

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
WILLIAM C. MUMBY

MARC D. JOSEPH  
*Of Counsel*

*\*Not admitted in California  
Licensed in Colorado*

October 13, 2020

**Via Email and Overnight Delivery**

Hosam Haggag, City Clerk  
Simrat Dhadli, Deputy City Clerk  
City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, CA 95050  
[hhaggag@santaclaraca.gov](mailto:hhaggag@santaclaraca.gov)  
[sdhadli@santaclaraca.gov](mailto:sdhadli@santaclaraca.gov)

Andrew Crabtree  
Community Development  
Director  
City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, CA 95050  
[ACrabtree@santaclaraca.gov](mailto:ACrabtree@santaclaraca.gov)

Alexander Abbe  
Assistant City Attorney  
City of Santa Clara  
City Attorney's Office  
1500 Warburton Avenue  
Santa Clara CA 95050  
[aabbe@santaclaraca.gov](mailto:aabbe@santaclaraca.gov)

**Via Email Only**

Rebecca Bustos, [RBustos@santaclaraca.gov](mailto:RBustos@santaclaraca.gov)

**Re: Initial Study/Mitigated Negative Declaration: 1111 Comstock  
Data Center Project ((PLN2019-13941; CEQ2020-01079)**

Dear Mr. Haggag, Ms, Dhadli, Mr. Crabtree, Mr. Abbe and Ms. Bustos:

On behalf of **Santa Clara Citizens for Sensible Industry** ("Santa Clara Citizens"), we submit these comments on the Initial Study/Mitigated Negative Declaration ("IS/MND"), prepared pursuant to the California Environmental Quality Act ("CEQA") by the City of Santa Clara ("City") for the 1111 Comstock Data Center Project ("Project"), proposed by Prime Data Centers ("Applicant"). The Project proposes to demolish an existing 23,765-square-foot industrial building and

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construct a four-story, 121,170-square-foot data center building on the 1.38-acre project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts (“MW”) of information technology power; backup generators; underground fuel storage containers; and mechanical cooling equipment on the building’s roof. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

The Project seeks from the City the following discretionary approvals: Architectural Review and Demolition Permit. The Architectural Review Process, found at Zoning Ordinance Chapter 18.76 of the Santa Clara City Code, requires that the Director of Community Development or a designee review plans and drawings prior to issuance of a building permit.<sup>1</sup> The review, which takes place at a publicly noticed Development Review Hearing, assesses design, aesthetics, and consistency with zoning standards.<sup>2</sup> Demolition permits require the following: PCB screening assessment, sewer cap permit, air quality permit from the Bay Area Air Quality Management District (“BAAQMD”), and planning clearance. All demolition of structures larger than 1,000 square feet must create and submit a recycling plan.<sup>3</sup>

Based on our review of the IS/MND, we have concluded that it fails to comply with CEQA. The IS/MND fails to accurately describe the existing environmental setting and underestimates and fails to adequately mitigate air quality, public health, and greenhouse gas (“GHG”) impacts from the Project.

These comments were prepared with the assistance of James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. Dr. Clark’s comments and curricula vitae are attached to this letter as Attachment A.<sup>4</sup> For the reasons discussed herein, and in the attached expert comments, Santa Clara Citizens urges

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<sup>1</sup> Santa Clara City Code, Title 18: Zoning, Chap. 18.76.

<sup>2</sup> *Id.*

<sup>3</sup> City of Santa Clara Requirements for Obtaining a Demolition Permit, July 1, 2019, <https://www.santaclaraca.gov/home/showdocument?id=66421>.

<sup>4</sup> James J.J. Clark, Ph.D., Comment Letter on Initial Study with Proposed Mitigated Negative Declaration (IS/MND) for 1111 Comstock Data Center, Santa Clara, California (PLN2019-13941 and CEQ2020-01075), Clark and Associates, (Aug. 21, 2020) (hereafter “Dr. Clark Comments”).

the City to remedy the deficiencies in the IS/MND by preparing a legally adequate environmental impact report (“EIR”) pursuant to CEQA.

## I. STATEMENT OF INTEREST

Santa Clara Citizens is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential health, safety, public service, and environmental impacts of the Project. The association includes individuals and organizations, including **California Unions for Reliable Energy** (“CURE”) and its local affiliates, and the affiliates’ members and their families, who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project’s environmental and health and safety impacts. Its members may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

Santa Clara Citizens supports the development of data centers where properly analyzed and carefully planned to minimize impacts on the environment. Any proposed project should avoid impacts to public health, energy resources, sensitive species and habitats, and should take all feasible steps to ensure significant impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can development truly be sustainable.

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused

construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we offer these comments.

## II. LEGAL BACKGROUND

### A. CEQA

CEQA is intended to provide the fullest possible protection to the environment. CEQA requires that a lead agency prepare and certify an EIR for any discretionary project that may have a significant adverse effect on the environment.<sup>5</sup> In order to set an accurate foundation for the analysis, an EIR must include a description of the "existing physical conditions in the affected area."<sup>6</sup> CEQA requires analysis of the "whole of an action," including the "direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."<sup>7</sup> "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government."<sup>8</sup>

In addition, public agencies must adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts and describe those mitigation measures in the EIR.<sup>9</sup> A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>10</sup> "Feasible" means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological

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<sup>5</sup> Pub. Resources Code §§ 21002.1(a), 21100(a), 21151(a); 14 C.C.R. §§ 15064(a)(1), (f)(1), 15367.

<sup>6</sup> *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319–322; 14 C.C.R. § 15125.

<sup>7</sup> Pub. Resources Code § 21065; 14 C.C.R. § 15378(a).

<sup>8</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal quotations omitted).

<sup>9</sup> Pub. Resources Code §§ 21002, 21081(a), 21100(b)(3); 14 C.C.R. § 15126.4.

<sup>10</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

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factors.<sup>11</sup> Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.<sup>12</sup>

CEQA prohibits deferring identification of mitigation measures when there is uncertainty about the efficacy of those measures or when the deferral transfers authority for approving the measures to another entity.<sup>13</sup> An agency may only defer identifying mitigation measures when practical considerations prevent formulation of mitigation measures at the usual time in the planning process, the agency commits to formulating mitigation measures in the future, and that commitment can be measured against specific performance criteria the ultimate mitigation measures must satisfy.<sup>14</sup>

### B. An EIR is Required

The EIR is the very heart of CEQA.<sup>15</sup> A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>16</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>17</sup> An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is

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<sup>11</sup> 14 C.C.R. § 15364.

<sup>12</sup> *Id.* § 15126.4(a)(2).

<sup>13</sup> *Id.* § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309.

<sup>14</sup> *POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736, 739–740, *as modified on denial of reh'g* (Aug. 8, 2013), *review denied* (Nov. 20, 2013); see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (EIR deficient for failure to specify performance standards in plan for active habitat management of open space preserve); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 (EIR’s deferral of acoustical report demonstrating structures designed to meet noise standards without setting the actual standards is inadequate for purposes of CEQA); *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1396 (negative declaration’s deferral of mitigation measure improper where the measure required applicant to comply with recommendations of a report that did not exist yet with no further guidance on what mitigation was necessary).

<sup>15</sup> See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App.4th 903, 926–927; *Sundstrom v. County of Mendocino* (1974) 202 Cal.App.3d 296, 304.

<sup>16</sup> Pub. Resources Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’t Dev. v. City of Chula Vista (“CREED”)* (2011) 197 Cal.App.4th 327, 330–331; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

<sup>17</sup> Pub. Resources Code § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

enough that the impacts are “not trivial.”<sup>18</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>19</sup>

Whether a fair argument exists is a question of law that the court reviews de novo, with a preference for resolving doubts in favor of environmental review.<sup>20</sup> In reviewing a decision to prepare a negative declaration rather than an EIR, courts “do not defer to the agency’s determination.”<sup>21</sup>

The fair argument standard creates a “low threshold” for requiring preparation of an EIR and affords no deference to the agency’s determination.<sup>22</sup> Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.”<sup>23</sup> A reviewing court must require an EIR if the record contains any “substantial evidence” suggesting that a project “may have an adverse environmental effect”—even if contrary evidence exists to support the agency’s decision.<sup>24</sup>

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.<sup>25</sup> In short, when “expert opinions clash, an EIR should be done.”<sup>26</sup> “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.”<sup>27</sup> In the context of reviewing a mitigated negative declaration,

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<sup>18</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 fn. 16.

<sup>19</sup> Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>20</sup> *CREED*, 197 Cal.App.4th at 331; *Pocket Protectors*, 124 Cal.App.4th at 927.

<sup>21</sup> *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

<sup>22</sup> *Pocket Protectors*, 124 Cal.App.4th at 928.

<sup>23</sup> Pub. Resources Code § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist. No. 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).

<sup>24</sup> *Mejia*, 130 Cal.App.4th at 332–333.

<sup>25</sup> *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, 6 Cal.App.4th at 1317–1318; CEQA Guidelines § 15064(f)(5).

<sup>26</sup> *Pocket Protectors*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317–1318.

<sup>27</sup> *Pocket Protectors*, 124 Cal.App.4th at 935.

“neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”<sup>28</sup> Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”<sup>29</sup>

The fair argument test requires the preparation of an EIR whenever “there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.”<sup>30</sup> Such substantial evidence is present here and requires the preparers of this IS/MND to take a closer look at the environmental impacts of the Project in an EIR.

### **III. THE CITY FAILED TO PROVIDE THE DOCUMENTS REFERENCED IN THE IS/MND FOR THE ENTIRE COMMENT PERIOD**

The City violated CEQA and improperly truncated the public comment period when it failed to make all documents referenced or relied on in the IS/MND available for public review during the entire public comment period.<sup>31</sup> As a result, Santa Clara Citizens and other members of the public were unable to complete a meaningful review and analysis of the IS/MND and its supporting evidence. The City delayed providing the coalition access to responsive records, while denying the coalition’s request to extend the comment period. We therefore provide these initial comments on the IS/MND and reserve our right to submit supplemental comments at a future date.

CEQA and the CEQA Guidelines require that “all documents referenced” and “all documents incorporated by reference” in a negative declaration shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>32</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be

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<sup>28</sup> *Id.* at 935.

<sup>29</sup> *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

<sup>30</sup> 14 C.C.R. § 15063(b)(1) (emphasis added).

<sup>31</sup> See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>32</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

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remedied by permitting additional public comment.<sup>33</sup> It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>34</sup>

On September 23, 2020, we submitted a request to the City for “immediate access to any and all documents referenced or incorporated by reference in the Initial Study/Mitigated Negative Declaration related to the 1111 Comstock Street Project” (Request No. 20-554).<sup>35</sup> On September 29, 2020, the City asked for clarification as to what records were sought, even though there was no ambiguity in such a basic request. In a follow-up letter to the City on October 1, 2020, we explained that our request included “all documents referenced and referred to throughout the MND and used to support conclusions reached in the MND, including any documents not made available in the Appendices.”<sup>36</sup>

On October 5, the City stated that responsive documents would be provided by October 19, 2020—six days after the close of the comment period. The City then provided us with documents referenced in the IS/MND on October 9, four days before the public review and comment period ended. CURE and other members of the public have therefore been denied access to the relevant documents referenced and incorporated by reference in the MND during the entire public comment period in violation of CEQA.<sup>37</sup>

#### **IV. THE IS/MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION**

CEQA requires that an EIR “set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.”<sup>38</sup>

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<sup>33</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>34</sup> *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

<sup>35</sup> Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to City of Santa Clara re Request for Immediate Access to Documents Referenced in the Mitigated Negative Declaration – 1111 Comstock Street Project by Prime Data Centers (PLN2019-13941; CEQ2020-01079) (September 23, 2020).

<sup>36</sup> Letter from ABJC to City of Santa Clara re FOLLOW-UP to Request for Immediate Access to Documents Referenced in Mitigated Negative Declaration – 1111 Comstock Street Project by Prime Data Centers (PLN2019-13941; CEQ2020-01079) (October 1, 2020).

<sup>37</sup> See *Ultramar*, 17 Cal.App.4th 689, 699.

<sup>38</sup> *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).



Similarly, an IS/MND must present a complete and accurate description of the project under consideration.<sup>39</sup> “The scope of the environmental review conducted for the initial study must include the entire project. . . . [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.”<sup>40</sup> A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.”<sup>41</sup>

The IS/MND fails to provide a complete description of several of the Project’s components, including details of the demolition of the existing improvements on the site; specifications of the generators and other technology to be employed; and construction processes, schedules and details. Moreover, no description of critical processes that will take place throughout the Project’s lifetime—such as de-energizing of generators for maintenance and testing—is offered. In the absence of this crucial information, the public is precluded from meaningful review of the Project’s potential impacts.

## V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS

As noted above, under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>42</sup> The fair argument standard creates a “low threshold” favoring environmental review

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<sup>39</sup> 14 C.C.R. § 15063(d)(1) (requiring an initial study to include a description of the project).

<sup>40</sup> *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

<sup>41</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

<sup>42</sup> Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

through an EIR, rather than through issuance of a negative declaration.<sup>43</sup> An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>44</sup> Substantial evidence can be provided by technical experts or members of the public.<sup>45</sup> "If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."<sup>46</sup>

**A. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Potentially Significant Air Quality Impacts**

The IS/MND concludes that emissions from the Project will not have a significant impact on air quality.<sup>47</sup> Dr. Clark reviewed the IS/MND and provided substantial evidence that the City underestimated the Project's criteria pollutant emissions. Thus, substantial evidence demonstrates that the Project will have significant impacts beyond what is disclosed, analyzed and mitigated in the IS/MND.

**1. The City Lacks Substantial Evidence that the Project's Backup Generators Will Run Only 50 Hours Each Year**

The Project includes six 3,000-kW and one 500-kW backup diesel generators that the City assumed would run 50 hours per year, which is the Bay Area Air Quality Management District's ("BAAQMD") stationary source rule's maximum allowable run time.<sup>48</sup> The IS/MND notes that emergency situations, including

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<sup>43</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>44</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street, supra*, 106 Cal.App.3d at p. 1002 ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").

<sup>45</sup> *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

<sup>46</sup> CEQA Guidelines § 15062(f).

<sup>47</sup> IS/MND, p. 32.

<sup>48</sup> IS/MND, p. 34.

power failures, as well as private utility work to restore services and protect property from damage, are exempt from the limits in BAAQMD's rules and that the City did not calculate or analyze emissions beyond the 50 hours.<sup>49</sup>

The IS/MND also notes that data centers consume more energy than other land uses and require an uninterrupted power supply, thereby admitting that there will be significant emissions of criteria pollutants beyond what is modeled.<sup>50</sup> For example, public safety power shut offs are conducted by Pacific Gas & Electric, which are expected to cause power outages of 24 to 48 hours each.<sup>51</sup> Nearby San Jose Clean Energy estimates that these outages may last several days a year, far beyond the 50 hours modeled in the IS/MND.<sup>52</sup> The IS/MND must be withdrawn, and an EIR must be prepared that considers the emissions associated with running the backup diesel generators beyond 50 hours.

**B. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate the Project's Potentially Significant Public Health Impacts**

The IS/MND concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations.<sup>53</sup> This conclusion suffers from two errors: 1) the failure of the Air Quality and Greenhouse Gas Emissions Assessment (Appendix A) to include the most sensitive receptors in emissions modeling, and 2) the failure to model emissions beyond 50 hours of operation of the backup generators, noted above.<sup>54</sup>

The IS/MND's Air Quality Assessment erroneously states that the "closest sensitive receptors to the proposed project site are existing residences about 3,315

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<sup>49</sup> IS/MND, pp. 34; 105.

<sup>50</sup> See IS/MND, p. 6.

<sup>51</sup> See Pacific Gas & Electric, Public Safety Power Shutoffs, *available at* [https://www.pge.com/en\\_US/safety/emergency-preparedness/natural-disaster/wildfires/public-safety-power-shutoff-faq.page](https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/public-safety-power-shutoff-faq.page); Silicon Valley Power, PG&E's Public Safety Power Shutoffs, *available at* <https://www.siliconvalleypower.com/svp-and-community/safety/pg-e-s-public-safety-power-shutoff-program>.

<sup>52</sup> See San Jose Clean Energy, PG&E Power Shutoffs, *available at* <https://sanjosecleanenergy.org/psps/>.

<sup>53</sup> IS/MND, p. 36.

<sup>54</sup> Dr. Clark Comments, p. 9.

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feet north of the project site ...”<sup>55</sup> The Granada Islamic School is much closer—1,700 feet—to the Project site.

Potential health impacts from operation of the Project’s generators were evaluated using air quality dispersion modeling and applying BAAQMD recommended health impact calculation methods.<sup>56</sup> Though the IS/MND states that “[t]he maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million,” it is unclear where those numbers came from. Nothing in the Assessment indicates whether the evaluations of health impacts were actually performed at the Granada Islamic School or at the residences further away. The Assessment’s initial erroneous assumption that the closest sensitive receptors were the residences more than 3,000 feet from the Project site does not appear to have been corrected during calculations of health risks, as Figure 2 in the Assessment does not include the Granada Islamic School in its display of sensitive receptors. As asserted by Dr. Clark, such an oversight would significantly alter the assumptions and conclusions of the IS/MND. The City must re-analyze the Project’s impacts in an EIR.

As required by CEQA, the City must prepare a site-specific baseline health risk assessment (“HRA”) that calculates the excess incremental lifetime risk for all of the nearby receptors. As Dr. Clark points out, “[t]he City’s emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation.”<sup>57</sup>

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. It has been linked to a range of serious health problems, including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>58,59</sup> Dr. Clark

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<sup>55</sup> IS/MND Appendix A, p. 5.

<sup>56</sup> IS/MND Appendix A, p. 15.

<sup>57</sup> Dr. Clark Comments, pp. 9–10.

<sup>58</sup> Dr. Clark Comments, p. 9.

<sup>59</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB4938-006acp>

asserts that, given the Project's proximity to sensitive receptors and the nature of the TACs emitted, an HRA, prepared in accordance with the Office of Environmental Health and Hazard Assessment and analyzing the Project's potentially significant public health impacts from TACs emitted from the diesel particulate matter, is essential.<sup>60</sup>

**C. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Potentially Significant Greenhouse Gas Impacts**

The CEQA Guidelines require a lead agency to compare a project's GHG emissions against a threshold of significance that the agency determines applies to the Project, or to otherwise determine the extent to which the project complies with local regulations and requirements adopted to reduce GHG emissions, provided there is no evidence that GHG emissions would be cumulatively considerable.<sup>61</sup> Here, the City chose to use a qualitative approach when considering GHG emissions. Rather than measure the Project's emissions against a numerical threshold, the IS/MND instead evaluated them based on whether they conflict with a plan, policy, or regulation adopted for the purpose of reducing GHG.<sup>62</sup> Substantial evidence, however, supports a fair argument that the Project's emissions are significant.

**1. Substantial Evidence Does Not Support the Conclusion that GHG Emissions Will Not Be Significant**

Though BAAQMD provides clear thresholds to which emissions from both stationary and nonstationary sources can be compared,<sup>63</sup> the IS/MND fails to measure any of the Project's emissions against a numerical threshold, and fails, therefore, to demonstrate that Project impacts are less than significant.

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%20identified%20DPM,and%20other%20adverse%20health%20effects; U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002; Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>60</sup> Dr. Clark Comments, pp. 9–10.

<sup>61</sup> CEQA Guidelines § 15064.4 subd. (b).

<sup>62</sup> IS/MND, p. 66.

<sup>63</sup> BAAQMD identifies thresholds of significance for emissions from nonstationary operational sources as 1,100 MTCO<sub>2</sub>e/yr or 4.6 MTCO<sub>2</sub>e/service population/yr (in the absence of compliance with a qualified GHG reduction strategy). The Guidelines set the threshold for stationary operational sources at 10,000 MTCO<sub>2</sub>e/yr. BAAQMD CEQA Guidelines (May 2017), p. 2-10.

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The IS/MND indicates that total Project emissions are calculated as 10,323 MTCO<sub>2e</sub>/year. The BAAQMD CEQA Guidelines, meanwhile, provide the following thresholds of significance for operational-related GHG emissions for land use development projects: “Compliance with a qualified GHG Reduction Strategy; or annual emissions less than 1,100 MTCO<sub>2e</sub>/yr; or 4.6 MTCO<sub>2e</sub>/SP/yr (residents + employees).”<sup>64</sup>

Even subtracting from the total emissions the 522 MTCO<sub>2e</sub>/year attributed to generators (since stationary sources are subject to different thresholds than nonstationary sources), Project emissions are significant. As stated in BAAQMD’s CEQA Guidelines, “[i]f annual emissions of operational-related GHGs exceed [threshold] levels, the proposed project would result in a cumulatively considerable contribution of GHG emissions and a cumulatively significant impact to global climate change.”<sup>65</sup>

## 2. Compliance with Plans and Policies Does Not Establish that the Project’s GHG Emissions Would Be Less Than Significant

The IS/MND concludes that the Project’s GHG emissions would not have a significant impact on the environment because the Project is consistent with the City of Santa Clara Climate Action Plan (“CAP”), as well as other plans, policies, and regulations adopted for the purpose of reducing GHG emissions.<sup>66</sup> Substantial evidence, however, supports a fair argument that the Project’s GHG emissions are significant notwithstanding their consistency with local, regional, and state plans.

As stated above, the Project’s total operational emissions amount to 10,323 MTCO<sub>2e</sub> annually—significantly higher than the 1,100 MTCO<sub>2e</sub>/year threshold established by BAAQMD. The IS/MND fails to describe how this might be abated through the Project’s compliance with GHG reduction strategies.

Furthermore, the IS/MND relies on obtaining the status of less-than-significant for the Project’s emissions from a plan that is set to expire before the Project is implemented. The City’s Climate Action Plan, adopted in 2013, contains projected emissions and measures designed to help the City meet statewide 2020

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<sup>64</sup> BAAQMD CEQA Guidelines (May 2017), p. 2-4.

<sup>65</sup> *Id.*

<sup>66</sup> IS/MND, p. 70–71.

goals established by AB 32.<sup>67</sup> As acknowledged in the IS/MND, “consistency with the CAP cannot be used to determine significance under CEQA.”<sup>68</sup>

The IS/MND argues that because electricity—by far the biggest source of the Project’s emissions—is provided by Silicon Valley Power, “a utility on track to meet the 2030 GHG emissions reductions target established by SB 32,” the Project would generate lower emissions than the statewide average for an equivalent facility.<sup>69</sup> Additionally, because the Project would allegedly comply with several applicable City and state plans, including green building and energy efficiency measures, and policies adopted to reduce GHG emissions, the IS/MND concludes that “the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”<sup>70</sup>

The IS/MND fails, however, to establish that the Project’s consistency with these plans and programs will ensure that the Project’s contribution to global climate change is not significant. Despite compliance with these plans, Dr. Clark reiterates that calculations of the Project’s total emissions provided in the IS/MND nevertheless surpass BAAQMD’s thresholds, demonstrating that emissions would be significant. The City must prepare an EIR that analyzes and mitigates these significant GHG emissions.

## V. CONCLUSION

CEQA requires that an EIR be prepared if there is substantial evidence that a project, either individually or cumulatively, may have a significant impact on the environment.<sup>71</sup> As discussed above, there is substantial evidence supporting a fair argument that the Project would result in significant adverse impacts that were not identified or adequately analyzed in the IS/MND.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter. Only by complying with all

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<sup>67</sup> *Id.* at 67.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Pub. Resources Code § 21151; 14 CCR §15063(b)(1).  
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applicable laws will the City and the public be able to ensure that the Project's environmental impacts are mitigated to less than significant levels.

Sincerely,



Kendra Hartmann  
Tanya Gulesserian

Attachments

KDH:acp

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