozo

Date	Ver.	Action By	Action	Result
1/27/2021	1	Planning Commission	Approved	Pass
1/27/2021	1	Planning Commission	Approved	Pass
1/27/2021	1	Planning Commission	Approved	Pass

REPORT TO PLANNING COMMISSION

SUBJECT

Public Hearing: Action on the Appeal of the Development Review Hearing Adoption of a Mitigated Negative Declaration and Architectural Approval of a Data Center Project Located at 1111 Comstock Street

REPORT IN BRIEF

Project: Appeal of the approval of an architectural review application for a new four-story data center

Applicant: Prime Data Centers

Owner: Jim Khosh Revocable Living Trust

General Plan: Low Intensity Office/R&D

Zoning: Light Industrial (ML)

Site Area: 1.38 acres

Existing Site Conditions: One existing 23,765 square-foot one-story industrial building

Surrounding Land Uses

North: Industrial uses

South: Industrial uses

East: Industrial uses

West: Industrial uses

Issues: Consistency with the City's General Plan and Zoning Ordinance

Staff Recommendation: Adopt resolutions denying the appeal, and upholding the Development Review approval, subject to conditions of approval.

BACKGROUND

At a publicly noticed meeting on November 4, 2020, the Development Review Hearing officer adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) and approved architectural review of a data center at 1111 Comstock Street (CEQ2020-01079 and PLN2019-13941) following public testimony and deliberation. The approved project is for a new four-story, approximately 121,170 square-foot data center building, with surface parking, landscaping and site improvements on a 1.38-acre project site. The project includes the demolition of the existing 23,765 square foot one-story industrial building and the removal of surface paving and existing landscaping prior to project construction.

Prior to the Development Review Hearing, the City distributed the MND for a twenty-day review period, as required by the California Environmental Quality Act (CEQA). During that review period, the City received one comment letter from law firm Adams Broadwell Joseph & Cardozo, which represents an association of labor unions and individuals called "Santa Clara Citizens for Sensible Industry" (SCCSI). A response to comments was prepared and included in the Development Review Hearing meeting packet, included in *Attachment 1*.

On November 12, 2020, Adams Broadwell Joseph & Cardozo filed an appeal of the Development Review Hearing approval of the data center. The appeal form is provided as *Attachment 4*.

DISCUSSION

During the November 4, 2020 Development Review Hearing, Kendra Hartmann of Adams Broadwell Joseph & Cardozo reiterated the comments previously submitted regarding the MND. In her verbal comments, Ms. Hartmann requested the preparation of an Environmental Impact Report (EIR) and that the Development Review Hearing Officer disapprove the MND and deny the Architectural Review application. The comments included claims that the MND failed to disclose, analyze, and mitigate potential impacts to air quality and greenhouse gas emissions, and public health. The letter also included claims that the City did not provide all of the documents referenced in the MND for the entire comment period and that the document's project description was incomplete. The letter's conclusion requested that the Development Review Hearing Officer disapprove the project, asserting that the Development Review Hearing Officer could not make the necessary findings for architectural approval as an EIR was required.

In response, City staff and the CEQA consultant, Michael Lisenbee with David J. Powers and Associates, advised the hearing officer that Ms. Hartmann had not raised any new issues than those in the previously submitted comment letter, and that these comments were thoroughly addressed by the City in the Response to Comments (RTC) document (*Attachment 1*). As provided in more detail in the RTC, the air quality emissions from backup generators were determined to be less-than-significant based on regulations of the Bay Area Air Quality Management District (BAAQMD), which direct the City to measure anticipated emissions from the number of hours of generator testing each year, but not based on occasional power outages. Greenhouse gas emissions were determined to be less-than-significant based on the fact that the project would result in 43.5% lower emissions than

the statewide average for an equivalent facility due to Silicon Valley's Power mix, and given the project's energy efficiency measures to reduce emissions. Potential health impacts were appropriately modeled and determined to be less-than-significant using the 2015 Office of Environmental Health and Hazard Assessment (OEHHA) risk assessment guidelines and California Air Resources Board (CARB) guidance.

In addition, the MND and all of its appendices were available for the entire comment period. Ms. Hartmann's suggestion that the City also had a duty to provide every document "referenced" in the MND for the entire comment period was based on a pre-2018 CEQA regulation that is no longer in effect. The City did, however, provide Ms. Hartmann with all of the referenced documents, as she requested, in response to a public records request.

Following the public comment, the hearing officer reviewed and deliberated and then adopted the MND and MMRP and approved the Architectural Review of the project subject to conditions of approval established by the City's Project Clearance Committee.

On November 12, 2020, Adams Broadwell Joseph & Cardozo, on behalf of SCCSI, filed an appeal within the seven-day appeal period of the Development Review Hearing action on the project. The Appeal challenges both the approval of the MND and MMRP and the architectural review.

For the MND and MMRP, the Appeal includes largely the same comments that were expressed the comment letter submitted on October 13, 2020 during the MND 20-day comment period and verbally during the public hearing. The appeal repeats the claim that there is insufficient evidence to approve the project and asserts the need for further environmental analysis and the preparation of an EIR. As discussed above, the City's position is that the MND and MMRP conform to the requirements of CEQA and that no further environmental analysis is required.

For the architectural review, the Appeal alleges that the project would not meet the required finding that a project cannot "materially affect adversely the health, comfort or general welfare." As discussed above, however, the MND's analysis included a Health Risk Assessment that determined that health impacts of the project would be less than significant. Moreover, approval of the architectural application for the project would implement the purpose and intent of the City's General Plan and conform to the Zoning Ordinance. The proposed data center project is a permitted use under the Low-Intensity Office/ Research and Development (R&D) land use designation and Light Industrial (ML) zoning designation for the project site. The project involves investment in the development of a Class A building structure and site improvements that would enhance the streetscape and increase property values by replacing derelict buildings, asphalt surface parking areas, and minimal landscaping on the site. The project provides adequate on-site parking and would not increase traffic congestion or hazards as a data center use is a low employee density project and low vehicle trip generating use. The project furthermore is in keeping with the scale and character of new development of data centers in the industrial sector.

ENVIRONMENTAL REVIEW

An MND was prepared for the project by the environmental consultant firm David J. Powers & Associates, in accordance with the California Environmental Quality Act (CEQA). The MND and Notice of Availability were posted on the City's website at <https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/390/3649>, on September 18, 2020 and circulated for 20-day review from September 21, 2020 to October 13, 2020, in accordance with CEQA requirements. The Planning Department received one comment

letter on the MND from Adams Broadwell Joseph & Cardozo. Responses to comments received on the MND during the 20-day review period were prepared and are provided as *Attachment 1*.

The MND examined environmental impacts associated with project development and identified potentially significant cultural resources, biological resources, geology and soils, and noise impacts that with incorporation of mitigation measures identified in the MND and MMRP would reduce the potentially significant impacts to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the MND and would be implemented through project conditions of approval and the MMRP for the project.

FISCAL IMPACT

There is no impact to the City for processing the appeal 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 January 15, 2021, the notice of the public hearing for this item was posted in three conspicuous locations within 300 feet of the project site. On January 15, 2021, the notice was mailed to property owners within 500 feet of the project site. At the time of this staff report, the Planning Division has not received any public comments for this appeal.

ALTERNATIVES

1. Adopt a resolution to deny the appeal and uphold the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Adopt a resolution to deny the appeal and uphold the Development Review Hearing approval of the data center project located at 1111 Comstock Street, subject to conditions.
3. Approve the appeal and overturn the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
4. Approve the appeal and overturn the Development Review Hearing approval of the data center project located at 1111 Comstock Street.

RECOMMENDATION

Alternatives 1 and 2:

1. Adopt a resolution to deny the appeal and uphold the Development Review Hearing adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Adopt a resolution to deny the appeal and uphold the Development Review Hearing approval of the data center project located at 1111 Comstock Street, subject to conditions.

Prepared by: Rebecca Bustos, Senior Planner

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: Reena Brilliot, Planning Manager

ATTACHMENTS

1. Mitigated Negative Declaration (MND), Mitigation Monitoring and Reporting Program (MMRP), and Response to Comments (RTC) Received on the MND
2. Development Review Hearing Staff Report of November 4, 2020
3. Excerpt Development Review Hearing Meeting Minutes of November 4, 2020
4. Appeal of the Development Review Hearing Action of November 4, 2020
5. Resolution to Deny the Appeal and Uphold the Development Review Hearing Adoption of the MND and MMRP
6. Resolution to Deny the Appeal and Uphold the Development Review Hearing Approval of the Data Center Project
7. Conditions of Approval
8. Development Plans