P.C. Agenda: 01-23-02
Item: 4c

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PLANNING COMMISSION **FROM:** Joseph Horwedel

SUBJECT: PROTEST OF A NEGATIVE DECLARATION FOR ADMINISTRATIVE PERMIT FILE NO. AP01-08-022 **DATE:** January 23, 2002

Council District 4

BACKGROUND

This memorandum analyzes a protest of a Mitigated Negative Declaration prepared for an Administrative Permit to allow the installation of one standby/backup diesel generator to be used during interruptions of electrical service. The subject site is located on the northwest corner of Tasman and Vista Montana Drives at 305 West Tasman Drive. Surrounding land uses consist of industrial to the north, east, and south and single family attached residential to the west.

The Mitigated Negative Declaration was originally circulated on December 5, 2001 to property owners/occupants within 500 feet of the project site. The Mitigated Negative Declaration listed a public review period of 20 days, per the California Environmental Quality Act (CEQA). The public review period was extended through to 5 p.m. on January 2, 2002 because the original final date would have occurred on a day the Planning Division would have been closed and unavailable to the public.

ANALYSIS

The Draft Negative Declaration for this project was prepared in conformance with the California Environmental Quality Act (CEQA). Section 21080 of the CEQA Statute and Section 15070 (b) of the Guidelines specify that a Mitigated Negative Declaration may be prepared where the Initial Study identifies potentially significant effects, but revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid or mitigate the effects to a point where clearly no significant effects would occur. There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have significant effect on the environment. The Initial Study prepared for this project concluded that while the project has the potential to cause significant impacts, changes to the project and mitigation measures agreed to by the proponent and incorporated into the project would reduce any environmental effects to a less than significant level, and would not require preparation of an Environmental Impact Report (EIR).

The City of San Jose received one letter of protest on the Draft Mitigated Negative Declaration, which was received on January 2, 2002. The letter was submitted by Drew Plant, representing

the residents of the adjacent California Impressions residential development. The letter was signed by eleven (11) persons residing on Verdigris Circle and Feafel Drive. The four reasons for the protest have been reproduced in the section below, followed by the City's response to the issues raised. In addition, a complete copy of the letter has been attached.

RESPONSE TO COMMENTS FROM CALIFORNIA IMPRESSIONS HOMEOWNERS

COMMENT 1

This generator is an added nuisance with regard to noise level in the community. There has been no information made public regarding how much ambient noise would be created by this generator. The negative declaration states insertion loss figures for noise but does not state the expected added amount of ambient noise that would be created. Depending on the initial noise created by the generator, the resulting noise could be enough to be a public nuisance to nearby residents.

RESPONSE TO COMMENT 1

A mandatory detailed noise quality analysis completed by a qualified acoustic consultant was submitted by the applicant as part of the environmental review process and was included in the permit application file as part of the public record. The file and all associated documents were made available for public review as referenced in the Public Notice of the Intent to Adopt a Mitigated Negative Declaration. The public notice of the Intent to Adopt a Mitigated Negative Declaration for this application that was circulated on December 5th stated that the Draft Mitigated Negative Declaration, Initial Study and all reference documents were available at the Department of Planning, Building and Code Enforcement for public review. These reference documents, referenced in the Initial Study, included an Air Quality Impact Analysis and a Cumulative Noise Study. In addition, the applicant, at staff request, held a community meeting on September 25, 2001 for the project. Property owners/occupants within a 500-foot radius of the project site were sent notices for the community meeting. The project applicant, owner, air quality expert and noise quality expert were present at the meeting to discuss the project.

The noise quality impact report conducted by Thorburn Associates, dated October 3, 2001, analyzed potential noise impacts from the proposed generator and proposed mitigation measures to reduce any possible impacts to less than significant levels and to meet City Ordinance thresholds. As part of the analysis, the report included information on the existing ambient noise levels, the noise that would be produced by the proposed generator and the resulting noise levels after mitigation. The noise report analyzed the cumulative impact of this generator on the existing ambient noise level, which includes the noise from two existing generators.

The area of greatest sensitivity is the portion of the site nearest to a sensitive receptor, the adjacent residential development. This residential area is directly adjacent to the northern lot line. The existing ambient noise level was measured at 61 dBA at this location, and is a result of mechanical noise, airplane fly-overs, and traffic, all of which come from sources other than the subject property and are outside of the control of this project's applicant. The proposed generator would produce a level of 48 dBA. The cumulative impact of all three generators on-site would produce a noise level of approximately 50-52 dBA, which is below City of San Jose Zoning Ordinance threshold of 55 dBA for properties adjacent to residential uses. Because the cumulative impact of

the noise created by the three generators running at the same noise is below the existing ambient noise level and the mitigated noise barrier wall/enclosure, the proposed emergency generator would not raise the existing 24-hour equivalent noise level found at the site. Per CEQA, there would be a significant noise impact if the 24-hour equivalent ambient noise level was increased by more than 3 decibels. The noise report also recommended several mitigation measures to ensure that the noise produced by the generator will comply with the City Ordinance. These measures include closing air gaps in the existing enclosure, replacing the louver with an acoustical louver, turning the exhaust stack away from all lot lines, and installation of a stack muffler/silencer.

Comment 2

The upward-pointing exhaust stack is stated to be at a height of at least 15 feet. A 15-foot smoke-stack would make the level of the stack even with the 2nd floor of our houses, which would result in harmful waste gases being directed into the 2nd floor of our houses. This poses a serious health threat and is entirely unacceptable.

RESPONSE TO COMMENT 2

The air quality impact of the proposed generator was analyzed in an air quality report prepared by Donald Ballanti, a certified consulting meteorologist. The report is part of the Initial Study for the project and is on file at the Planning Department for public review. The Bay Area Air Quality Management District (BAAQMD) has established thresholds of significance for air quality impacts. The City of San Jose requires that the cumulative impact of all generators on the project site must meet these thresholds of significance. The thresholds of significance for diesel generators include nitrogen oxide emissions, Fine Particulate Matter (PM10) emissions and the increased carcinogenic health risk caused by PM 10. Air quality impacts are considered less than significant if annual NOx and PM10 emissions are 15 tons or less per year. The threshold for cancer risk is either 1 increment risk per million or between 1 and 10 increment risks per million with the incorporation of Toxic Best Available Control Technology (TBACT).

The applicant and the air quality impact study have indicated that the cumulative impact of the proposed generator and two existing generators are below the thresholds determined by BAAQMD. The proposed generator will incorporate TBACT. The applicant has proposed a maximum of 30 hours per year for the routine testing and maintenance of the generator. The air quality impact study was prepared based on calculations for the generators running 30 hours and 100 hours per year and an exhaust stack height of 14 feet. The air quality analysis concluded that the cumulative impacts meet all BAAQMD thresholds for both the 30 hour and 100 hour maximums. NOx emissions would be a maximum of 0.23 tons per year for 30 hours and 0.76 tons per year for 100 hours. PM10 emissions would be a maximum of 0.0005 tons per year for 30 hours and 0.018 tons per year for 100 years. In addition to limiting the hours of operation in accordance with BAAQMD and City policies, the applicant will be required to use CARB certified low sulfur fuel to reduce the generator's PM10 emissions. Although the applicant's proposed hours of operations and stack height of 14 feet will reduce the air quality impacts to an acceptable level, the City requires a vertical stack height minimum of 15 feet above grade. The City's standard minimum vertical stack height requirement will increase the exhaust dispersion into the atmosphere rather than into the immediate vicinity of the generator and the nearby residences. The stack will have a minimum distance of 244 feet from the nearest residential property line. The applicant will be required to orient the stack so that outflow will be directed upwards and away from the residential property line.

COMMENT 3

The amount of noise created by the generator, added to the already disturbing amount of ambient noise created by the currently operational generators owned by Novellus and SuperTex would make life miserable and sleep impossible for nearby neighbors. According to public documents, Rick Aquino (an independent consultant hired by the City) made noise measurements along the barrier wall adjacent to residential property on October 3, 2001. He measured ambient noise levels of around 61 dB to 64 dB, which is already well in excess of mandated City limits of 55 dB for residential environments. We implore the City to demand that existing noise generators be made to comply with the City noise ordinance before more noise generators are installed. We will not allow more noise to be added to an already intolerably noisy environment!

RESPONSE TO COMMENT 3

The City of San Jose Zoning Ordinance Section 20.50.300 states that the sound pressure level generated by any use or combination of uses shall not exceed the decibel level at any property line as shown in Table 20-135. The maximum noise level in decibels at the property line for industrial use adjacent to property used or zoned for residential purposes in Table 20-135 is 55 decibels. As stated in the response to comment 1, the applicant's noise quality consultant prepared a noise quality impact analysis for this project. The report is on file as part of the Initial Study for the project at the Planning Division and is available for public review. The noise quality consultant, Tyler Rynberg of Thorburn Associates, Inc., measured the existing ambient noise. The noise report stated that the cumulative noise impacts of the two existing generators produce a level of 45-49 decibels at the closest property line, which is also closest to the nearest residential use (northern property line). However, the existing ambient noise level measured 61 decibels over a period of 15 minutes on September 19, 2001. The DNL (Day/Night Average Sound Level) noise level average over a period of 24 hours is 57 decibels. The ambient noise level is a result of airplane fly-overs, parking lot traffic and mechanical equipment noise from adjacent uses. These noise sources are caused by sources outside of the project site and are beyond the control of the project applicant. The proposed generator will produce a level of 48 decibels at the northern property line. The cumulative impact from noise sources on the subject property, including the proposed generator, will be 50-52 decibels. The cumulative impact of the use that is the subject of this Draft Mitigated Negative Declaration will be lower than the existing ambient noise level. There will not be a significant increase to the ambient noise level because the noise generated by the proposed generator and two existing generators will be less than the existing ambient noise level. The noise report includes recommendations that will lower the noise impacts even further and these recommendations will be incorporated into the project. These recommendations include the replacing the existing louvers with sound attenuating acoustical louvers, the incorporation of a residential grade muffler/silencer, and the requirement that the generators be tested separately or sequentially.

COMMENT 4

It is assumed that noise testing would be done during normal operation and without advance notice to WebEx by an impartial third party or a City of San Jose official (and not by WebEx) to avoid unfairly optimistic results. This was not made clear in the City's proposed negative declaration.

RESPONSE TO COMMENT 4

The noise study was conducted by a professional acoustical consultant hired by the project applicant and the applicant has complied with all of the City's requirements for the permitting process for the installation of emergency standby generators. The noise report was included in the Initial Study for this Draft Negative Declaration and has been on file for public review. Noise measurements were taken and analyzed over a 24 hour average and 6 short-term 15 minute periods. The acoustic consultant conducted actual noise measures on the project site over a period of three days at five different locations. The consultant analyzed the existing noise measurements with the manufacturer's specifications on the proposed generator to evaluate the cumulative noise impact that would be caused by the implementation of this proposed project. It is staff's professional opinion that the noise quality impact study for this project was adequate and complete. Staff duly acknowledges these comments and will them into consideration before making a recommendation and decision on the Administrative Permit application.

CONCLUSION

The Initial Study prepared for this project examined the potential significant environmental impacts for the proposed Administrative Permit. The Director of Planning concluded that there was no substantial evidence that the proposed project would result in a significant environmental impact. Using the "Fair Argument" standard, an EIR is required if it can be fairly argued, based on substantial evidence in the record, that the project will have a significant effect on the environment. The protest letter received on the Draft Negative Declaration does not contain substantial evidence to support that this proposed project would result in a significant effect on the environment. Consequently, the preparation of an EIR is unnecessary.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission at this time are to uphold the Negative Declaration for the Administrative Permit proposal or to require the preparation of an EIR

RECOMMENDATION

The Director of Planning recommends that the Planning Commission uphold the Negative Declaration prepared for the Administrative Permit.

JOSEPH HORWEDEL, Acting Director
Planning, Building and Code Enforcement

Attachments