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Via Email and Overnight Delivery

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Re: Comments on the LS1 Data Center Project Proposed Mitigated Negative Declaration (MND) (PLN2019-13745 and CEQ2019-01071)

Dear Ms. Agrawal:

We write on behalf of Santa Clara Citizens for Sensible Industry (“SCCSI”) to provide comments on the proposed Mitigated Negative Declaration (“MND”)¹ and Initial Study (“IS”)² prepared by the City of Santa Clara (“the City”), pursuant to the California Environmental Quality Act (“CEQA”),³ for the LS1 Data Center Project (PLN2019-13745 and CEQ2019-01071) (“Project”). LVP Martin Avenue Associates LLC c/o Lightstone Group (“Applicant”) proposes to demolish a single-story building previously used for industrial warehousing, manufacturing, and office purposes and construct a three-story, 79,300 square foot (“sf”) data center.⁴ The Project site is 1.68 acres (73,386 sf) and is located at 2175 Martin Avenue in the City of Santa Clara, California.⁵

The Project would include approximately 47,800 sf of data hall space and approximately 31,500 sf of support space, consisting of office space, a loading dock,

¹ City of Santa Clara, LS1 Data Center Project: Proposed Mitigated Negative Declaration (MND) (Aug. 2019) (*hereinafter* “MND”).

² City of Santa Clara, Initial Study: LS1 Data Center Project (Aug. 2019) (*hereinafter* “IS”).

³ Pub. Resources Code (“PRC”) § 21000 *et seq.*

⁴ MND at p. i.

⁵ IS at p. 7.
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storage, space, mechanical/electric/fiber rooms, and other ancillary uses.⁶ Each data hall would include a 4.25 MW data room with projected peak capacity of 13.5 megavolt amperes (“MVA”).⁷

An approximately 7,700 sf exterior equipment yard would house six 2.75 MW emergency generators to provide backup power to the data center in the event of an equipment failure or interruption in electrical service.⁸ The Project would also include uninterruptible power supplies and lithium ion batteries to cover the total projected electrical demand in the event of equipment failure.⁹ The proposed floor area ratio (“FAR”) for the Project is 1.08.¹⁰

Project construction would occur in one phase consisting of three main categories of construction activities.¹¹ Activity Category 1 (demolition) would include demolition of the existing building and grading.¹² Activity Category 2 (core and shell) would include buildout of the core and shell structure and installation of pavement, landscaping, and utility connections.¹³ Activity Category 3 (interiors) would include buildout of the interior data halls and tenant spaces.¹⁴

Based on our review of the MND, IS, and supporting documents, we conclude these documents fail to comply with CEQA. Specifically, the IS does not sufficiently describe the current environmental setting for biological resources and energy use. These deficiencies are fatal errors because all potentially significant environmental impacts which may result from the Project are not adequately analyzed and all feasible mitigation measures to reduce those impacts to a level of insignificance have not been proposed or adopted.

As described in these comments, there is more than a fair argument that the Project could result in potentially significant impacts to air quality, biological resources, energy, and land use. The City cannot undertake any further actions

⁶ *Ibid.*

⁷ *Ibid.*; *see also* appen 3.0-1.

⁸ *Id.* at p. 8.

⁹ *Ibid.*

¹⁰ *Id.* at p. 7 (the MND and IS assume the Project’s FAR is 1.09 for conservative purposes).

¹¹ MND at p. ii.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

concerning the proposed Project until it prepares an Environmental Impact Report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts to less than significant.

We reviewed the MND, the IS and its technical appendices, and the available reference documents with the assistance of our expert consultant, James Clark, Ph.D., whose comments and qualifications are included as Attachment A.¹⁵ The City must respond to Dr. Clark’s comments separately and fully.

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 City of Santa Clara resident Mr. Long Vu, California Unions for Reliable Energy (“CURE”) and its organization members and the members’ families, and other individuals who live, work, recreate and raise their families in the City. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

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.

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

¹⁵ Letter from James J.J. Clark, Ph.D., Clark & Associates to Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: Comment Letter on LS1 Data Center Project Mitigated Negative Declaration (MND) Application PLN2019-13745 (Aug 22., 2019) (*hereinafter* Clark Comments).
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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.¹⁶ It is for these purposes that we offer these comments.

II. THE IS FAILS TO ADEQUATELY DESCRIBE THE ENVIRONMENTAL SETTING

An initial study must include a description of the project's environmental setting.¹⁷ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.¹⁸ "The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts."¹⁹

"An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings."²⁰ Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."²¹ It includes "facts, reasonable assumption predicated upon facts, and expert opinion supported by facts,"²² but does not include "[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate."²³

¹⁶ PRC § 21871(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

¹⁷ CEQA Guidelines § 15063(d)(2).

¹⁸ *Id.* § 15125(a); see also *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 38 Cal. 4th 310, 320-21 (CEQA Guidelines § 15125(a) applies to an initial study).

¹⁹ CEQA Guidelines § 15125(a).

²⁰ *Id.* § 15063(a)(3).

²¹ *Id.* § 15384(a).

²² *Id.* § 15384(b).

²³ *Id.* § 15384(a).

A. The IS Fails to Adequately Describe the Potential for Special-Status Species to Occur in the Project Vicinity

The IS concludes “there are no wetlands or other sensitive habitats on or adjacent to the project site” based on a single site visit conducted exclusively for the purpose of completing a tree inventory.²⁴ Other than the Tree Inventory Report included as an Appendix 4.4-1,²⁵ “there is not a separate record for [the site visit] included in the administrative record.”²⁶ Not a single mention of the presence or absence of special-status species is made in the Tree Inventory Report. The IS cannot rely on unsubstantiated expert opinion to conclude that no wetlands or other sensitive habitats occur on or adjacent to the project site.

To the contrary, the IS recognizes special-status species have the potential to occur on the Project site despite the highly urbanized nature of the area because “the site may provide nesting habitat and food sources for native migratory birds and raptors.”²⁷ Moreover, 38 special-status species are listed in the California Natural Diversity Database for the quadrangle in which the Project is located including, but not limited to, the California Tiger Salamander, Swainson’s hawk, burrowing owl, coast horned lizard, northern California legless lizard and hairless popcorn flower.²⁸ The Project site contains numerous mature trees and is located less than 1,600 feet the San Thomas Aquino Creek riparian corridor, which supports a variety of aquatic and wetland-oriented species.

“[P]reparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, *an agency must use its best efforts to find out and disclose all that it reasonably can.*”²⁹ “If, after *thorough investigation*, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate

²⁴ IS at p. 54, fn. 29.

²⁵ *Id.*, appen. 4.4.-1.

²⁶ City of Santa Clara, LS1 Data Center Administrative Record (July 31, 2019) (“This site visit was conducted as part of the Tree Inventory; there is not a separate record for it included in the administrative record.”).

²⁷ IS at p. 54.

²⁸ Cal. Department of Fish and Game, CNDBB Quad Species List (last accessed Aug. 19, 2019).

²⁹ CEQA Guidelines § 15144 (emphasis added).

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discussion of the impact.”³⁰ An agency may not hide behind its own failure to gather relevant data.³¹

The City failed to gather relevant data concerning the potential of special-status species to occur within the vicinity of the Project. As a result, the environmental impacts of the Project on special-status species are potentially significant and the adequacy of the proposed mitigation measures cannot be properly assessed. The City must prepare an EIR analyzing the impacts of the Project on special-status species and implement all feasible mitigation measures to reduce those impacts.

B. The IS Fails to Describe the Energy Consumption of Data Centers in the City

Data centers are high energy consumers.³² “The high density of equipment in data centers makes them extremely energy intensive, often requiring 10 to 100 times more electricity per floor space than other building types.”³³ “In 2014, U.S. data centers consumed an estimated 70 billion kWh, representing about 1.8% of total U.S. electricity consumption.”³⁴ The electricity consumed by data centers in the City is even more extreme than the national use.

Silicon Valley Power (“SVP”) provides electricity to data centers in the City, which would include the proposed Project.³⁵ Although 84% of the total number of customers in SVP’s service area are residential, 90% of utility retail sales were to commercial and industrial customers.³⁶ As of December 2017, over 46% of SVP’s commercial and industrial sales are attributable to data centers.³⁷ This number will only continue to increase because the City is a prime location for data centers due to power pricing from SVP, whose electricity rates average 25 to 40 percent

³⁰ *Id.* § 15145 (emphasis added).

³¹ *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408.

³² Beth Whitehead, et al., *Assessing the Environmental Impact of Data Centers Part 1: Background, Energy Use, and Metrics*, Building and Environment 82 (2014) 151-159.

³³ Arman Shehabi, et al., *Data Center Growth in the United States: Decoupling the Demand for Services from Electricity Use*, Environ. Res. Lett. 13 (2018) p. ES-1, available at <https://iopscience.iop.org/article/10.1088/1748-9326/aaec9c/pdf>.

³⁴ *Id.*

³⁵ MND at p. i; IS at p. 8, appen. 3.0-1.

³⁶ Silicon Valley Power, 2018 Integrated Resource Plan (Dec. 2018) p. 3-1 (*hereinafter* 2018 IRP).

³⁷ *Ibid.*

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lower than the cost of power from Pacific Gas & Electric Company in the surrounding municipalities.³⁸ In fact, data centers are one of the primary drivers for SVP's need to increase its maximum energy capacity.³⁹

The IS fails to include any discussion regarding the presence of data centers in the City and their substantial electricity consumption. As a result, the potentially significant Project and cumulative impacts on energy cannot be properly evaluated. The City must prepare an EIR assessing the Project's significant energy impacts and identify all feasible mitigation measures to reduce those impacts to a level of insignificance.

III. THE CITY MUST PREPARE AN ENVIRONMENTAL IMPACT REPORT

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁴⁰ "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."⁴¹ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁴²

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁴³ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in

³⁸ Rich Miller, *Why Santa Clara is the Focus for Silicon Valley Data Center Activity*, Data Center Frontier (Apr. 11, 2018), available at <https://datacenterfrontier.com/silicon-valley-data-centers-power-pricing/>; see also Michael Rareshide, *The Silicon Valley Data Center Remains Strong But Faces Challenges for Future Expansion to Meet Demand* (Mar. 26, 2019), available at <https://info.siteselectiongroup.com/blog/the-silicon-valley-data-center-market-remains-strong-but-faces-challenges-for-future-expansion-to-meet-demand>.

³⁹ 2018 IRP at p. 4-4 ("The near-term accelerated growth observed in the load forecast is due to the growth from data centers which are already in the City's planning development processes."), p. 4-6 ("The high density of data centers in SVP's territory and the planned addition of new data centers drive the higher energy demand and load factor for the utility.")

⁴⁰ See PRC § 21000; CEQA Guidelines § 15002.

⁴¹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

⁴² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁴³ See PRC § 21100.

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the “fair argument” standard. Under that standard, a lead agency “shall” 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.⁴⁴

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) 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 the effects or mitigate the effects to a point where clearly no significant effects would occur, and
- (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.⁴⁵

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁶ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁷ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁸

⁴⁴ *Id.* §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 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 Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

⁴⁵ PRC § 21064.5.

⁴⁶ *See, e.g., Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁷ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁸ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to 4690-007acp

As discussed previously, “substantial evidence” required to support a fair argument is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁴⁹ “[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”⁵⁰

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”⁵¹ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.⁵²

As detailed below, there is more than a fair argument based substantial evidence that the Project may result in significant impacts to air quality, biological resources, energy, and land use. Therefore, the City must prepare an EIR evaluating the Project’s potentially significant impacts and adopt all feasible mitigation measures to reduce those impacts to a less than significant level.

A. Substantial Evidence Supports a Fair Argument the Project Could Result in Significant, Unmitigated Impacts to Air Quality and Public Health

1. MM AIR-1.1 Fails to Adequately Mitigate the Impacts from Construction NOx Emissions

The IS concludes that NOx emissions from construction are significant if left unmitigated because it exceeds the Bay Area Air Quality Management District’s

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”).

⁴⁹ CEQA Guidelines § 15384(a).

⁵⁰ *Id.* § 15064(f).

⁵¹ *Id.* § 15126.4(a)(2).

⁵² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; PRC § 21061.4690-007acp

daily thresholds.⁵³ To reduce this impact to less than significant, the City proposes to institute MM AIR-1.1.⁵⁴ This mitigation measure states: “The project applicant shall ensure that all off-road diesel powered equipment used during construction is equipped with engines that meet EPA Tier 4 final emissions standards.”⁵⁵ This mitigation measure is vague and contains no mechanism to verify compliance.

As identified by Dr. Clark, the measure does not *require* that the Applicant use Tier 4 equipment based on the plain language of the measure.⁵⁶ Because the measure, as written, allows the Applicant to avoid use of Tier 4 measures and does not include any type of mechanism for the City to verify that Tier 4 engines are being used during the construction phase, NOx emissions would remain significant and unmitigated.⁵⁷

2. The City’s Calculation of Construction DPM Emissions Remain Significant and Unmitigated

The City significantly underestimates the Project’s diesel particulate matter (“DPM”) emissions. As Dr. Clark describes, the modeling assumptions used in the Air Quality and GHG Technical Report were incorrectly analyzed.⁵⁸ The construction mitigated emissions modeling contains the same exact assumptions as the unmitigated analysis even though the City intends to implement MM AIR-1.1 to reduce the DPM emissions.⁵⁹ Under the assumptions made by the City, the Project’s mitigated DPM emissions would emit 970 pounds of DPM.⁶⁰ Therefore, the Project’s DPM emissions would remain significant even with mitigation. Furthermore, as discussed in the prior section, the proposed mitigation measure is vague and unverifiable, and therefore will not reduce the impacts to less than significant.⁶¹

⁵³ IS at p. 46-47.

⁵⁴ *Id.* at p. 47.

⁵⁵ *Ibid.*

⁵⁶ Clark Comments at p. 4.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Compare* IS, appen. 4.2-1, appen. 1B *with* appen. 1B.

⁶⁰ Clark Comments at p. 4-5.

⁶¹ *Id.* at p. 4.

3. The Health Risk Assessment Does Not Properly Evaluate the Potential Risk from Exposure to Diesel Exhaust

The method used by the City to calculate the potential risks from diesel exhaust fails to consider all the toxic components emitted by diesel engines.⁶² As Dr. Clark emphasizes, “diesel exhaust is a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases.”⁶³ The City’s risk assessment does not include an analysis of the vapor phase component.⁶⁴ Calculating the cumulative risk from all the components of diesel exhaust is a more precise representation of the risk posed from exposure to the air toxin.⁶⁵ Therefore, the City’s analysis presents an underestimation of the true risk to residents, the community, and workers from the release of DPM during construction and operation of the Project.⁶⁶

The City must prepare an EIR properly analyzing the Project’s air emissions and propose mitigation measures which reduce impacts to a level of insignificance.

B. Substantial Evidence Supports a Fair Argument MM BIO-2.1 Fails to Adequately Mitigate the Impacts to Protected Trees to Less than Significant

The IS recognizes that construction could result in a significant impact due to the removal or disturbance of trees that are protected under the General Plan.⁶⁷ To avoid conflicts with the local policy and reduce the potential impacts, the City proposes to implement MM BIO-2.1.⁶⁸ This mitigation measure requires that the Applicant submit a Tree Replacement Plan to the City Arborist and Community Development Director for review and approval.⁶⁹

⁶² *Id.* at p. 5.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ IS at pp. 57-58.

⁶⁸ *Id.* at pp. 58-59.

⁶⁹ *Id.* at p. 58.

Consistent with Policy 5.3.1-P10 of the Santa Clara 2010-2035 General Plan (“General Plan”),⁷⁰ MM BIO-2.1 requires a tree replacement ratio of 2:1. However, if a 2:1 ratio within the project site is not feasible, the proposed measure allows for a 1:1 ratio upon approval by the Community Development Director. This reduced ratio is not based on any policies set forth in the General Plan; rather, it stems from the City’s “past practice and to have an onsite benefit rather than an off-site benefit.”⁷¹

An unwritten rule, which is inconsistent with the General Plan, cannot reduce the Project’s potentially significant impacts. If the City desires to change its General Plan policy, the City must propose an amendment to the General Plan and conduct environmental review, pursuant to CEQA, just as it did when the City adopted Policy 5.3.1-P10.⁷² Because MM BIO-2.1 permits a replacement rate lower than the rate allowed in the General Plan, the mitigation measure conflicts with local policies adopted to mitigate significant impacts to biological resources. Therefore, the Project’s impacts on protected trees remain significant, and the City must prepare an EIR.

C. Substantial Evidence Supports a Fair Argument the Project May Have Significant Impact on Energy Resources

To conclude that the Project’s impacts on energy resources during operation would be less than significant, the IS relies on the Project’s projected peak power usage effectiveness (“PUE”).⁷³ PUE is used to measure the ratio of power delivered to the site to be used by the IT equipment, and is analogous to the miles per gallon metric for the fuel consumption of a car.⁷⁴ But this metric does not always demonstrate success in minimizing energy consumption.⁷⁵ In fact, “there are concerns that the metric does not consider the actual productivity or efficiency of the equipment. As a result, a data center in which no infrastructure upgrades are made actually achieves an improved PUE as the IT equipment ages and uses more

⁷⁰ City of Santa Clara, 2010-2035 General Plan (2010) 5-28 (*hereinafter* General Plan).

⁷¹ IS at p. 57.

⁷² General Plan at 5-28.

⁷³ IS at pp. 11, 67.

⁷⁴ Whitehead at p. 157.

⁷⁵ The Green Grid, White Paper #63: Data Center Environmental Impacts – Main Impacts and Proposal for the Data Center Maturity Model (2014) p. 9.
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power.”⁷⁶ Therefore, the Project could result in inefficient, wasteful, or unnecessary consumption of energy resources during operation due to aging equipment despite a PUE consistent with the average of other data centers.

Moreover, the Project’s PUE may be incorrectly calculated. “To get a ‘correct’ value for IT equipment energy, measurements would need to be taken at the component level: CPU and other integrated circuits, memory, disks, etc.”⁷⁷ The variation of how the IT equipment is accounted for “means that PUE measures may not be directly comparable and provides opportunities for organizations to game the ratings.”⁷⁸ The IS and its supporting documents do not identify the assumptions used to calculate the Project’s PUE.⁷⁹ As a result, the public is unable to determine whether the PUE identified in the IS is an accurate assessment of the Project’s energy consumption.

Lastly, Appendix F of the CEQA Guidelines requires an examination of the “effects of the project on local and regional energy supplies and on requirements for additional capacity.”⁸⁰ In its will serve letter, SVP stated it would be able to provide 9 MVA of electric service to the Project upon completion of all development work requested by SVP.⁸¹ However, the Project’s peak projected load is 13.5 MVA.⁸² SVP could provide additional power beyond the 9 MVA if needed, but only up to 4.5 **KVA**.⁸³ The IS fails to disclose the fact that the Project’s total peak demand exceeds the amount of electricity SVP can provide to the site. Moreover, the IS fails to include mitigation measures for reducing peak energy demand.⁸⁴ Therefore, the Project’s impacts on energy are potentially significant and remain unmitigated.

⁷⁶ Whitehead at p. 157; *see also* Nathaniel Horner, et al., *Power Usage Effectiveness in Data Centers: Overloaded and Underachieving*, *The Electricity Journal* 29 (2016) p. 63 (“A low-overhead facility running older, less efficient servers could conceivably achieve a low PUE while still using more energy than it needs.”).

⁷⁷ Horner at p. 63.

⁷⁸ *Ibid.*

⁷⁹ *See* IS, appen. 3.0-1.

⁸⁰ CEQA Guidelines, appen. F.

⁸¹ IS, appen. 4.6-1.

⁸² *Id.*, appen. 3.0-1.

⁸³ *Id.*, appen. 4.5-1 (emphasis added).

⁸⁴ *See* CEQA Guidelines, appen. F.

The City must prepare an EIR to properly assess the Project's energy impacts and propose feasible mitigation measures to reduce those impacts to less than significant.

D. Substantial Evidence Supports a Fair Argument the Project's Energy Impacts Are Cumulatively Considerable

The City's analysis of the Project's cumulative energy impacts is inadequate. Cumulative impacts are defined as "two or more individual effects which, when considered together, are considerable or ... compound or increase other environmental impacts."⁸⁵ Stated another way, "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."⁸⁶

A cumulative impact analysis "assesses cumulative damage as a whole greater than the sum of its parts."⁸⁷ Such an analysis is necessary because "[t]he full environmental impact of a proposed ... action cannot be gauged in a vacuum."⁸⁸ "[A]n agency may not ... [treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that is but one of several substantially similar operations.... To ignore the prospective cumulative harm under such circumstances could be to risk ecological disaster."⁸⁹

Not only is the City's analysis of the Project's cumulative energy impacts insufficient as a matter of law, but substantial evidence supports a fair argument that the Project's incremental effects on energy are cumulatively considerable.

1. The City Fails to Conduct a Legally Sufficient Analysis of the Project's Cumulative Energy Impacts

The City fails to conduct a proper inquiry of the Project's cumulative energy impacts. In considering a project's cumulative impacts, the lead agency should generally undertake a two-step analysis. First, the agency should determine

⁸⁵ *Id.* § 15355.

⁸⁶ *Id.* § 15130(a)(1).

⁸⁷ *Environmental Protection Information Center v. Johnson* (1985) Cal. App. 3d 604, 216.

⁸⁸ *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 408 (quoting *Akers v. Resor* (W.D. Tenn. 1978) 443 F. Supp. 1355, 1360).

⁸⁹ *Whitman*, 88 Cal. App. 3d at 408.

whether the combined effects from both the proposed project and other projects would be cumulatively significant.⁹⁰ If the agency answers this inquiry in the affirmative, the agency should then analyze whether “the proposed project’s *incremental* effects are cumulatively considerable.”⁹¹ “An EIR must be prepared if the cumulative impact may be significant and the project’s incremental effect, though individually limited, is cumulatively considerable. ‘Cumulatively considerable’ means the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”⁹²

As a threshold matter, the IS fails to consider all relevant projects in its analysis. The IS identifies ten “recently approved and reasonably foreseeable land use projects in the vicinity of the project site” in Table 4.21-1.⁹³ None of these projects are data centers.⁹⁴ Although the MND claims to include all “recently approved and reasonably foreseeable projects within approximately 2 miles of the project site,”⁹⁵ **it omits five (5) proposed data centers within 2 miles of the Project,**⁹⁶ as well as six other proposed projects that are currently undergoing, or have recently completed, environmental review.⁹⁷

Project Name	Address	Project Summary
Laurelwood Data Center	2201 Laurelwood Road, Santa Clara, CA 95050	Laurelwood Data Center (LDC) will consist of two multi-storied data center buildings. The maximum electrical load of the LDC is 99 megawatts (MW), inclusive of tenant-installed information technology (IT) equipment in the LDC and cooling and ancillary electrical and telecommunications equipment operating to

⁹⁰ *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 120.

⁹¹ *Id.* (emphasis added).

⁹² CEQA Guidelines § 15064(h)(1).

⁹³ IS at p. 171, table 4.21-1.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ City of Santa Clara, Environmental Review/CEQA, <http://santaclaraca.gov/government/departments/community-development/planning-division/ceqa-documents> (last accessed Aug. 26, 2019).

⁹⁷ *See generally ibid.*; *see also* California Energy Commission, Laurelwood Data Center, 19-SPPE-01, <https://ww2.energy.ca.gov/sitingcases/laurelwood/>; California Energy Commission, Walsh Data Center, 19-SPPE-02, <https://ww2.energy.ca.gov/sitingcases/walsh/>.

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		<p>support IT equipment. The LDC consists of two buildings. Building 1 is an approximately 250,560-square-foot, three-story structure with supporting amenities including elevators, restrooms, lobby, staging, and storage. Building 2 is an approximately 283,392-square-foot, four-story structure with supporting amenities including elevators, restrooms, lobby, staging, and storage. Both buildings include loading docks, backup generator yards, stormwater bio-swales, paved surface parking lots, and landscaping features. The LDC also includes an onsite 60-kilovolt (kV) substation with an electrical supply line that will connect to an SVP distribution line located 0.1 miles west of the LDC.⁹⁸</p>
Walsh Data Center	651 Walsh Avenue, Santa Clara, CA 95050	<p>The Walsh Data Center (WDC) would consist of thirty-two (32) 3-MW diesel fired generators that would be used exclusively to provide backup generation to support a data center to be located at 651 Walsh Avenue in Santa Clara, California. The project would also include one (1) 2-MW emergency generator that would provide backup electricity for an administrative building. The project has been designed with a 5-to-make-4 and a 6-to-make-5 design basis to ensure uninterrupted power up to 80 MW, which is the maximum building load of the WDC. The generators will be located in one generator yard in a two-level stacked configuration. The lower level generator package will integrate a dedicated fuel tank with a capacity of 12,800 gallons. The upper level generators will have a day tank with a capacity of 600 gallons. A new distribution substation would be constructed to support the WDC—this substation would ultimately be owned and operated by Silicon Valley Power (SVP) as part of its distribution network. While SVP has not yet designed the 60 kV transmission lines that interconnect the new substation, SVP has estimated that one transmission line will come in to the site from</p>

⁹⁸ California Energy Commission, Laurelwood Data Center, 19-SPPE-01, <https://ww2.energy.ca.gov/sitingcases/laurelwood/>. 4690-007acp

		the north and one from the south, both routes paralleling the existing UPPR rail lines. There may be up to 6 new transmission poles. ⁹⁹
1150 Walsh Avenue SV1 Data Center Project	1150 Walsh Avenue, Santa Clara, CA 95050	Demolition of three, one-story industrial buildings totaling 37,443 square feet to construct a four-story, 160,450 square foot data center building, with back-up diesel generators and new 27-megawatt electrical substation, and site-improvements. ¹⁰⁰
2305 Mission College Boulevard Data Center Project	2305 Mission College Boulevard, Santa Clara, CA 95054	Demolition of an existing two-story 358,00 square foot office/R&D and construct a two-story 495,610 square foot data center building with equipment yards and onsite improvements. ¹⁰¹
McLaren Data Center Project	651, 725, 825 Mathew Street, Santa Clara, CA 95050	Development of two four-story data center buildings totaling 413,000 square feet, electric substation along Mathew Street, mechanical yard support areas, and surface parking lot. A lot line adjustment is proposed as part of the project combining three separate parcels. ¹⁰²
3005 Democracy Way Mixed-Use Development Project	3005 Democracy Way, Santa Clara, CA 95050	General Plan Amendment and Planned Development (PD) Rezoning of the 48.6-acre site to allow the development of up to approximately 6.15 million gross square feet (gsf) of residential uses (6,000 units), 3.65 million gsf of office buildings, 400,000 gsf of retail/community amenities, 300,000 gsf of hotel facilities, and 110,000 gsf of educational facilities. ¹⁰³
3035 El Camino Real Residential Project	3035 El Camino Real, Santa Clara, CA 95051	Approval of a Rezoning from Thoroughfare Commercial (CT) to Planned Development (PD); and Approval of a Tentative Subdivision Map to allow demolition of existing site improvements and the construction of a new 48-unit residential

⁹⁹ California Energy Commission, Walsh Data Center, 19-SPPE-02, <https://ww2.energy.ca.gov/sitingcases/walsh/>.

¹⁰⁰ City of Santa Clara, Mitigated Negative Declaration: 1150 Walsh Avenue SV1 Data Center (June 2019).

¹⁰¹ City of Santa Clara, Initial Study for the 2305 Mission College Boulevard Data Center Project (Mar. 2018).

¹⁰² City of Santa Clara, McLaren Data Center Project: Proposed Mitigated Negative Declaration (Feb. 2017); *see also* California Energy Commission, Application for a Small Power Plant Exemption for the McLaren Backup Generating Facility Project, 17-SPPE-01 (Nov. 2018).

¹⁰³ City of Santa Clara, Notice of Preparation of an Environmental Impact Report for the 3005 Democracy Way Mixed-Use Development Project (Oct. 2018).

		condominium development, including six live/work units. ¹⁰⁴
3625 Peterson Office Project	3625 Peterson Way, Santa Clara, CA 95054	Architectural Review of two, eight-story office buildings totaling 632,216 square feet connected by bridges at two levels; a 13,370 square foot, one-story amenity building that includes a roof deck; a four-level parking structure and surface parking providing a total of totaling 2,280 parking spaces on-site; and landscaping and site improvements. ¹⁰⁵
Catalina II Residential Development Project	433-1493 El Camino Real, Santa Clara, CA 95050	Approval of a Rezoning from Thoroughfare Commercial (CT) and General Office (OG) to Planned Development (PD); and Approval of a Vesting Tentative Subdivision Map to allow demolition of the existing improvements and construction of 39-unit townhome development, including seven live/work units. ¹⁰⁶
Corvin Supportive Housing Project	2904 Corvin Drive, Santa Clara, CA 95051	The project would involve demolishing the existing one-story office building onsite and constructing a five-story, 77,430 square foot residential development. Dwelling units would consist of 143 affordable studios, or micro-units, designed for single occupancy and a two-bedroom manager's unit. ¹⁰⁷
Mariani's Inn, Residences & Senior Living Project	2500 El Camino Real, Santa Clara, CA 95051	General Plan Amendment from Community Mixed-Use to Regional Mixed-Use, a Development Agreement, and Rezone of the 7.14-acre project site from CT (Thoroughfare Commercial) to PD (Planned Development) to allow construction of a new mixed-use development, including up to 392 multi-family and senior residential units, a 311-room hotel and restaurant. A one lane bridge over Saratoga Creek would potentially be included for construction as part of the project, extending Arroyo Drive through to Bowe Avenue to

¹⁰⁴ City of Santa Clara, Initial Study: 3035 El Camino Real Residential Project (July 2019).

¹⁰⁵ City of Santa Clara, Notice of Preparation of an Environmental Impact Report for the 3625 Peterson Office Project (Apr. 2018).

¹⁰⁶ City of Santa Clara, Initial Study for the Catalina II Residential Development Project (Mar. 2019).

¹⁰⁷ Department of Housing and Urban Development, 2094 Corvin Drive: Environmental Assessment for HUD-Assisted Projects (Jan. 2019).

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		facilitate vehicular, pedestrian and bicycle connections. ¹⁰⁸
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Even ignoring the City’s failure to include all relevant projects, the IS fails to analyze whether the combined effects from both the proposed Project and other projects would be cumulatively significant. The IS concludes “some of these projects could contribute to changes to the demand for energy or result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner, which would be considered a significant impact,”¹⁰⁹ but the Project would not result in a cumulative considerable impact on energy because it would include energy-efficiency components, would not conflict with any applicable plans for renewable energy or energy efficiency, and would not result in inefficient, wasteful, or unnecessary consumption of energy resources during construction or operation.¹¹⁰

The City’s analysis improperly compares the incremental effects of the proposed Project with the collective impacts of all other relevant projects. When undertaking a cumulative impact analysis, an agency cannot simply compare the incremental effects of a proposed project *against* the collective impacts of all other relevant projects yielding the proposed project’s relative impact vis-à-vis the impacts of other projects.¹¹¹ Rather, the lead agency must *add* the project’s incremental impact to the anticipated impacts of other projects.¹¹² No such analysis has been completed.

At a minimum, the City must prepare an EIR analyzing the collective energy impacts of all past, present, and probable future data centers in the City. Then, the City must analyze whether the Project’s incremental contribution to energy is cumulatively considerable. The answer to both these inquiries is a resounding yes – the Project’s incremental contribution to energy impacts is cumulatively considerable.

¹⁰⁸ City of Santa Clara, Notice of Preparation of an Environmental Impact Report for the Mariani’s Inn, Residences and Senior Living Project (Feb. 3, 2017).

¹⁰⁹ IS at p. 174.

¹¹⁰ *Ibid.*

¹¹¹ *Communities for a Better Environment*, 103 Cal. App. 4th at 117-121.

¹¹² *Ibid.*

2. The Project's Incremental Effects on Energy Are Cumulatively Considerable

Despite the substantial energy use by data centers currently and the increasing trend of data center development within the City and the surrounding region, the IS fails to include any meaningful analysis of the cumulative energy impacts.¹¹³ The Project itself will have a significant incremental impact on energy consumption because the Project's projected electricity demand exceeds SVP's ability to meet the demand. The Project applicant estimates the projected peak load is 13.5 MVA.¹¹⁴ However, SVP is only able to provide up to 9.0045 MVA of electric service to the Project once operational.¹¹⁵

In combination with the significant energy use by all other data centers in the City, the Project's energy impacts are cumulatively considerable. Moreover, the MND does not include any mitigation measures which could reduce the cumulative energy impact to less than significant. The City must prepare an EIR examining the significant cumulative energy impacts and identify mitigation measures to reduce the incremental impacts of the Project to a level of insignificance.

IV. THE PROJECT IS INCONSISTENT WITH THE CITY'S GENERAL PLAN

The General Plan establishes goals and policies to guide land use development within the City and identifies land use classifications for areas throughout the City, which specify the allowed uses and the associated density and intensity standards.¹¹⁶ For non-residential and mixed-use classifications, "intensity" is measured as FAR.¹¹⁷ Discretionary density and intensity bonuses may be applied to a project if certain criteria are met.¹¹⁸

¹¹³ CEQA Guidelines § 15064(h)(1).

¹¹⁴ IS, appen. 3.0-1, p. 1.

¹¹⁵ *Id.*, appen. 4.6-1 ("Silicon Valley Power's ability to provide 9MVA of electric service to 2175 Martin Ave. in Santa Clara is conditional upon the applicant completing all electric utility development work by Santa Clara City Code. If additional capacity beyond 9MVA is demonstrated, SVP will provide an additional **4.5KVA** power feed to this site.") (emphasis added).

¹¹⁶ *Id.* at p. 5-10.

¹¹⁷ *Id.* at p. 5-11.

¹¹⁸ *Ibid.*

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The IS correctly finds that the Project is in an area designated by the General Plan as Low-Intensity Office/Research and Development (“R&D”) designation.¹¹⁹ The General Plan describes this land use classification as follows:

This classification is intended for campus-like office development that includes office and R&D, as well as medical facilities and free-standing data centers, with manufacturing uses limited to a maximum of 20 percent of the building area. It is typically located in areas that provide a transition between light industrial and higher-intensity office and R&D uses. It includes landscaped areas for employee activities and parking that may be surface, structured or below-grade. Accessory, or secondary, small scale supporting retail uses that serve local employees and visitors are also permitted. The maximum FAR is 1.00.¹²⁰

The IS acknowledges that the proposed FAR for the Project is 1.09,¹²¹ in excess of the maximum FAR for the applicable land use designation, but the City contends the Project is consistent with the General Plan Discretionary Use Policy 5.5.1-P9.¹²² The City erroneously applies this discretionary policy.

Policy 5.5.1-P9 states:

For ***Data Centers on Light or Heavy Industrial designated properties***, allow a 20 percent increase in the maximum allowed non-residential square-footage, provided that sufficient onsite land area is available to meet the parking requirements for other uses allowed under those designations, and provided that the increased intensity is compatible with planned uses on neighboring properties and consistent with other applicable General Plan policies.¹²³

This discretionary policy does not apply to areas designated as Low-Intensity Office/R&D. Instead, the policy only applies to projects located in areas designated by the General Plan as light industrial or heavy industrial areas. Consistent with General Plan Policy 5.3.5-P12, the discretionary FAR increase for light industrial or heavy industrial areas are intended to promote development of data centers “in

¹¹⁹ IS at pp. 8, 28, 114.

¹²⁰ General Plan at p. 5-13.

¹²¹ IS at pp. 8, 28, 116

¹²² *Ibid.*

¹²³ General Plan at p. 5-49 (emphasis added).

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Light and Heavy industrial areas to compliment employment areas and retail uses.”¹²⁴

Because the discretionary increase in FAR does not apply to the Project site, and the Project exceeds the applicable maximum FAR, the Project is inconsistent with the General Plan. Therefore, the Project could potentially cause a significant environmental impact due to a conflict with the General Plan. The City must prepare an EIR analyzing the Project’s significant impacts on land use, including inconsistency with the General Plan.

V. THE CITY CANNOT APPROVE THE PROJECT BECAUSE IT DOES NOT MEET THE REQUIRED FINDINGS FOR AN ARCHITECTURAL REVIEW APPROVAL

For the Architectural Committee to approve a proposed project, the Committee must find and determine, *inter alia*, “[t]hat the design and location of the proposed development ... is such as not to be determinantal to the harmonious development contemplated by ... the general plan of the City.”¹²⁵ If the Committee is unable to make the findings and determinations prerequisite to granting of architectural approval, the application must be denied.¹²⁶

As discussed above, the Project is inconsistent with the General Plan because the FAR for the Project exceeds the applicable maximum and no valid exception to this requirement exists.¹²⁷ Similarly, the proposed mitigation measure for potentially significant impacts to trees includes a provision which conflicts with the General Plan.¹²⁸ Therefore, the Architectural Committee cannot make the necessary findings to approve the Project. The Committee must deny the Project’s application as proposed.

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¹²⁴ *Id.* at p. 5-27 (“5.3.5-P12 Promote development, such as manufacturing, auto services and data centers, in Light and Heavy Industrial classifications to compliment employment areas and retail uses.”).

¹²⁵ City of Santa Clara Zoning Ordinance § 18.76.020(c)(3).

¹²⁶ *Id.* § 18.76.020(e).

¹²⁷ *See supra* Section IV.

¹²⁸ *See supra* Section III.B.

VI. CONCLUSION

The IS and MND are inadequate because the CEQA documents fail to set forth the existing environmental setting, and identify, analyze, and mitigate all potentially significant impacts to air quality, biological resources, energy, and land use. Due to these deficiencies, the City cannot conclude the Project's impacts are mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a 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.¹²⁹ As discussed in detail above, there is more than a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the IS and MND. Moreover, there is substantial evidence the proposed mitigation measures will not reduce potentially significant impacts to a level of insignificance.

Finally, the Project conflicts with Policy 5.3.1-P10 of the General Plan and the applicable FAR in the General Plan. Because the Project is inconsistent with the General Plan, it cannot be approved by the Architectural Committee.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this comment letter, the attached comments from Dr. Clark, and other public comments in the record. This is the only way the City, decisionmakers, and the public can ensure the Project's significant environmental, public health and safety impacts are mitigated to less than significant levels and that the Project complies with the City's General Plan.

Sincerely,



Andrew J. Graf
Associate

Attachments
AJG:acp

¹²⁹ CEQA Guidelines § 15063(b)(1).
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