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August 28, 2020

**Via E-Mail and Overnight Mail**

Elaheh Kerachian  
City of Santa Clara  
Community Development Department  
1500 Warburton Avenue  
Santa Clara, CA 95050  
[ekerachian@santaclaraca.gov](mailto:ekerachian@santaclaraca.gov)

**Re: Initial Study/Mitigated Negative Declaration: 2905 Stender Way  
CoreSite SV9 Data Center (CEQ2020-01075)**

Dear Ms. Kerachian:

On behalf of **Santa Clara Citizens for Sensible Industry (“SCCSI”)**, we submit these comments on the Initial Study/Mitigated Negative Declaration (“IS/MND”) <sup>1</sup> for the 2905 Stender Way CoreSite SV9 Data Center Project (“Project”) prepared pursuant to the California Environmental Quality Act (“CEQA”) <sup>2</sup> by the City of Santa Clara (“City”). The Project, the existing one-story structure and associated parking lot would be removed and replaced with a new, four-story, approximately 250,000 square foot data center. Average power consumption would be 48-megawatts (MW). Backup diesel generators would be installed to provide emergency power to the data center. The 3.8-acre Project site is zoned PD – Planned Development and was previously zoned Light Industrial. The Project site is in Santa

<sup>1</sup> City of Santa Clara Community Development Department, Initial Study with Proposed Mitigated Negative Declaration 2905 Stender Way CoreSite SV9 Data Center, (July 2020) (hereafter “IS/MND”).

<sup>2</sup> Public Resources Code § 21000 *et seq.*

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August 28, 2020

Page 2

Clara south of Highway US-101 and west of the San Tomas Expressway. The Project site has frontage on Stender Way. Surrounding land uses are predominantly industrial and there are no sensitive receptors within close proximity to the site.

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 settings 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 Exhibit A.<sup>3</sup> For the reasons discussed herein, and in the attached expert comments, CURE urges 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

SCCSI 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** and its local affiliates, and the affiliates’ members and their families, and other individuals who live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County.

SCCSI 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.

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<sup>3</sup> James J.J. Clark, PhD., Comment on Initial Study with Proposed Mitigated Negative Declaration (IS/MND) for 2905 Stender Way, CoreSite SV9 Data Center, Santa Clara, California, CEQ2020-01075, Clark and Associates, (Aug. 21, 2020) (hereafter “Clark Comments”) **EXHIBIT A**.

California Unions for Reliable Energy (“CURE”) is a coalition of labor organizations whose members encourage sustainable development of California’s energy resources. CURE’s members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. CURE has helped cut smog-forming pollutants in half, reduced toxic emissions, increased the use of recycled water for cooling systems, and pushed for groundbreaking pollution control equipment as the standard for all new power plants, all while helping to ensure that new power plants and transmission facilities are built with highly trained, professional workers who live and raise families in nearby communities.

Individual members of CURE, and its affiliated labor organizations 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. Individual members of CURE’s affiliates 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. The members of CURE have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members.

SCCSI 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 determinantal 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. The labor organization members of SCCSI 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>4</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>5</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>6</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>7</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>8</sup> A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>9</sup> “Feasible” means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.<sup>10</sup> Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.<sup>11</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>12</sup> An agency may only defer

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<sup>4</sup> Pub. Resources Code §§ 21002.1(a), 21100(a), 21151(a); 14 C.C.R. §§ 15064(a)(1), (f)(1), 15367.

<sup>5</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>6</sup> Pub. Resources Code § 21065; 14 C.C.R. § 15378(a).

<sup>7</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal quotations omitted).

<sup>8</sup> Pub. Resources Code §§ 21002, 21081(a), 21100(b)(3); 14 C.C.R. § 15126.4.

<sup>9</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

<sup>10</sup> 14 C.C.R. § 15364.

<sup>11</sup> *Id.* § 15126.4(a)(2).

<sup>12</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.

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>13</sup>

## **B. An EIR is Required**

The EIR is the very heart of CEQA.<sup>14</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>15</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>16</sup> An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>17</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>18</sup>

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<sup>13</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>14</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>15</sup> Pub. Resources Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’tl 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>16</sup> Pub. Resources Code § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

<sup>17</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 fn. 16.

<sup>18</sup> Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

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>19</sup> In reviewing a decision to prepare a negative declaration rather than an EIR, courts “do not defer to the agency’s determination.”<sup>20</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>21</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>22</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>23</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>24</sup> In short, when “expert opinions clash, an EIR should be done.”<sup>25</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>26</sup> In the context of reviewing a mitigated negative declaration, “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>27</sup> Where such substantial evidence is presented, “evidence to the contrary is not sufficient to

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<sup>19</sup> *CREED*, 197 Cal.App.4th at 331; *Pocket Protectors*, 124 Cal.App.4th at 927.

<sup>20</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>21</sup> *Pocket Protectors*, 124 Cal.App.4th at 928.

<sup>22</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>23</sup> *Mejia*, 130 Cal.App.4th at 332–333.

<sup>24</sup> *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, 6 Cal.App.4th at 1317–1318; CEQA Guidelines § 15064(f)(5).

<sup>25</sup> *Pocket Protectors*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317–1318.

<sup>26</sup> *Pocket Protectors*, 124 Cal.App.4th at 935.

<sup>27</sup> *Id.* at 935.

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>28</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>29</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 IS/MND FAILS TO ADEQUATELY ESTABLISH THE EXISTING ENVIRONMENTAL SETTING FOR THE PROJECT**

The IS/MND describes the existing environmental setting inaccurately and incompletely, thereby skewing the County’s impact analysis. The existing environmental setting is the starting point from which the lead agency must measure whether a proposed Project may cause a significant environmental impact.<sup>30</sup> CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.<sup>31</sup>

Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate and meaningful evaluation of environmental impacts. The importance of having a stable, finite and fixed environmental setting for purposes of an environmental analysis was recognized decades ago.<sup>32</sup> Today, the courts are clear that “[b]efore the impacts of a Project can be assessed and mitigation measures considered, an [EIR] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.”<sup>33</sup>

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<sup>28</sup> *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

<sup>29</sup> 14 C.C.R. § 15063(b)(1) (emphasis added).

<sup>30</sup> See, e.g., *Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (March 15, 2010) 48 Cal.4th 310, 316; *Fat v. City of Sacramento* (2002) 97 Cal.App.4th 1270, 1278, citing Remy, et al.; Guide to the Calif. Environmental Quality Act (1999) p. 165.

<sup>31</sup> CEQA Guidelines §15125, subd. (a); *Riverwatch v. City of San Diego* (1999) 76 Cal.App.4th 1428, 1453.

<sup>32</sup> *City of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

<sup>33</sup> *City of Amador v. El Dorado City Water Agency* (1999) 76 Cal.App.4th 931, 952.

An EIR must also describe the existing environmental setting in sufficient detail to enable a proper analysis of project impacts.<sup>34</sup> The CEQA Guidelines provide that “[k]nowledge of the regional setting is critical to the assessment of environmental impacts.”<sup>35</sup> This level of detail is necessary to “permit the significant effects of the project to be considered in the full environmental context.”<sup>36</sup>

Here, the IS/MND fails to describe the nearest sensitive receptor to the proposed Project site for purposes of analyzing impacts to air quality and public health. The IS/MND describes a sensitive receptor as people most likely to be affected by air pollution, such as the pregnant, children, and the elderly.<sup>37</sup> According to the IS/MND, the nearest sensitive receptors for the Project are residences 1,400 feet to the northwest.<sup>38</sup> However, Dr. Clark reviewed the Project and determined that the City failed to identify the closest sensitive receptor, which is the Grace Adult Day Health Care Center at 3010 Olcott Street – only 375 feet from the Project site.<sup>39</sup> This Center provides nursing, meals, transportation, and therapies for disabled adults and as such should have been considered the proper nearest sensitive receptor for the Project.<sup>40</sup> This failure by the City results in an improper underestimation of how emissions from the Project will impact these sensitive receptors.<sup>41</sup>

#### **IV. 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>34</sup> *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1121-22.

<sup>35</sup> CEQA Guidelines § 15125, subd.(d).

<sup>36</sup> *Id.*

<sup>37</sup> IS/MND, p. 23.

<sup>38</sup> IS/MND, p. 23.

<sup>39</sup> Clark Comments, p. 6.

<sup>40</sup> Clark Comments, p. 6.

<sup>41</sup> Clark Comments, p. 9.

<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 with implementation of Mitigation Measures AQ-1 and AQ-2, the Project will not have a significant impact from air quality emissions.<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**

The Project includes sixteen backup diesel generators that the City assumed would run fifty 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 also notes that emergency situations, including power failures, are exempt

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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, pp. 22-31.

<sup>48</sup> IS/MND, pp. 28-29.

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 require energy constantly, 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.<sup>53</sup>

2. Mitigation Measure AQ-2 is Ineffective and Will Not Reduce Criteria Pollutant Emissions to a Less Than Significant Level

CEQA requires mitigation measures to be supported by substantial evidence that they will be effective.<sup>54</sup> The IS/MND's Mitigation Measures AQ-2 states:

“In order to reduce NOX emissions below the BAAQMD threshold, the applicant shall limit non-emergency operation (including testing and maintenance) of each backup diesel generator to no more than 18 hours per year.”<sup>55</sup>

According to Dr. Clark, this measure lacks substantial evidence to demonstrate it will be effective.

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<sup>49</sup> IS/MND, p. 29.

<sup>50</sup> See IS/MND, p. 9.

<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> See Clark Comments, p. 8.

<sup>54</sup> *Sacramento Old City Ass'n v. City Council* (1991) 229 Ca.3d 1011, 1027.

<sup>55</sup> IS/MND, p. 27.

First, the mitigation measure does not limit non-emergency operation at all. These unmodeled emissions will remain unmitigated and thus are still significant.<sup>56</sup> Second, the IS/MND lacks substantial evidence to show that a maintenance schedule of only 18 hours, rather than the 50 modeled, per backup generator is feasible.<sup>57</sup> Dr. Clark states that it may not be possible to simply reduce necessary maintenance and testing.<sup>58</sup> Thus, substantial evidence shows that the mitigation measure is not feasible and significant impacts remain. Those impacts must be evaluated in an EIR.

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

The IS/MND concludes that public health impacts, as measured in cancer risk from toxic air contaminants (“TAC”), would not be significant.<sup>59</sup> This conclusion suffers from two errors previously noted: the failure to identify the correct sensitive receptor for the Project and the failure to model emissions beyond 50 hours of operation of the backup generators.<sup>60</sup>

Based on the erroneous sensitive receptors, the IS/MND found that the Project creates a cancer risk of 6.8 in one million, below the threshold of significance of 10 in one million.<sup>61</sup> Dr. Clark applied the same health risk calculator as the IS/MND with the correct sensitive receptor used and determined that the actual cancer risk from the Project was 45.6 in one million, far above the threshold of significance, even assuming the Project only requires just 50 hours of operation of backup generators.<sup>62</sup> Dr. Clark determined that, in order to reduce impacts to less than significant, the City must require an operating restriction of 11 hours and 50 minutes per generator per year of operation, including during emergency events.<sup>63</sup>

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<sup>56</sup> Clark Comments, p. 8.

<sup>57</sup> Clark Comments, p. 10.

<sup>58</sup> Clark Comments, p. 10.

<sup>59</sup> IS/MND, p. 30.

<sup>60</sup> Clark Comments, p. 9.

<sup>61</sup> IS/MND, p. 31.

<sup>62</sup> Clark Comments, p. 9.

<sup>63</sup> Clark Comments, p. 10.

Based on these high emissions, Dr. Clark recommends that the City prepare a health risk assessment (“HRA”) to analyze the Project’s potentially significant public health impacts from TACs emitted from the diesel particulate matter.<sup>64</sup> These TACs can increase respiratory disease, lung cancer, and premature death.<sup>65</sup> Dr. Clark thus recognizes that the Project must include a site-specific HRA based on the guidelines issued by the Office of Environmental Health and Hazard Assessment.<sup>66</sup>

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

The CEQA Guidelines require a lead agency to compare a project’s GHG emissions against a threshold of significance that the lead agency determines applies to the Project, or the extent to which the project complies with local regulations and requirements adopted to reduce GHG emissions, provided there is not evidence that GHG emissions would be cumulatively considerable.<sup>67</sup> Here, the City improperly bifurcated the analysis of the Project’s GHG emissions. Specifically, for the part of the Project not covered by a stationary source permit, the City considered consistency with the California Air Resources Board’s (“CARB”) 2017 Scoping Plan, the City’s Climate Action Plan (“CAP”), and Senate Bill (“SB”) 350’s mandate of 100 percent renewable energy by 2050.<sup>68</sup> For the backup generators, the City compared the GHG emissions to a numerical threshold of 10,000 metric tons of carbon dioxide equivalent (“MTCO<sub>2e</sub>”) per year. Both of these analyses fail to demonstrate that Project impacts are less than significant.

1. Project Emissions from Non-Stationary Sources are Significant

The IS/MND disclosed that Project emissions will be 34,110.9 MTCO<sub>2e</sub> annually. These emissions are significant, despite any alleged consistency with GHG emission reduction plans.

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<sup>64</sup> Clark Comments, pp. 10-11.

<sup>65</sup> Clark Comments, p. 11.

<sup>66</sup> Clark Comments, p. 11.

<sup>67</sup> CEQA Guidelines § 15064.4 subd. (b).

<sup>68</sup> IS/MND, pp. 60-61.

a. CARB's 2017 Scoping Plan

Consistency with CARB's 2017 Scoping Plan cannot be used to determine with substantial evidence that Project emissions are less than significant. The California Supreme Court ruled that local land use projects cannot rely on statewide emissions reductions plans to demonstrate a less than significant impact from GHG emissions without also providing substantial evidence to show how that statewide goal is appropriate for the local project.<sup>69</sup> Here, the City did not provide substantial evidence that the 2017 Scoping Plan was appropriate for this Project. Further, Dr. Clark determined that the Project's emissions of 34,110.9 MTCO<sub>2</sub>e are significant, particularly when compared to other numeric thresholds.<sup>70</sup>

b. The City's CAP

A CAP can be used to demonstrate that a project's GHG emissions are less than significant provided that the CAP was adopted through a public process and reduces a Project's GHG emissions.<sup>71</sup> Here, the City's CAP was adopted through a public process and does contain provisions that reduce the GHG emissions of data centers, but it was designed towards the state's 2020 GHG emissions targets.<sup>72</sup> The City admits that it must update its CAP for consistency with the State's 2030 goals.<sup>73</sup> For this Project that would be operating beyond 2020, the City's analysis of consistency with 2020 targets is irrelevant. Additionally, even if the Project's CAP consistency could demonstrate emissions are less than significant, Dr. Clark provided substantial evidence to the contrary based on the modeled emissions.<sup>74</sup>

c. SB 350

Similar to CARB's 2017 Scoping Plan, SB 350 is a statewide plan. The IS/MND does not contain substantial evidence to demonstrate that Silicon Valley Power's efforts to meet SB 350 compliance demonstrate that the Project would not

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<sup>69</sup> *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 225-226.

<sup>70</sup> Clark Comments, p. 12.

<sup>71</sup> See CEQA Guidelines § 15064.4 subd. (b)(3).

<sup>72</sup> See City of Santa Clara, Climate Action Plan, available at <https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/general-plan/climate-action-plan>.

<sup>73</sup> See City of Santa Clara, Climate Action Plan, available at <https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/general-plan/climate-action-plan>.

<sup>74</sup> Clark Comments, p. 12.

have a significant GHG emission impact. Even if Silicon Valley Power were to meet SB 350's targets, it would not do so for almost 30 years after the Project is operational. With Dr. Clark's evidence that these impacts remain significant, despite consistency with SB 350, the City's assertion that the Project's impacts are less than significant are not supported by substantial evidence.<sup>75</sup>

Despite compliance with plans identified in the IS/MND, Dr. Clark provided substantial evidence showing the Project's GHG emissions would be significant. Therefore, the City must prepare an EIR that analyzes and mitigates these significant GHG emissions.

## 2. Project Emissions from Stationary Sources are Significant

The IS/MND stated that the Project's GHG emissions from the diesel backup generators will total 8,541 MTCO<sub>2e</sub> per year, which is below BAAQMD's stationary source threshold of 10,000 MTCO<sub>2e</sub> per year.<sup>76</sup> First, the BAAQMD targets come from the BAAQMD guidelines designed for compliance with the State's 2020 GHG emission reduction goals, not the current 2030 goals. The City is required, but failed, to provide substantial evidence to demonstrate why using those outdated goals is appropriate. Further, the City relied on modeled emissions data based off of the faulty assumption that the backup generators will be used for 50 hours per year.<sup>77</sup> Dr. Clark provided substantial evidence as to why the City lacks evidence to rely on 50 hours per year of operation. A more reasonable level of use, consistent with expected power outages would demonstrate that Project GHG emissions would exceed even the outdated 10,000 MTCO<sub>2e</sub> threshold.

The City failed to adequately disclose, analyze, and mitigate all of the potentially significant Project impacts on air quality, public health, and from GHG emissions, in violation of CEQA. The City must withdraw the IS/MND and prepare an EIR that properly discloses, analyzes and mitigates these impacts.

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<sup>75</sup> Clark Comments, p. 12.

<sup>76</sup> IS/MND, p. 61.

<sup>77</sup> IS/MND, p. 61.

August 28, 2020

Page 15

## V. CONCLUSION

CEQA requires that an EIR be prepared if there is substantial evidence that a project, either individually or cumulatively, may cause a significant effect on the environment.<sup>78</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, or mitigated 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 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,



Kyle C. Jones

KCJ:ljl

Exhibits

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<sup>78</sup> Pub. Resources Code § 21151; 14 CCR §15063(b)(1).