



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: October 18, 2017

COUNCIL DISTRICT: 4

SUBJECT: FILE NOS. C15-054, SP16-053, V17-004. A CONFORMING REZONING FROM THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO THE LI LIGHT INDUSTRIAL ZONING DISTRICT; A SPECIAL USE PERMIT TO REMOVE EIGHT ORDINANCE SIZED AND 14 NON-ORDINANCE SIZED TREES AND TO ALLOW 14 GENERATORS AND THE CONSTRUCTION OF SIX BUILDINGS FOR A DATA CENTER USE TOTALING APPROXIMATELY 376,519 SQUARE FEET AND IMPROVEMENTS (ON-AND OFF-SITE); AND A DEVELOPMENT EXCEPTION TO REDUCE THE OFF-STREET PARKING REQUIREMENTS.

RECOMMENDATION

The Planning Commission voted 7-0-0 to recommend that the City Council:

1. Adopt a resolution (i) approving the Final Water Supply Assessment for the 237 Industrial Center Project prepared by Schaaf & Wheeler on behalf of the San Jose Municipal Water Company (dated May 2017) pursuant to Section 15155(b) of the CEQA Guidelines and Section 10910(g) of the California Water Code and (ii) certifying the 237 Industrial Center Final Environmental Impact Report (FEIR) and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program, all in accordance to the California Environmental Quality Act, as amended (CEQA).
2. Approve an ordinance rezoning an approximately 64.59 gross acre parcel site, located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso Milpitas Road) from A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District.
3. Adopt a resolution approving (i) a Special Use Permit, subject to conditions, to allow the removal of eight ordinance sized and 14 non ordinance sized trees, and construction of six buildings for a data center use totaling approximately 376,519 square feet with associated site improvements and 14 generators and off-site improvements on an approximately 49 acres, and (ii) a Development Exception pursuant to San Jose Municipal Code Section 20.100.1300B.1.d to allow for a reduction in off street parking.

OUTCOME

Should the City Council adopt the resolution to approve the Water Supply Assessment, certify the Environmental Impact Report (EIR), adopt an ordinance to rezone the project site to LI Light Industrial, and approve the Special Use Permit and Development Exception, the applicant will be able to implement the Special Use Permit for a data center use and a Development Exception to allow for a reduction to the off-street parking standards.

EXECUTIVE SUMMARY

On October 11, 2017, the Planning Commission unanimously recommended that the City Council approve a Final Water Supply Assessment for the Project prepared by Schaaf & Wheeler on behalf of the San Jose Municipal Water Company (dated May 2017); adopt the resolutions making certain findings concerning significant impacts, mitigation measures, and alternatives and certify the 237 Industrial Center Environmental Impact Report, 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, approve a 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.

Seven comment letters from individuals, community organizations, and a State Agency were submitted prior to the Planning Commission hearing, and seven members of the public spoke at the hearing. These letters and comments included the following concerns: 1) changes to the design of Iris Chang Park to accommodate a San Jose Municipal Water System groundwater well required as a condition of project approval; 2) adequacy of the mitigation and analysis in the environmental impact report (particularly with regard to construction and operational air quality, 3) loss of prime farmland, greenhouse gas emissions, and cumulative traffic; 4) inconsistency with the Alviso Master Plan; and 5) traffic in the Alviso community. Staff responded to these concerns and highlighted the analysis in the Draft EIR, response to comments in the First Amendment, and the Planning Commission staff report.

BACKGROUND

Public Comments prior to the Planning Commission Hearing

Prior to the October 11, 2017 Planning Commission meeting, staff received six comment letters on the project and the FEIR. These letters are as follows:

- Email from Mark Espinoza, representing the Organizacion Comunidad de Alviso, dated October 6, 2017;
- Letter from the California Department of Transportation, dated October 6, 2017;
- E-mail from Sarah Ruiz, dated October 11, 2017;
- E-mail from Richard Ruiz, dated October 11, 2017;

- E-mail from Jean Marlowe, representing the River Oaks Neighborhood Association, dated October 11, 2017;
- Letter from Deborah E. Quick of Morgan, Lewis & Bockius LLP, representing the Los Esteros Critical Energy Facility, dated October 11, 2017; and
- E-mail from Esther Alday, dated October 11, 2017.

Planning Commission Hearing

On October 11, 2017, the Planning Commission held a public hearing to consider the Environmental Impact Report, including the Water Supply Assessment, the proposed Conforming Rezoning, the Special Use Permit and Development Exception.

Staff gave a brief presentation detailing the data center project, the community outreach efforts, the development options under the Environmental Impact Report, the off-site improvements, the environmental impacts, the environmental alternatives and the proposed additional Conditions of Approval. The applicant gave a brief overview of the project.

Seven members of the public spoke on the project. Of the seven members of the public, five students were affiliated with San Jose State University, one member spoke on the behalf of the Los Esteros Critical Energy Facility, and the last member spoke on behalf of the Silicon Valley Organization. Two San Jose State University students and the representative for the Los Esteros Critical Energy Facility were opposed to the project. The representative of the Silicon Valley Organization was in support of the project, and two San Jose State University affiliates did not state whether they were for or against the project. During the public hearing, the San Jose State University professor stated there was not an issue with Microsoft, but that Microsoft needed to further consider the community benefits.

The following issues were raised prior to and at the public hearing:

Potential location of a San Jose Municipal Water well at the future Iris Chang Park

Prior to the Planning Commission meeting, staff received correspondence from the public and Commissioner Peter Allen with concerns about the potential location of a groundwater well on the planned Iris Chang Park site between Epic Drive and Coyote Creek. The proposed groundwater well is part of an agreement between the applicant and the San Jose Municipal Water System (SJMWS) to purchase approximately 2,500 square feet of property within the SJMWS's North San Jose/Alviso service area for the well installation. SJMWS has not identified a specific well location yet, but the Iris Chang Park site is one of the locations being considered. There is a condition of approval requiring the dedication of the groundwater well site or payment for a site prior to any issuance of building permit, all subject to City approval.

The public's concerns were related to changes in the design of the park from the introduction of a groundwater well site, the reduction in the size of the park, and the lack of outreach. Staff responded to the concern, stating that there has not been a decision made on the location of the groundwater well and that there would be additional community outreach should the park site be

pursued for a groundwater well. Commissioner Allen asked if the groundwater well and the park could co-exist. Staff stated that there are ongoing discussions between San Jose Municipal Water and Parks, Recreation and Neighborhood Services (PRNS) and that this arrangement could theoretically work as the groundwater well dimensions would approximately be ten feet by 20 feet, though additional outreach would be required. Any significant changes to the park master plan would require public outreach and for the park master plan to be brought forward to the Parks and Art Commissions again.

Inadequacy of the Environmental Impact Report

Several public speakers and public comment letters submitted prior to the hearing expressed concern about the adequacy of the EIR. Issues raised at the hearing included the analysis of off-site improvements (particularly impacts to burrowing owls), the effect of sea level rise on the project, the evaluation of construction air quality impacts for Option 2, and discrepancies between the project described in the EIR compared with the project described in the staff report.

Staff responded to these concerns by stating that the project, including the off-site improvements, will be required to comply with the Santa Clara Valley Habitat Conservation Plan, which includes procedures based on best-available science to reduce impacts to burrowing owls and the payment of fees to off-set reductions in burrowing owl habitat resulting from the project.

With regard to sea level rise, the 2015 court decision in the California Building Industry Association vs. the Bay Area Air Quality Management District determined that CEQA is concerned with the effects of a project on the environment, and, with the exception of a few specific cases, not the effects of the environment (such as sea-level rise) on a project. Office of Economic Development staff discussed steps the City is taking with the U.S. Army Corps of Engineers to address sea level rise on the Water Pollution Control Plant and the City as a whole.

Finally, the EIR is based on the project description known at the time the Notice of Preparation was circulated in May 2016. Subsequent modifications to the project, including additional details not known at the time of EIR preparation, do not result in any change in the analysis or impacts identified in the EIR.

Issues raised on the EIR in comment letters prior to the public hearing included traffic (particularly the potential for by-pass traffic in the Alviso community), greenhouse gas emissions, potential air quality impacts from the project on the future Agnews School, and alternatives. Most of these issues were previously addressed in the response to public comments provided in the First Amendment to the EIR, which is included in the Council packet. As stated in the EIR, truck traffic from the project is not anticipated to use Los Esteros Road into the Alviso community as project traffic is anticipated to use the access to SR 237 at Zanker Road. With regards to potential air quality impacts to the future Agnews School, this school site is located more than one mile from the project site south of SR 237. The Bay Area Air Quality Management District (BAAQMD) considers sensitive receptors (such as residents and students) to be most at risk within 1,000 feet of a source of Toxic Air Contaminants (TACs). As the project is more than one mile from the Agnews site, potential TAC exposure to future students is less than significant.

Inconsistency with the Alviso Master Plan

San Jose State Students raised concerns regarding the project's inconsistency with the Alviso Master Plan, specifically with the Light Industrial land use designation, principles for determining appropriate land uses in the Alviso planning area and environmental protection policies.

The concern regarding the project's inconsistency with the Alviso Land Use Designation of Light Industrial was focused on only allowing low intensity uses in the Light Industrial areas located near Coyote Creek and that uses should minimize both point and non-point source pollution. There were concerns that the data center is not a low intensity use as six buildings and three new public streets are proposed as part of the project. The project is considered a low intensity use as it does not generate large amounts of vehicular traffic and does not have a large amount of employees present at any one time (approximately 40 employees at any given time). Much of the square footage of the project is dedicated to server rooms. The public streets are required as part of the project as there are minimal public infrastructure in the vicinity of the project site.

There was a concern related to the project's inconsistency with the Alviso Master Plan's Principles for Determining Appropriate Land Uses. These principles are not considered policies in which projects will be required to comply, but instead provide background information on how the Alviso Master Plan was developed.

Lastly, there was a concern related to the project's inconsistency with the Alviso Master Plan's environmental protection policies listed below:

1. Environmental protection policy 1: All new parking, circulation, loading, outdoor storage, utility, and other similar activity areas must be located on paved surfaces with property drainage to avoid potential pollutants from entering the groundwater, Guadalupe River, Coyote Creek, or San Francisco Bay.
2. Environmental protection policy 2: Waterways or marshlands should never be used for storage, trash, or other environmentally adverse uses.
3. Environmental protection policy 3: The riparian corridors adjacent to Coyote Creek and Guadalupe River should be preserved intact. Any development adjacent to the waterways should follow the City's Riparian Corridor policies.
4. Environmental protection policy 4: To mitigate the loss of specific wildlife habitat due to development, certain lands should be set aside to provide needed habitat.

The parking, circulation, and loading for the project is located on paved surfaces, and the project has been evaluated for compliance with stormwater requirements. The project provides a 100-foot riparian setback and does not propose any storage or trash activities in this area. As discussed in the Planning Commission staff report, the project is in compliance with the City's Riparian Corridor Policies. While the project is not proposing to set aside land on the project site for wildlife habitat, the project is located within the Santa Clara Valley Habitat Plan, which requires payment of fees to mitigate the loss of habitat. The project is required to pay these fees before construction activities can occur.

Concerns of the Los Esteros Critical Energy Facility

Deborah E. Quick of Morgan, Lewis & Bockius LLP, spoke at the hearing representing the Los Esteros Critical Energy Facility on a site adjacent to the project and referenced her 14-page letter submitted prior to the Planning Commission hearing. Her testimony and letter raised the following issues/concerns of the Los Esteros Critical Energy Facility:

1. Dust impacts to adjacent properties are not adequately addressed in the EIR.
2. The EIR must be recirculated because the First Amendment identifies new significant impacts.
3. Recirculation is required to disclose impacts related to the construction and operation of the Oakmead Pump Station.
4. The EIR does not adequately consider mitigation for impacts to agricultural resources.
5. The EIR does not evaluate potential impacts associated with the whole of the project, such as:
 - a. There is no geotechnical analysis for Option 1 or the light industrial portion of Option 2.
 - b. Construction dust emissions from construction of the data center were not disclosed or analyzed.
 - c. The EIR does not consider all impacts from the construction of off-site infrastructure (particularly with regards to archeological resources at the outfall to Coyote Creek).
6. The EIR does not quantify the differences in impacts between the alternatives.

Staff provided a response to each of the issues raised in the letter, which are summarized as follows:

- Analysis of construction dust impacts on the Los Esteros site: The evaluation of construction air quality and fugitive dust emissions in the EIR is adequate. The Bay Area Air Quality Management District (BAAQMD) has no established threshold of significance for fugitive dust. Instead, implementation of Best Management Practices (BMP) established by BAAQMD for dust control, such as twice-daily on-site watering, limiting vehicle speeds to 15 miles per hour, and covering haul trucks transporting soil, would reduce construction dust emissions to a less than significant level. These BMPs are standard permit conditions in the Special Use Permit and are included in the EIR analysis. Furthermore, the analysis of construction air quality impacts for Option 1 (all light industrial) in the EIR is more conservative than impacts for Option 2 (data center plus light industrial) because development under Option 1 is assumed to occur within a 20-month window while the development under Option 2 is assumed to be spread out in two distinct phases with approximately ten years between each phase. In Option 1, more construction equipment will be on site releasing toxic air contaminants at any time, whereas in Option 2 there will be less construction equipment on site at any one time because there will be two separate phases of construction. In both Options, the implementation of the BMPs listed in the EIR will result in a less than significant impact for fugitive dust. Furthermore, at the request of Commissioner Yesney, the applicant

agreed to work with Los Esteros Critical Energy Facility to address their concerns about fugitive dust during construction.

- **New impacts and mitigation:** The First Amendment to the EIR identified a cumulative impact at Mission College Boulevard and Montague Expressway in Santa Clara. However, this impact only applies to development Option 1 (all light industrial) and not to Option 2 (light industrial plus data center), and with the approval of the Special Use Permit, Option 2 is most likely to occur. If Option 1 is pursued, the project will pay a fair-share contribution towards these improvements, which, arrangement has been completed with the City of Santa Clara.
- **Disclosure of impacts to the Oakmead Pump Station:** The letter references the City's response to comments on behalf of the Los Esteros Critical Energy Facility in the First Amendment. The City's response references an attached memo to the First Amendment, which was not included in the published First Amendment. Staff provided a copy of the memo prepared by Schaaf & Wheeler (dated May 2, 2017) to the Planning Commission at the October 11th hearing and posted the memo to the City's website for the Project's EIR (<http://www.sanjoseca.gov/index.aspx?nid=5084>).
- **Mitigation for impacts to Prime Farmland:** The EIR identified the loss of Prime Farmland as a significant and unavoidable impact with no feasible mitigation measures. This impact is the same conclusion as previous EIRs which evaluated development on the site, including the Envision San Jose 2040 General Plan EIR (which mentioned the Project site in the analysis of the loss of lands designated as Prime Farmland within the City's Urban Growth Boundary) and the 2000 US DataPort Planned Development Rezoning and Prezoning EIR (which evaluated the loss of Prime Farmland on both the Project site and the site of the Los Esteros Critical Energy Facility). As specified in the Envision San Jose 2040 FEIR, land designated as Prime Farmland within the City's Urban Services Area and Urban Growth Boundary is assumed to be developed within urban development.
- **Lack of a geotechnical analysis for light industrial development:** No geotechnical report was prepared for the light industrial development evaluated in Option 1 or the light industrial portion of Option 2 because there are no light industrial buildings proposed at this time. The geotechnical reports evaluate project-level building design and recommend project-specific measures, which is only known for the data center. Subsequent light industrial development will be required to prepare a project-level geotechnical analysis prior to approval of a building permit.
- **Impacts related to the construction of off-site improvements, particularly the outfall into Coyote Creek:** The impacts of the off-site improvements were evaluated in the EIR, and mitigation measures identified for significant impacts, including biological resources, cultural resources, and hazardous materials. If the outfall to Coyote Creek is constructed, the procedures outlined in Mitigation Measure MM CUL-1.1 through 1.5 will apply, and implementation of these mitigation measures will reduce any impacts to cultural resources to a less than significant level.
- **Analysis of alternatives:** CEQA does not require that alternatives and impacts be evaluated at the same level of detail as the project (CEQA Guidelines Section

15126.6(e)). The analysis of alternatives does evaluate the levels of impacts compared to the Project's two development options.

Additional Conditions of Approval

The addition of the following Conditions of Approval are part of the Planning Commission recommendation to City Council:

1. Permit Adjustment. The permittee shall be required to obtain a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement for the following:
 - a. A solid screening wall for the loading dock area (generally located between the paving and pedestrian path, parallel to the riparian corridor). This screening wall shall fully shield the loading dock area from the riparian corridor. Additionally, the landscape planting shall be adjusted to include only native species plant material between the creek and project paving on the east side of project site. The biologist shall be retained to evaluate the height and planting material in this immediate area and provide a letter indicating that the wall and planting materials meet the intent of condition.
2. The project applicant shall complete an evaluation of operational energy efficiency and design measures consistent with Criteria 5 of the City's Greenhouse Gas Reduction Strategy and General Plan Policy MS-2.8. The evaluation shall be completed and submitted to the Director of PBCE for review and approval prior to issuance of building permits for the data center and substation.
3. Prior to issuance of a building permit, permittee shall: 1) record a Grant Deed, in a form acceptable to the City, to transfer an approximately 2,500 square foot property (of a size, character, and geological conditions acceptable to (SJMWS) at no cost to the City, which property is within SJMWS's North San José/Alviso service area for the future installation of a new groundwater well to meet the 14.5 acre feet per year backup cooling supply requirements identified in the project Environmental Impact Report and Water Supply Assessment (WSA); or 2) In lieu of a Grant Deed, if the City determines that the well for the backup cooling supply requirement may be located on property already owned by the City, the permittee may elect to pay an amount as approved by City Council.

The video recording of the Planning Commission hearing is available on the City's website at the following link: <http://sanjoseca.gov/index.aspx?nid=3431>.

ANALYSIS

Analysis of the issues regarding the proposed Conforming Rezoning, Special Use Permit and Development Exception, including conformance with the California Environmental Quality Act, General Plan, Alviso Master Plan, Riparian Corridor Policy Study, Riparian Corridor Protection and Bird-Safe Design Council Policy, City of San Jose Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development, Zoning Ordinance, and Industrial Design Guidelines, is contained in the attached Planning Commission staff report, Environmental Impact Report, and attachments.

EVALUATION AND FOLLOW UP

If the resolution approving the Water Supply Assessment and certifying the Environmental Impact Report and an ordinance of the City of San Jose rezoning the project site to the Light Industrial Zoning District are adopted along with approving the Special Use Permit and Development Exception, the project would be able to proceed with an application for Public Works Permits and Building Permits to allow construction activities to occur.

If the resolution approving the Water Supply Assessment and certifying the Environmental Impact Report, the ordinance rezoning the project site to the Light Industrial Zoning District and the Special Use Permit and Development Exception is denied, the project will not be able to move forward with any subsequent permits.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy. An Environmental Scoping Meeting was held on Thursday, June 9, 2016, and a community meeting was held on Thursday, April 6, 2017. There were approximately 13 people in attendance at the Environmental Scoping Meeting and approximately nine people in attendance at the community meeting. At both meetings, there were concerns and questions raised regarding public infrastructure and riparian protections. The property owners and occupants within a 1,000-foot radius were sent public hearing notices for the Environmental Impact Report scoping meeting, community meeting and Planning Commission and City Council hearings. Signage has been posted at the site to inform the public about the proposal. The Planning Commission agenda was posted on the City of San Jose website, which included a copy of the staff report and associated attachments, and staff has been available to discuss the project with members of the public.

COORDINATION

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

CEQA

An Environmental Impact Report (237 Industrial Center) has been prepared for the project by the Department of Planning, Building and Code Enforcement.

/s/
ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Steve McHarris, Planning Official, at (408) 535-7819.

Attachments:

1. Planning Commission Staff Report and Attachments and Correspondence
2. Oakmead Pump Station Memorandum