



Memorandum

TO: HONORABLE MAYOR AND
COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 20, 2017

Approved

D. D. S. Y. L.

Date

11/30/17

COUNCIL DISTRICT: 4

**SUBJECT: RECONSIDERATION HEARING ON THE CITY COUNCIL'S
CERTIFICATION OF THE 237 INDUSTRIAL CENTER PROJECT FINAL
ENVIRONMENTAL IMPACT REPORT PURSUANT TO SECTION
21.07.080 OF THE SAN JOSE MUNICIPAL CODE**

RECOMMENDATION

- a) Conduct a hearing to reconsider the City Council's certification of the 237 Industrial Center Final Environmental Impact Report adopted on October 24, 2017 (Resolution No. 78393) for Rezoning File No. C15-054 from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District; Special Use Permit File No. SP16-053 to remove eight ordinance-size trees and 14 non-ordinance size trees, and allow 14 generators and the construction of six buildings for a data center use totaling approximately 376,519 square feet with on-and off-site improvements; and Development Exception File No. V17-004 to allow an exception to the off-street parking requirements on a 64.59-gross acre site located at 1657 Alviso-Milpitas Road.
- b) Adopt a resolution affirming (i) City Council Resolution No. 78393 certifying the 237 Industrial Center Final Environmental Impact Report adopted on October 24, 2017 (Resolution No. 78393) and (ii) City council Resolution No. 78394 approving Special Use Permit File No. SP16-053 and Development Exception File No. V17-004, and finding that:
 - (1) The City Council has read and considered the 237 Industrial Center Final Environmental Impact Report and related administrative record in connection with Rezoning File No. C15-054, Special Use Permit File No. SP16-053, and Development Exception File No. V17-004;
 - (2) The 237 Industrial Center Final Environmental Impact Report, was prepared and completed in compliance with the California Environmental Quality Act of 1970,

as amended, together with state and local implementation guidelines; Certification of the 237 Industrial Center Final Environmental Impact Report for Rezoning File No. C15-054, Special Use Permit File No. SP16-053, and Development Exception File No. V17-004 reflects the independent judgment and analysis of the City of San José.

- c) Final adoption of ORDINANCE NO. 30023 - An ordinance of the City of San José rezoning certain real property of approximately 64.59 acres situated northwest of State Route 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road) from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District.

OUTCOME

Affirming the certification of the 237 Industrial Center Final Environmental Impact Report along with final adoption of the rezoning ordinance and affirming Special Use Permit No. SP16-053 and Development Exception File No. V17-004 will allow the project applicant to move forward with application for building permits and implementation of the Conforming Rezoning from A(PD) Planned Development Zoning District to LI Light Industrial Zoning District (File No. C15-054); removal of eight ordinance-size trees and 14 non-ordinance size trees, and allow 14 generators and the construction of six buildings for a data center use totaling approximately 376,519 square feet with on-and off-site improvements (File No. SP16-053); and approval of Development Exception to allow an exception to the off-street parking requirements (File No. V17-004).

Reversing the certification of the 237 Industrial Center Final Environmental Impact Report would mean there is no environmental clearance for the proposed project and therefore, City Council Resolution No. 78394 approving Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 would be null and void and the City cannot move forward with the final adoption of the rezoning ordinance and the project applicant cannot implement the proposed project.

EXECUTIVE SUMMARY

The project site is located on an approximately 64.59 gross acre parcel site, located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road, Assessor's Parcel Number: 015-31-054). The proposed Project is Conforming Rezoning from A(PD) Planned Development Zoning District to LI Light Industrial Zoning District; removal of eight ordinance-size trees and 14 non-ordinance size trees, and allow 14 generators and the construction of six buildings for a data center use totaling approximately 376,519 square feet with on-and off-site improvements; and approval of Development Exception to allow an exception to the off-street parking requirements.

The Planning Commission conducted a public hearing on October 11, 2017 and considered the 237 Industrial Center Final Environmental Impact Report (FEIR), an ordinance for Conforming

Rezoning File No. C15-054, and adoption of resolution approving Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 as described above. Attachment 3 includes the Planning Commission Staff Report and all documents associated with the project provided to the Planning Commission for the public hearing. After the public hearing, the Planning Commission recommended the City Council approve the Final Water Supply Assessment for the Project as analyzed in the 237 Industrial Center FEIR prepared by Schaaf & Wheeler on behalf of the San José Municipal Water Company (dated May 2017); adopt a resolution making certain findings concerning significant impacts, mitigation measures, and alternatives and certify the 237 Industrial Center FEIR, all in accordance with CEQA; approve an ordinance rezoning the project site from the A(PD) Planned Development Zone District to the LI Light Industrial zone district; and adopt a resolution to approve the Special Use Permit for the construction of six data center buildings and off-site improvements and approve a Development Exception to allow a reduction in off-street parking requirements.

The City Council conducted a public hearing on October 24, 2017 on the proposed Project. Attachment 4 includes the Memorandum to City Council from the Planning Commission and all documents associated with the project provided to the City Council for the public hearing. The City Council (i) adopted Resolution No. 78393 (a) approving the Water Supply Assessment and then, (b) certifying the 237 Industrial Center Final Environmental Impact Report (FEIR) and adopted a related Mitigation Monitoring and Reporting Program, all in accordance to CEQA, as amended; (ii) passed Ordinance No. 30023 rezoning the subject site, and (iii) adopted Resolution No. 78394 approving the Special Use Permit and Development Exception. These actions authorized a rezoning from A(PD) Planned Development Zoning District to LI Light Industrial Zoning District; the removal of eight ordinance-size trees and 14 non-ordinance size trees, the use of 14 generators, and the construction of six buildings for a data center use totaling approximately 376,519 square feet with on-and off-site improvements, and an exception to the off-street parking requirements on a 64.59-gross acre site.

Subsequent to the City Council's action on October 24, 2017, the City received two Notices of Request for Reconsideration of the FEIR pursuant to Section of 21.07.080 of the San José Municipal Code. Prior to seeking judicial review of an environmental impact report certification decision made by the City Council, any interested person shall file a petition for reconsideration with the city clerk not later than three business days following the date of the decision. Upon timely receipt of a petition for reconsideration, the city clerk shall schedule a reconsideration hearing to be commenced by the city council no later than sixty days after the filing of the petition. At the conclusion of the hearing for reconsideration, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all hearings conducted by the city council concerning the matter.

The grounds for reconsideration are limited to (i) an offer of relevant evidence which was improperly excluded at the prior city council certification hearing, (ii) proof of facts which demonstrate that the city council proceeded without, or in excess, of its jurisdiction, (iii) proof of facts which demonstrate that the City Council failed to provide a fair hearing, and (iv) proof of facts which demonstrate that the City Council abused its discretion by not proceeding in a manner required by law, rendering a decision which was not supported by findings of fact, or rendering a decision in which the findings of fact were not supported by the evidence.

The City received the first notice on October 26, 2017 from Morgan, Lewis & Bockius, LLP on behalf of the Los Esteros Critical Energy Facility (LECEF). As part of LECEF's Request for Reconsideration, LECEF attached and resubmitted their letter dated October 11, 2017 to the Planning Commission and letter dated October 24, 2017 to the City Council. The Request for Reconsideration claimed that the City conducted inadequate environmental analysis to support the 237 Industrial Center FEIR and failed to comply with procedural requirements of CEQA. As will be explained in detail below, no new environmental issues have been raised in LECEF's request for reconsideration. The issues raised now for reconsideration were addressed in the First Amendment to the DEIR and reiterated through staff's oral response at Planning Commission, the staff report to Planning Commission, the memorandum from Planning Commission to City Council, and staff's oral response at City Council. As part of this memorandum in the Analysis section, Staff had a consultant perform additional air quality analysis to address LECEF's concerns about specific construction emissions and the analysis confirms the findings in the 237 Industrial Center FEIR. LECEF's Request for Reconsideration are included as Attachment 1 of this memorandum.

The City received the second notice on October 27, 2017 from Mark Espinoza on behalf of Organizacion Comunidad de Alviso. As part of the Organizacion Comunidad de Alviso's Request for Reconsideration, they attached and resubmitted their letter dated October 6, 2017, which was previously sent to the Planning Commission. The City previously responded to the letter from Organizacion Comunidad de Alviso dated October 6, 2017 in the First Amendment to the Draft Environmental Impact Report as well as the Planning Commission memo to the City Council dated October 18, 2017. No additional comments were submitted by Organizacion Comunidad de Alviso with their Notice of Request for Reconsideration. The Request for Reconsideration is included as Attachment 2 of this memorandum.

Pursuant to California Public Resources Code Section 21166 and CEQA Guideline Section 15162, when an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that (i) there are substantial changes in the proposed project from the project analyzed in the prior EIR, (ii) there are substantial changes in the circumstances under which the project is undertaken from what was analyzed in the prior EIR, and (iii) there is new information of substantial importance that would require a new or subsequent environmental impact report.

None of the conditions cited above exist requiring recirculation of the FEIR or completion of a new EIR, and Staff recommends that the certified FEIR provides adequate analysis under CEQA. Claims raised by the appellant do not raise new significant information requiring additional environmental analysis because the impacts raised have been addressed in the official record, including the Planning Commission Staff Report (October 11, 2017), the Planning Commission memo to City Council (October 18, 2017), and the FEIR available at <http://www.sanjoseca.gov/index.aspx?NID=5084>.

BACKGROUND

Environmental Review

The City prepared a Draft Environmental Impact Report (DEIR) which analyzed the environmental impacts of two development scenarios (Option 1 - 1.2 million sq. ft. of light industrial uses on entire 64.59 acre site and Option 2 - the proposed Project to be built in Phase 1 and development of 728,000 square feet of light industrial uses on the southern 38 acres of the site) and discussed alternatives to the development scenarios including the proposed Project. The DEIR was circulated for public review and comment for 45 days from Thursday June 1, 2017 to Monday July 17, 2017. The DEIR identified significant impacts resulting from the two development scenarios, including the proposed Project related to agricultural resources, transportation, greenhouse gas emissions, air quality, biological resources, cultural hazardous materials (exposure to contaminated soils), and cumulative transportation. The DEIR identified mitigation measures to reduce the significant impacts to a less than significant level except for agricultural resources (loss of prime farmland), transportation (impacts to State Route 237 and Interstate 880 and Zanker Road/Tasman Drive intersection), and greenhouse gas emissions which are significant and unavoidable impacts.

The City received 12 written comment letters during the public comment period, including one letter submitted by LECEF on July 17, 2017. No letter was received from Organizacion Comunidad de Alviso who filed a request for reconsideration. Comments received focused primarily on the following:

- Conversion of designated prime farmland;
- Effects to on-site historic structures;
- Impacts to freeway segments and roadways;
- Effects on vehicle miles travelled;
- Fair share fees for transportation improvements;
- Effects on trails;
- Impacts to the riparian corridor and wildlife;
- Effects of lighting on birds and wildlife;
- Infrastructure improvements;
- Insufficient evidence to support a statement of overriding considerations;
- Air quality impacts to public health;
- Growth inducement effects; and
- Measures to reduce effects to climate change.

None of the comments received in response to the circulation of the DEIR raised substantive issues that required re-circulation of the DEIR as further explained in the First Amendment to the DEIR which also includes the City's prepared responses to comments on the DEIR and text edits. This First Amendment was posted to the City's website prior to the October 11, 2017 Planning Commission hearing. The DEIR and the First Amendment together comprised the

Final Environmental Impact Report (FEIR) for the Project are included as Attachment 5 of this memorandum. The FEIR is also available at <http://www.sanjoseca.gov/index.aspx?NID=5084>.

Planning Commission Public Hearing

After the public circulation period for the DEIR and prior to the October 11, 2017 Planning Commission hearing, the City received four public letters. Two of the letters (LECEF and Organizacion Comunidad de Alviso) expressed concerns about the adequacy of the DEIR. In accordance with Title 21 Environmental Clearance, Section 21091 of Public Resources Code, and Section 15088 of the CEQA Guidelines from the California Code of Regulations, the City is not required under CEQA to provide responses to public comments on the DEIR outside of the public circulation period that ended on July 17, 2017. Staff, however, as a courtesy and for informational purposes responded to these comments as part of the oral response at Planning Commission and in a memorandum dated October 18, 2017 to City Council from the Planning Commission. Staff's response is included as Attachment 4 of this memorandum.

City Council Public Hearing

The City Council conducted a public hearing on the certification of the 237 Industrial Center Final Environmental Impact Report, consideration of an ordinance for a Conforming Rezoning File No. C15-054, and approval of Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 on October 24, 2017. An LECEF representative spoke at the public hearing and reiterated the concerns previously expressed in their letter to Planning Commission dated October 11, 2017, and did not identify any additional issues. As noted above, concerns in the LECEF letter to Planning Commission were addressed in the First Amendment to the DEIR, as part of the oral response at Planning Commission, and in the memorandum to City Council from Planning Commission dated October 18, 2017 (see Attachments 4 and 5). The FEIR was certified (City Council Resolution No. 78393), the ordinance for rezoning was passed for publication (Ordinance No. 30023), and the Special Use Permit and Development Exception were approved by City Council on October 24, 2017.

Reconsideration of City Council's Certification of FEIR

As discussed above, subsequent to the City Council's action on October 24, 2017, the City received two Notices of Request from Morgan, Lewis & Bockius, LLP on behalf of LECEF on October 26, 2017 and Mark Espinoza on behalf of Organizacion Comunidad de Alviso on October 27, 2017.

Pursuant to Section 21.07.080 of the San José Municipal Code, if an interested person timely requests reconsideration of a certified EIR by the City Council, the City Clerk is required to set a hearing before the City Council within 60 days of the request. Upon conclusion of the environmental reconsideration hearing, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all hearings conducted by the city council concerning the matter.

If the City Council affirms the City Council's certification of the 237 Industrial Center Final Environmental Impact Report adopted on October 24, 2017 (Resolution No. 78393), then the

proposed project identified as Rezoning File No. C15-054, Special Use Permit File No. SP16-053, and Development Exception File No. V17-004 can proceed with applications for building permits. Reversing the certification of the 237 Industrial Center Final Environmental Impact Report would mean there is no environmental clearance for the proposed project and therefore, City Council Resolution No. 78394 approving Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 would be null and void and the City cannot move forward with the final adoption of the rezoning ordinance and the project applicant cannot implement the proposed project.

ANALYSIS

This section addresses the following: 1) a timeline of when the petitioners raised their concerns during the environmental review process; and 2) Summarizes of staff's response to comments raised by the petitioners. Since LECEF and Organizacion Comunidad de Alviso did not raise any new issues in their petitions for reconsideration and staff has already thoroughly and fully responded to all of their prior comments, this memorandum will not go into great details and will only summarize the main issues, provide additional clarification, and discuss additional air quality analysis supporting the FEIR.

Los Esteros Critical Energy Facility (LECEF)

The City received a total of three letters from the attorneys representing LECEF. The first letter dated July 17, 2017 was received during the public circulation of the DEIR from June 1, 2017 to July 17, 2017. Full responses to that letter were included in pages 37-49 of the First Amendment to the Draft EIR (see Attachment 5). A second letter dated October 11, 2017 was received prior to the Planning Commission hearing on October 11, 2011. As discussed above, in accordance with Title 21 of the San José Municipal Code, Section 21091 of the Public Resources Code, and Section 15088 of the CEQA Guidelines from the California Code of Regulations, the City is not required under CEQA to provide responses to public comments on the DEIR outside of the public circulation period which ended on July 17, 2017. Staff, however, as a courtesy and for informational and disclosure purposes, fully responded to these comments in a memorandum to the City Council from Planning Commission dated October 18, 2017 (see Attachment 4). A subsequent letter was submitted by LECEF on October 24, 2017 – the date of the Council Hearing. Responses to environmental issues raised in that letter were already provided as part of the administrative record but will be clarified below.

1. LECEF states that the 237 Industrial Center DEIR requires recirculation because the First Amendment to the DEIR identified an additional impact at the intersection of Montague Expressway and Mission Boulevard in the City of Santa Clara. This intersection is an identified Congestion Management Program(CMP) intersection and is therefore, under the jurisdiction of the County of Santa Clara. As stated in Response D-2 and Appendix A (revisions to the traffic report) of the First Amendment to the Draft EIR, this intersection has been previously identified and analyzed in the North San José Area Development Policy (NSJADP) EIR.

This intersection is identified as part of the Tier 1-A improvements in Santa Clara County's Expressway Planning Study 2008 Update. Therefore, mitigation by way of the payment of fees as part of the NSJADP project and the County's identified improvements reduces the impacts to a less than significant level. Because impacts at this intersection have been previously identified and there are other intersections impacted by the project, as described in the DEIR, the project will be required to pay fees into the NSJADP traffic impact fee program and the County's Tier 1-A improvement project. This is not a new impact under CEQA. Recirculation of the DEIR is therefore, not required.

2. LECEF states that the air quality analysis is not supported by substantial evidence. They assert that the proposed project would generate significant construction dust due to the "unique sensitivity to dust and particulate matter, which 'can degrade and potentially clog the air inlet filters of the LECEF's Facility's combustion turbines.'" This comment does not provide sufficient technical information to study, analyze or otherwise substantiate the claim. Furthermore, the Bay Area Air Quality Management District (BAAQMD) has determined that when a project includes Best Management Practices (BMPs) during construction, impacts are less than significant; therefore, the City has correctly determined that average daily construction emissions impacts from the project are less than significant. The BMPs are included as part of the project's permit conditions and include measures to reduce and minimize dust and other air quality pollutant emissions from construction activities, consistent with BAAQMD's Air Quality Guidelines and the City's standard procedures for construction activities.

In response to LECEF's concerns, an additional air quality model run was completed by *Illingworth & Rodkin* (project air quality consultants) dated November 6, 2017 to ensure that the number of truck trips assumed for the data center project as analyzed in the DEIR were included in the model runs for average daily construction emissions from the project (see Attachment 7). While the model assumes some number of truck trips, the additional evaluation assumed a worst case scenario of an additional 15,500 truck trips (124,000 cubic yards of fill, 16 cubic yards per truck, with one trip in and one trip out). Even with the addition of these additional truck trips, emissions generated would be below BAAQMD thresholds, as shown in Table 1 below.

Table 1 Average Daily Construction Emissions from the Project				
Description	ROG	NOx	PM₁₀	PM_{2.5}
Option 1 Emissions (tons) 2018	0.65	6.58	0.13	0.12
Option 1 Emissions (tons) 2019	6.59	0.66	0.02	0.02
<i>Option 1 Average Daily Emissions (pounds per day) - Assuming 400 workdays</i>	<i>36</i>	<i>36</i>	<i>1</i>	<i>1</i>
Data Center Option 2 Emissions (tons) 2018	0.63	7.92	0.26	0.24
Data Center Option 2 Emissions (tons) 2019	0.46	4.29	0.18	0.17
Data Center Option 2 Emissions (tons) 2020	2.34	0.52	0.02	0.02
<i>Option 2 Data Center Average Daily Emissions (pounds per day) - Assuming 605 workdays</i>	<i>11</i>	<i>42</i>	<i>2</i>	<i>1</i>
Light Industrial Option 2 Emissions (tons) 2025	0.27	2.58	0.09	0.09
Light Industrial Option 2 Emissions (tons) 2026	0.42	3.91	0.08	0.07
Light Industrial Option 2 Emissions (tons) 2027	0.41	3.87	0.07	0.07
Light Industrial Option 2 Emissions (tons) 2028	4.24	2.91	0.06	0.06
<i>Option 2 Light Industrial Average Daily Emissions (pounds per day) - Assuming 1,005 workdays</i>	<i>11</i>	<i>26</i>	<i>1</i>	<i>1</i>
<i>BAAQMD Thresholds (pounds per day)</i>	<i>54</i>	<i>54</i>	<i>82</i>	<i>54</i>

The revised table does show higher NOx emissions for the construction period associated with Option 2 Data Center construction. There are several reasons for these higher emissions:

1. The inclusion of the estimated 15,500 truck trips included to import the necessary fill material;
2. A much longer site preparation period for the Data Center of 155 days based on model defaults, compared to an estimate of 65 days for the entire site under Option 1; and
3. Use of the default construction assumptions that can lead to higher building period construction emissions. The CalEEMod defaults assume use of a crane and diesel generator for 740 days, whereas the estimated construction assumptions for Option 1 show less crane use and electricity access from line power rather than diesel generators.

In conclusion, the project, with either development of Option 1 or Option 2, would not cause air pollutant emissions that exceed significance thresholds during construction as identified in Table 1. The impacts would be less than significant with implementation of

the air quality permit conditions and mitigation measures identified on page 80 and 81 of the DEIR to reduce construction dust.

The comment states that LECEF “is willing to cooperate with the City and the project’s proponents to develop an effective and practical dust mitigation program in order to prevent negative impacts to critical energy infrastructure and avoid time-consuming and costly post-approval conflicts.” As shown in the minutes from the Planning Commission hearing on October 11, 2017, the applicant has agreed to work with LECEF to address construction-related air quality concerns.

3. In their letter dated October 11, 2017, LECEF notes that changes to the text of the DEIR were made in the First Amendment to the DEIR to address the need for the project to provide the land required for the installation of a new water well and that this is a mitigation of new significant impact. The changes to the text of the DEIR (page 97 of the First Amendment) were only to clarify that the water well will be used as a back-up system for cooling needs and did not identify the proposed water well as a new significant impact.

As stated in the Water Supply Assessment, San José Municipal Water has the ability to serve the back-up potable annual water needs for the project; however, the back-up flow needed on a daily basis could affect system-wide operations. For this reason, the project has always included the provision of a back-up water well location. The well is only needed for back-up cooling needs - the project will be using reclaimed water for its regular operations. This is not a new significant environmental impact and does not precipitate recirculation of the DEIR. A complete explanation of this issue is provided in pages 96-97 of the First Amendment to the DEIR (see Attachment 5).

Organizacion Comunidad de Aviso

The Organizacion Comunidad de Aviso submitted a comment letter on October 6, 2017 which was prior to the Planning Commission on October 11, 2017 but after the 30-day public comment period from June 1, 2017 to July 17, 2017. As discussed above, the City is not required under CEQA to provide responses to public comments on the DEIR outside of the public circulation period which ended on July 17, 2017. Staff, however, responded to these comments in a memorandum to City Council from Planning Commission, dated October 18, 2017 (see Attachment 4). No additional comments were submitted by Organizacion Comunidad de Aviso with their Notice of Request for Environmental Reconsideration.

The two Notice of Request for Environmental Reconsideration applications did not raise any new issues that were not previously addressed in the administrative record and FEIR which encompasses the DEIR and First Amendment to the DEIR and were reiterated in the Planning Commission Staff Report for the October 11, 2017 hearing; the memorandum to City Council from Planning Commission, dated October 18, 2017; and Staff’s oral responses at the October 11, 2017 Planning Commission and October 24, 2017 City Council hearings.

For the reasons stated herein, staff recommends that the City Council adopt a resolution to affirm the City’s Council decision on October 24, 2017 for certification of the Final Environmental

Impact Report, based on the required findings under CEQA in Resolution No. 78393 and final adoption of the ordinance for the Rezoning and affirm the approval of the Special Use Permit and Development Exception.

EVALUATION AND FOLLOW UP

As stated above, if the City Council affirms the City Council's certification of the 237 Industrial Center Final Environmental Impact Report adopted on October 24, 2017 (Resolution No. 78393), then the applicant may proceed with the acquisition of the necessary demolition, grading, and building permits and complete the proposed project identified under Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 that was approved by City Council on October 24, 2017 (Resolution No. 78394). The rezoning ordinance (ORDINANCE NO. 30023) will also proceed with final adoption.

Reversing the certification of the 237 Industrial Center Final Environmental Impact Report would mean there is no environmental clearance for the proposed project and therefore, City Council Resolution No. 78393 approving Special Use Permit File No. SP16-053 and Development Exception File No. V17-004 would be null and void and the City cannot move forward with the final adoption of the rezoning ordinance and the applicant cannot implement the proposed project.

POLICY ALTERNATIVES

As discussed in the Analysis section, the Council has one distinct policy decision to make:

1. Environmental Review: The Council may:
 - a. Affirm their decision on October 24, 2017 for certification of the Final Environmental Impact Report; or
 - b. Modify its decision on October 24, 2017; or
 - c. Reverse its decision on October 24, 2017.

PUBLIC OUTREACH

For this item, staff followed Council Policy 6-30: Public Outreach Policy in that notices for the public hearings for the project were mailed to the owners and tenants of all properties located within 1,000 feet of the project site. Furthermore, staff mailed a copy of this City Council Memorandum to adjacent property owners pursuant to Section 21.04.140 of the San José Municipal Code.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable Zoning and General Plan goals and policies as discussed in the FEIR, Planning Commission Staff Report.

CEQA

The 237 Industrial Center Final Environmental Impact Report adopted by City Council Resolution No. 78393. The Final Environmental Impact Report (Draft EIR plus the First Amendment) and supporting documents can be found on the City's Active EIRs website at <http://www.sanjoseca.gov/index.aspx?nid=5084>.

/s/
ROSALYNN HUGHEY, INTERIM DIRECTOR
Planning, Building and Code Enforcement

For questions about the environmental reconsideration, please contact Kieulan Pham at (408) 535-3844.

Attachments:

- Attach 1 – Environmental Reconsideration from Morgan, Lewis & Bockius, LLP on behalf of the Los Esteros Critical Energy Facility (LECEF), dated October 26, 2017.
- Attach 2 – Environmental Reconsideration from Mark Espinoza of Organizacion Comunidad de Aviso, dated October 27, 2017.
- Attach 3 – Planning Commission Agenda item 5a. including Planning Commission Staff Report and all associated documents for Planning Commission Hearing dated October 11, 2017, found at:
<http://www.sanjoseca.gov/DocumentCenter/View/72340> and
<http://www.sanjoseca.gov/DocumentCenter/View/72511>
- Attach 4 – City Council Agenda item 17-094 including Memorandum to the City Council from the Planning Commission and all associated documents for City Council Hearing dated October 24, 2017, found at:
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3164242&GUID=0504F57B-BD45-4D0D-8268-82F24559C489&Options=&Search>
- Attach 5 – Final Environmental Impact Report for The 237 Industrial Center adopted by the City Council on October 24, 2017 (Resolution No. 78393), found at:
<http://www.sanjoseca.gov/index.aspx?nid=5084>
- Attach 6 – City Council Resolution No. 78393; City Council Resolution No. 78394
- Attach 7 – 237 Industrial Center Construction Air Pollutant Emissions Analysis, dated November 6, 2017.

Note: All attachments are available via a link on the City Council Agenda for the December 12, 2017 Hearing. The City Council Agendas can be found at:
<http://www.sanjoseca.gov/index.aspx?NID=3549>.