7/17/18

Item 4

City of Santa Clara

City Council Meeting
July 17, 2018

2305 Mission College Boulevard

Public Hearing Item #4

City of Santa Clara
The Center of What's Possible

City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Appeal of Planning Commission Approval of

- A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MND/MMRP) ; and
- Architectural Review for a two-story 495,610 square foot data center on a 15.7 acre project site

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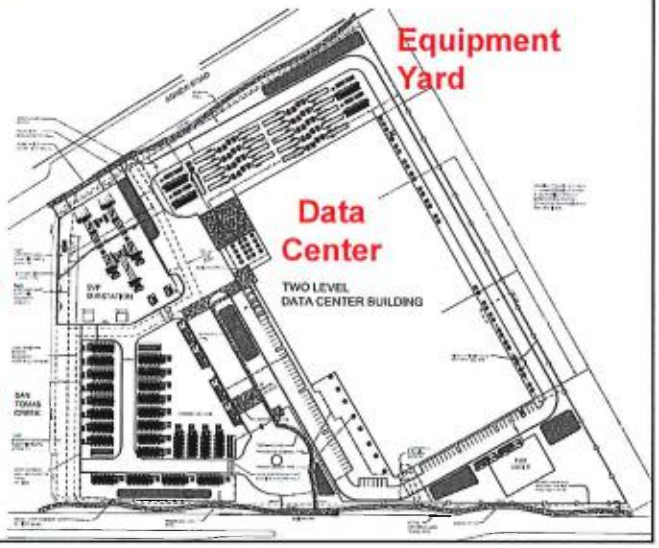
POST MEETING MATERIAL

2305 Mission College Blvd

Project Description

- 495,610 sq. ft. data center
- 2-story
- Outdoor uses



2305 Mission College Blvd

Proposed Elevations

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Project Timeline

- April 18, 2018 – Architectural Committee Approval (Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and Site and Architectural Review)
- April 24, 2018 – Appeals by Lozeau Drury LLP and Adams Broadwell Joseph & Cardoza
- June 13, 2018 – Planning Commission Approval
- June 20, 2018 – Appeals by Lozeau Drury LLP and Adams Broadwell Joseph & Cardoza

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

CEQA Process

- The MND was prepared and a Notice of Availability was circulated in accordance to CEQA
- The MND concluded that the proposed project, with the incorporation of the mitigation measures, will not have a significant effect on the environment
- Four organizations responded to the IS/MND: Adam Broadwell Joseph & Cardozo, Lozeau Drury LLP, Santa Clara Valley Transportation Authority, and Santa Clara Water District
- Responses to comments and a supplemental memo were prepared to address the comments

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Appellants Concerns

- Air quality impacts
- Greenhouse gas emissions
- Noise impacts during emergency operation
- Battery impacts, cancer risk and other health risks
- Procedural Issues (requirement for CPUC approval)
- City Code Finding requirements for Architectural Review

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Considerations

- Approval of the proposed data center would secure the purpose and intent of the City's Zoning Ordinance and the General Plan
- Data centers are a permitted use in the Light Industrial Zoning District
- The proposed project is similar in scale to the surrounding Office/R&D and industrial developments
- The MND determined that with mitigation, the project would not result in any significant environmental impacts
- Summary of responses to comments finds that there are no changes to the conclusions of the MND

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2305 Mission College Blvd

Considerations

- The proposed design is a modern architectural style that has been vetted by the Architectural Committee and subject to a public review process, and is consistent with the City's adopted Design Guidelines
- The proposed structure is comparable to the prior use on the site, which was a two-story, 358,000 sf office/R&D building and parking lot
- The Project would not result in increased traffic congestion or hazards; in fact, the proposed project will result in a significant reduction of vehicle trips compared to the prior development on the site
- The permitting authority of the California Energy Commission is not a CEQA issue

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2305 Mission College Blvd

Staff Recommendation

- Deny the appeal and uphold the Architectural Review Committee's adoption of the Mitigated Negative Declaration and Mitigation Monitoring or Reporting Program
- Deny the appeal and uphold the Architectural Review Committee's approval of the data center project located at 2305 Mission College Boulevard, subject to conditions.

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City of Santa Clara

City Council Meeting
July 17, 2018

2305 Mission College Boulevard

Public Hearing Item #4

City of Santa Clara
The Center of What's Possible

City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Existing Site: South Elevation from Mission College Blvd.

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

North Elevation from Agate Road

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City of Santa Clara
The Center of What's Possible

2305 Mission College Blvd

Environmental Review

- The MND was prepared and a Notice of Availability was circulated in accordance to CEQA
- The MND concluded that the proposed project, with the incorporation of the mitigation measures, will not have a significant effect on the environment
- Four organizations responded to the IS/MND: Adam Broadwell Joseph & Cardozo, Lozeau Drury LLP, Santa Clara Valley Transportation Authority, and Santa Clara Water District
- Responses to comments and supplemental memo were prepared to address the comments, and they were reviewed and approved by the City Attorney's Office

14

071718

#4

Lynn Garcia

From:	Mayor and Council
Subject:	FW: July 17, 2018 Appeal Hearing - 2305 Mission College Boulevard Data Center Project
Attachments:	4196-013j - Letter re Appeal 2305 Mission College Blvd 7-17-18.pdf

From: Lorrie J. LeLe [mailto:ljlele@adamsbroadwell.com]
Sent: Tuesday, July 17, 2018 4:49 PM
To: Mayor and Council; Steve Le
Cc: Collin S. McCarthy; Tanya A. Gulesserian
Subject: July 17, 2018 Appeal Hearing - 2305 Mission College Boulevard Data Center Project

Please find attached correspondence regarding the appeal hearing for tonight in connection with the 2305 Mission College Boulevard Data Center Project.

Thank you,

Lorrie LeLe
Legal Assistant to Collin S. McCarthy
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814
ljlele@adamsbroadwell.com | Phone: 916. 444.6201 Ext. 10 | Fax: 916.444.6209 |

POST MEETING MATERIAL

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July 17, 2018

Via Email Only

Agenda Item #4

Mayor and City Councilmembers
1500 Warburton Avenue
Santa Clara, CA 95050
MayorandCouncil@santaclaraca.gov

Re: **July 17, 2018 Appeal Hearing - 2305 Mission College Boulevard Data Center Project**

Dear Mayor Gillmor and Councilmembers:

We are writing on behalf of California Unions for Reliable Energy ("CURE"), Anthony Hernández and Edme Hernández (collectively, "Appellants") to urge the Santa Clara City Council to take the following actions at tonight's hearing on Appellants' appeal of the 2305 Mission College Boulevard Data Center Project:

1. Grant CURE's appeal;
2. Reverse the Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and
3. Reverse the Planning Commission's approval of Architectural Review for the Project.

In the alternative, if the City intends to overrule the appeal, then the City Council must add a condition of approval that prohibits issuance of any further permits until the developer/owner receives a license or exemption from the California Energy Commission, as required by Section 25500 et seq. of the Public Resources Code.

Thank you for your consideration.

Sincerely,

Collin S. McCarthy

cc: Steve Le, Assistant Planer Sle@santaclaraca.gov
CSM:ljl

4196-013j

07/17/18

#4

Lynn Garcia

From: Mayor and Council
To: Zachary Walton; Mayor and Council; Steve Le
Subject: RE: For the hearing tonight

From: Zachary Walton [mailto:zack@SSLLAWFIRM.COM]
Sent: Tuesday, July 17, 2018 1:08 PM
To: Mayor and Council; Steve Le
Cc: Zachary Walton
Subject: FW: For the hearing tonight

Please find the attached on behalf of the Project Applicant for the data center project at 2305 Mission College Blvd. that will be considered during tonight's hearing.

Zack Walton
SSL Law Firm LLP
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POST MEETING MATERIAL

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ZACHARY R. WALTON
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July 17, 2018

VIA HAND DELIVERY AND ELECTRONIC DELIVERY

Santa Clara City Council
1500 Warburton Avenue
Santa Clara, CA 95050
MayorAndCouncil@santaclaraca.gov

Community Development Department
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
sle@santaclaraca.gov

RE: 2305 Mission College Boulevard – Date Center Project

Dear Mayor and Council Members and Mr. Le:

This letter is provided on behalf of the project applicant, PR III 2305 Mission College LLC, in support of the proposed data center project located at 2305 Mission College Boulevard, PLN-2017-12535, CEQ2017-01034 and SCH2018032008 ("Project").

The Project is located on a developed parcel of land which currently contains an office building. The Project proposes to demolish this building and replace it with a state of the art data center building with equipment yards and onsite improvements. The Project is fully consistent with its General Plan and zoning designation, and is the subject of a thoughtful and carefully prepared Mitigated Negative Declaration ("MND") in full compliance with the California Environmental Quality Act ("CEQA").

Two union groups, LIUNA and CURE, have appealed the Planning Commission's unanimous approval of the Project, relying on opinions from two purported experts who regularly oppose projects in California. As we explain below, both opinions are based on errors and mistakes and do not amount to substantial evidence.

An expert opinion based on errors and mistakes is not substantial evidence

LIUNA and CURE would have you believe that the City is compelled to prepare an EIR simply because they have put forth expert opinions claiming that the Project will have potentially significant environmental impacts. That is not correct. LIUNA's and CURE's expert opinions are riddled with errors and mistakes and therefore are entitled to no deference and do not constitute substantial evidence. *See, e.g.*, Citizens' Comm. to Save our Village v. City of Claremont (1995) 37 Cal.App.4th 1157, 1170, explaining that expert opinions "rise only to the level of reliability and credibility as the evidence constituting the foundation for those opinions."

The City's responses to LIUNA's and CURE's comments do an excellent job of highlighting many or these errors and mistakes. We also asked the environmental consultancy Ramboll to review the IS/MND and LIUNA's and CURE's comments. Ramboll is a recognized expert in air quality and has appeared before the City before. Ramboll's analysis is attached. One example of a mistake is LIUNA's expert's opinion that the City should have calculated air emissions from construction equipment based on maximum daily emissions. The City evaluated the Project's emissions consistent with the Bay Area Air Quality Management District ("BAAQMD") CEQA Guidelines, which state that air emissions should be calculated based on average daily emissions. The City's air analysis is based on the correct methodology for evaluating air impacts in the Bay Area. LIUNA's expert's opinion stating otherwise is based on an objective error and therefore does not constitute substantial evidence.

The City has substantial discretion to select its significance thresholds; an expert opinion based on a different threshold is not substantial evidence

Ramboll's analysis demonstrates the numerous instances when LIUNA's and CURE's experts allege significant environmental impacts based on significance thresholds other than those selected by the City. The example above concerning LIUNA's expert's opinion that emissions should be calculated based on maximum daily emissions is a good example. LIUNA may believe this should be the significance threshold, but it isn't. The City's decision to use the significance threshold the agency with expertise in the field selected, i.e., BAAQMD, is inherently reasonable. *See, e.g., Mission Bay Alliance v. Office of Community Investment & Infrastructure (2016) 6 Cal.App.5th 160, 192,* "The lead agency has substantial discretion in determining the appropriate threshold of significance to evaluate the severity of a particular impact." LIUNA's expert isn't suggesting that the City applied the BAAQMD significance threshold incorrectly; they are just arguing that the City should use a different threshold. This is a policy issue that rests within the City's discretion; it is not evidence of an impact. LIUNA's and CURE's experts repeat this mistake in many other contexts, including how to assess greenhouse gas emissions and cumulative impacts.

The City properly considered emergency operations

LIUNA and CURE allege that the City did not properly evaluate potential air impacts from the Project's standby generators during an emergency. This is another example of LIUNA and CURE wanting the City to use different significance thresholds. The City evaluated potential air impacts consistent with BAAQMD's CEQA Guidelines and the California Air Resources

Board's Air Toxic Control Measure, neither of which call for attempting to calculate potential impacts that may occur during emergency conditions. There is good reason for this, as any assessment of potential impacts during an emergency would be speculative. Emergencies, by definition, occur unexpectedly and for an unknown amount of time. The Planning Commission staff report explains that Silicon Valley Power has not had a service disruption where the Project is located over the last 12 months. Disruptions elsewhere in Silicon Valley Power's service area have been for as little as 5 minutes. Any assessment of impacts during an emergency would be speculative at best and would not generate information that promotes informed decision-making, a guiding purpose of CEQA.[1]

The City's review is consistent with CEC jurisdiction

CURE expends considerable energy complaining that the California Energy Commission ("CEC") should evaluate the Project, not the City. While the CEC may have permitting authority over standby generators under certain circumstances, it does not have jurisdiction over a data center. Furthermore, the City has conditioned operation of the generators on obtaining any approvals from the CEC that may be required.

The process the City is following for evaluating the Project is consistent with recent precedent. In 2017, the City approved the McLaren Data Center project, which includes standby generators with a nominal capacity of 92 MW. After obtaining the City's approval, McLaren applied to the CEC for a small power plant exemption. The CEC recently put forth its CEQA document evaluating McLaren's exemption application, which relies heavily on the City's prior IS/MND. We anticipate a similar process for the current Project.

SWAPE is not an expert

LIUNA's expert opinion was prepared by Matt Hagemann and Hadley Nolan of SWAPE. Mr. Hagemann is a registered geologist who asserts expertise in environmental policy, site assessment and remediation. *See*, http://www.swape.com/staff/matt-hagemann/. Mr. Hagemann is not an air quality expert.

Ms. Nolan identifies herself as an air quality specialist in SWAPE's opinion. SWAPE's website explains that she graduated from UCLA in 2016 with a B.S. in Environmental Science and a minor in Environmental Systems and Society. *See*, http://www.swape.com/staff/hadley-nolan/. Ms. Nolan's experience does not qualify her as an expert.

The numerous mistakes in Mr. Hagemann's and Ms. Nolan's opinion may be explained by their lack of expertise. Regardless, their opinions do not rise to the level of expert opinions and are entitled to no deference.

***

The City is to be commended for its thorough analysis of the Project in accordance with CEQA. LIUNA and CURE have not presented any substantial evidence suggesting otherwise.

[1] The same applies to LIUNA's and CURE's criticisms of the City's analysis of the Project's potential noise impacts during an emergency.

Accordingly, we respectfully request that the City Council to overrule the appeals and uphold the Planning Commission's Project approvals, including the MND.

Sincerely,

Zachary Walton

RAMBOLL

ENVIRONMENT
& HEALTH

Via Electronic Mail

MEMORANDUM

To: Zachary Walton, SSL Law Firm LLP

From: Steven Branoff
Sarah Manzano

Subject: **RESPONSE TO COMMENTS ON 2305 MISSION COLLEGE BLVD DATA CENTER PROJECT IN SANTA CLARA, CALIFORNIA**

July 16, 2018

Ramboll
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San Francisco, CA 94111
USA

T +1 415 796 1950
F +1 415 398 5812
www.ramboll.com

Ramboll reviewed the appeals filed against the 2305 Mission College Blvd Data Center Project in Santa Clara, California and associated California Environmental Quality Act (CEQA) documents. This memorandum provides our opinions on the following comments received:

1. Adams Broadwell Joseph & Cardozo, "Appeal of Planning Commission Decision Denying Appeal and Upholding the Adoption of a Mitigated Negative Declaration and Architectural Approval for the 2305 Mission College Boulevard Data Center Project (PLN2017-12535 & CEQ2017-01034)," letter dated June 19, 2018.

2. Lozeau Drury LLP, Comments on Initial Study/Mitigated Negative Declaration for the 2305 Mission College Blvd Data Center Project, CEQ2017-01034; File No(s) PLN2017-12535 (SCH2018032008). Request for Environmental Impact Report," letter dated March 30, 2018.

3. Lozeau Drury LLP, "Supplemental Comments on LIUNA, Local 270 Appeal of Initial Study/Mitigated Negative Declaration for the 2305 Mission College Blvd Data Center Project, CEQ2017-01034; File No(s) PLN2017-12535 (SCH2018032008). Request for Environmental Impact Report," letter dated June 12, 2018.

BACKGROUND

We understand an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared by the City of Santa Clara for the 2305 Mission College Blvd Data Center Project. The City received comments on the IS/MND, some of which related to the assessment of air quality and greenhouse gas impacts. The approval of the Project was subsequently appealed by two parties. As requested, our review of the submitted comments is listed below. Please note that we did not review comments pertaining to matters other than air quality and greenhouse gas impacts.

RAMBOLL

ADAMS BROADWELL JOSEPH & CARDOZO LETTER

Greenhouse Gas Emissions are Significant and Unmitigated

GHG Emissions Are Unsupported and Significantly Underestimated

The commenter argues that GHG emissions have not been adequately quantified. BAAQMD's CEQA Guidelines describe significance thresholds for two categories of GHG emissions. For stationary sources, the threshold is a GHG emission rate of 10,000 MT CO2e/year. The only portion of the Project that qualifies as a "stationary source" under BAAQMD rules is the emergency backup power provided by diesel-fired generators. Emissions from these generators were shown in the IS/MND to be below 10,000 MT CO2e/year, and the commenter does not argue this point.

For non-stationary sources, BAAQMD CEQA Guidelines contain three significance thresholds that may be used:

1. Compliance with a qualified GHG reduction strategy;
2. GHG emissions of 1,100 MT CO2e/year; or
3. GHG emissions of 4.6 MT CO2e per service population per year.

For this Project, the IS/MND demonstrated that the Project would comply with all approved GHG reduction strategies, including applicable policies, rules and regulations. Quantification of GHG emissions from non-stationary source portions of the Project is therefore not required to demonstrate that the Project would have a less than significant impact on climate change. This quantification would only be required if the Project were being compared to one of the quantitative significance thresholds listed above (i.e., 1,100 MT/year or 4.6 MT/service population/year).

Mitigated GHG Emissions Are Significant

The commenter argues that non-stationary source GHG emissions are significant, since these emissions are above 1,100 MT CO2e/year. This comment ignores the fact that BAAQMD CEQA Guidelines allow the use of any one of three listed GHG significance threshold options.

It should also be noted that the commenter mentions the McLaren Data Center IS/MND as a relevant precedent for this Project. Ramboll performed the Air Quality and GHG impact evaluations for that project, and the McLaren Data Center IS/MND stated that the quantitative GHG significance thresholds for non-stationary sources were not relevant for a data center project. Specifically, these quantitative thresholds were developed for use with residential and commercial facilities (as opposed to industrial facilities). Also, these thresholds were developed in conjunction with the 2020 targets set by AB32, and do not reflect the regulatory landscape and new emission targets post-2020. The McLaren Data Center IS/MND also concluded that non-stationary source GHG emissions were not significant because the project would comply with a qualified GHG reduction strategy.

The Project Does Not Comply with a Qualified GHG Reduction Strategy

The commenter claims that the Project does not comply with the relevant GHG reduction strategies, including:

- City of Santa Clara Climate Action Plan (CAP)
- City of Santa Clara General Plan
- Bay Area Clean Air Plan

Regarding the City of Santa Clara CAP, the commenter states that listed measures from the CAP that are compliance options are not enforceable. However, the commenter also notes that an annual report

is required where the Project would document measures implemented and how the required reductions are achieved. This report is the enforcement mechanism for compliance with the CAP.

The commenter also acknowledges that the topic areas subject to comment (e.g., transportation, parking) represent a small fraction of the GHG emissions associated with the Project. So, amending mitigation measures related to these areas would not affect whether GHG emissions are significant.

Regarding the City of Santa Clara General Plan, the commenter argues that measures adopted by the City are not enforceable for the Project. This includes the City commitment to reduce overall emissions to 30% below 1990 levels by 2020, and maximizing the use of renewable energy, energy efficiency measures, and use of recycled water. This type of demonstration is not common for a single Project, but are rather goals for the entire City of Santa Clara. The Project is required to comply with specific measures designed to achieve compliance with these overall City-wide GHG reduction goals.

The same issue is true with commenter's claims regarding compliance with the Bay Area Clean Air Plan. The goals stated in the comments (e.g., "work with local governments to implement local renewable energy programs") are long-term goals proposed by BAAQMD to achieve reductions in air pollution and GHG emissions. The measures that may be applicable to the Project are adopted as BAAQMD regulations, including permit requirements, which the Project will comply with.

The commenter also lists additional feasible GHG mitigation measures that should be required. Additional mitigation would only be required if the Project had the potential to have significant GHG impacts. The mitigation required in the IS/MND is consistent with the qualified GHG reduction plans and regulations applicable to the Project, so further mitigation is not warranted.

Ambient Air Quality Impacts were Not Evaluated

The commenter claims the IS/MND did not include an analysis of whether the Project would cause an exceedance of an National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS) and modeling of the Project's emissions along with emissions from surrounding sources should be completed to determine significance.

In its Response to Comments, the City's consultant makes many arguments for why dispersion modeling is not necessary to determine compliance with the NAAQS and CAAQS standards, including:

- Mitigation Measures MM AIR-1 and MM AIR-2 would reduce the Project emissions to below the significance.
- BAAQMD CEQA Guidelines recognize that no single Project is sufficient in size to result in nonattainment.
- BAAQMD CEQA Guidelines provide emissions thresholds in lb/day.
- The Project's emissions are minimal compared to the total emissions from the SF Air Basin.

We agree with the City's consultant. An explicit analysis of air quality impacts and ozone formation is not needed here. Emissions are below thresholds of significance with mitigation.

Furthermore, the commenter states:

> "The significance thresholds relied on in the IS/MND, based on maximum annual and average daily emissions, do not allow determination of compliance with NAAQS and CAAQS, which are based on different averaging times."

However, the significance thresholds proposed by BAAQMD are designed to prevent additional deterioration. In its Proposed Thresholds of Significance document,[1] BAAQMD states:

> "These thresholds are based on the federal BAAQMD Offset Requirements to ozone precursors for which the SFBAAB is designated as a non-attainment area which is an appropriate approach to prevent further deterioration of ambient air quality and thus has nexus and proportionality to prevention of a regionally cumulative significant impact (e.g. worsened status of nonattainment)."

While the emissions thresholds do not have the same averaging times as the NAAQS and CAAQS, the thresholds were set at a level to prevent a cumulatively considerable contribution to the San Francisco Bay Area Air Basin's (SFBAAB) existing air quality concerns.

Therefore, the IS/MND does adequately analyze the Project's impacts related to the NAAQS and CAAQS.

CalEEMod is Inappropriate for Calculating the Project's Construction and Operational Emissions

The commenter claims that CalEEMod is an inappropriate tool for estimating emissions from Project construction activity and electricity generation. The assertions regarding CalEEMod's reliability ignore CalEEMod documentation provided by CAPCOA which outlines methods and reasoning behind the software. The complaints are discussed below in detail.

First, the commenter asserts that "CalEEMod is in many ways a "black box," where the actual emission calculations and coding are not available to the user or reviewer." CalEEMod is a publicly available software provide by the California Air Pollution Officers Association (CAPCOA) in collaboration with the California Air Districts. It is the widely accepted industry standard for estimating construction and operational emissions for projects in California. The program outputs do not outline the software methods because the methodology is publicly available and outlined in the User's Guide. Per the User's Guide, "CalEEMod utilizes widely accepted methodologies... Sources of these methodologies and default data include but are not limited to the United States Environmental Protection Agency (USEPA) AP-42 emission factors, California Air Resources Board (CARB) vehicle emission models, studies commissioned by California agencies such as the California Energy Commission (CEC) and CalRecycle."[2] While emissions methods are not outlined in software outputs, the emissions can be easily reproduced by following the user's guide methodology.

The commenter secondly makes several assertions questioning the validity of CalEEMod's fugitive dust emissions methods for construction activities. These claims are not relevant to this Project. BAAQMD CEQA guidelines list Best Management Practices (BMPs) as the appropriate threshold of significance for construction fugitive dust. Therefore, the Project is not significant with regards to fugitive dust so long as BMPs are followed. Construction fugitive dust emissions need not be quantified to determine significance for this Project. Fugitive PM2.5 emissions were appropriately included in the evaluation of PM2.5 ambient air concentrations.

The commenter argues that CalEEMod uses an inappropriate emission factor for unpaved roads, and that use of the factor for industrial roads (rather than the factor for public roads used by CalEEMod) results in higher particulate emissions. This comment is not appropriate here, since CalEEMod is the

[1] BAAQMD. 2010, California Environmental Quality Act Guidelines Update Proposed Thresholds of Significance. May 3. Available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/proposed_thresholds_report_-may_3_2010_final.pdf?la=en

[2] CAPCOA. 2017. CalEEMod User's Guide. November. Available at: http://www.aqmd.gov/caleemod/user's-guide

model recommended by BAAQMD for determining these emissions. This is not a question of the choice of a model input parameter – the commenter is suggesting that the model contains an inappropriate factor, something that cannot be changed by the user. This is not the appropriate forum for this comment.

The commenter also points out that wind erosion emissions were not quantified, but then complains that mitigation measures that would reduce emissions from this source are not appropriate. Wind erosion is not calculated by CalEEMod, probably because maintenance of significant storage piles at a construction site is not common, and the majority of emissions are from travel on unpaved roads, which have been quantified.

The commenter also indicates that CalEEMod does not evaluate CAP emissions from electricity generation. Grid electricity is provided by a variety of off-site sources, many of which are fossil-fuel power plants. Power plants are permitted by local authorities or the USEPA. As such, electricity CAP emissions are associated with the power generation facility, rather than the electricity consumers. The User's Guide also notes that "criteria pollutant emissions from power plants are subject to local, state, and federal control measures, which can be considered to be the maximum feasible level of mitigation for stack emissions."[3]

Finally, the commenter asserts that BAAQMD CEQA guidelines recommend the use of URBEMIS instead of CalEEMod. CalEEMod was developed expressly so that it might be used for CEQA analyses. Moreover, it improves upon URBEMIS methods and uses well documented data.[4] Furthermore, while BAAQMD CEQA Guidelines do not discuss CalEEMod, the program is listed as the suggested tool for Criteria Pollutants and GHGs on www.baaqmd.gov.[5]

Construction Emissions are Underestimated and Significant

CalEEMod Emissions Were Modeled Only for Annual Emissions

The commenter claims that the daily emissions were evaluated against significance thresholds incorrectly. The report states that average daily emissions are the incorrect metric and maximum daily emissions should be used instead. Table 2-1 of the BAAQMD CEQA Guidelines clearly indicates that the threshold is for "Average Daily Emissions."[6] Therefore, average daily emissions is correct.

The commenter asserts that average daily emissions are underestimated as annual emissions since construction is expected to last 336 days instead of 365. However, the referenced 336 days are number of working days and not calendar days. This actually represents emissions from over one year of emissions from September 2017 to December 2018, as stated in Appendix A of the IS/MND. Thus, the use of 336 days is appropriate and correct.

Furthermore, the use of 336 days in calculating average daily emissions is conservative. As discussed previously, BAAQMD CEQA Guidelines define Thresholds of Significance as "Average Daily Emissions". The threshold values of 54 lbs/day and 82 lbs/day are directly converted from the annual thresholds of 10 tons/year and 15 tons/year using 365 days per year. Therefore, to maintain consistency with

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[3] CAPCOA. CalEEMod User's Guide: Appendix A. October. Available at: http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6

[4] South Coast Air Quality District, et al. 2011. Methodology Reasoning and Policy Development of the California Emission Estimator Model. July. Available at: http://www.aqmd.gov/docs/default-source/caleemod/techpaper.pdf?sfvrsn=2

[5] See "Tools and Methodologies" section of BAAQMD CEQA website. Available at: http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools

[6] BAAQMD. 2017.California Environmental Quality Act Air Quality Guidelines. May. Available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

BAAQMD CEQA Guidelines, average daily emissions should actually be converted from annual emissions using the total number of days in a year instead of working days, which would result in lower average daily emissions. Therefore, the use of 336 days to compute average working days is conservative and does not underestimate emissions.

The commenter argues that summer emissions have been underestimated. However, BAAQMD CEQA Guidelines contain significance thresholds for average daily emissions and maximum annual emissions. The claim that maximum daily summer month emissions have been underestimated is not appropriate.

The commenter claims that ROG emissions from diesel storage tanks were not included in the analysis of operational emissions. The City's response to comments acknowledges these emissions, which are minimal and are also specifically exempted from air permitting by BAAQMD due to low emissions (as discussed below).

The commenter also claims that potential overlap of construction phases has not been evaluated. As noted above, the relevant significance thresholds require evaluation of average daily emissions (not maximum daily emissions). So, the averaging performed for the IS/MND is appropriate.

Applicant-Provided Inputs Disagree with Modelled Outputs
The commenter claims the CalEEMod inputs do not align with the data provided by the Applicant and provides a table comparing construction hours per day. However, the construction data provided by the applicant provides "Hours/day" and "Avg. Hours per day." The emissions in the IS/MND are dependent on the "Avg. Hours per day" provided by the Applicant. In calculating average daily emissions over the length of the project, "Avg. Hours per day" is the appropriate value to use. Thus, the emissions estimated in the IS/MND are correct.

The commenter further notes that the normal workday could be 9 hours, with a 1 hour lunch break. However, equipment exhaust emissions are based on the time the time the equipment engine is running, which often is not for the whole work day. Thus, this comment is not relevant to construction emissions.

Trip Length is Underestimated
The commenter claims that construction trip lengths are underestimated, although they provide no indication of what an appropriate trip length might be. The assumed trip lengths are default values provided by CalEEMod, and, therefore, are well documented and based on construction project surveys. So long as no project specific trip length information is available, CalEEMod defaults are an appropriate estimate of construction trip length.

Non-default values were only used for Building Construction and Paving hauling trips. These were updated based on Project-specific information, and the change is discussed more thoroughly below.

PM10 And PM2.5 Emissions Are Underestimated and Significant
The commenter claims that fugitive PM10 and PM2.5 emissions from construction have been underestimated. In fact, the methodology used in the IS/MND is consistent with standard practice within the industry. This has been discussed in response to earlier similar comments.

BAAQMD also does not have a quantitative threshold for construction PM10 and PM2.5 emissions (other than those from engine exhaust), instead relying on implementation of BMPs to ensure that a project remains insignificant. The commenter argues that this is not appropriate and suggests the use of construction emission significance thresholds adopted by South Coast and Monterey Bay. This process is not the appropriate forum to comment on the CEQA significance thresholds adopted by a regulatory agency.

The commenter also argues that the IS/MND does not require all feasible mitigation for construction PM10 and PM2.5 emissions. The comments related to the adequacy of required mitigation relate to the enforceability of these measures. In fact, these measures are enforceable and are written in a manner consistent with standard industry practice. The additional measures proposed by the commenter are mostly variations on the mitigation measures required by the IS/MND (e.g., watering), and the commenter does not provide any evidence that these would reduce emissions below measures already required for the Project.

Operational Emissions are Underestimated

Diesel Storage Tanks

The commenter claims that ROG emissions from diesel storage tanks were not analyzed in the IS/MND, but could be substantial.

The City's consultant states that diesel fuel has low volatility and thus would have low evaporative emissions. However, they estimated emissions to show this. ROG emissions from the diesel storage tanks were 120 pounds per year, compared to 3,905.5 pounds per year for other sources from the Project (calculated based on 10.7 lb/day x 365 days/yr). This confirms emissions from the diesel tanks would be minimal.

This idea is further supported by the fact that these tanks would be considered exempt from air permitting with the BAAQMD per Regulation 2 Rule 1 Section 123.3.5, which states that "Containers, reservoirs, tanks or loading equipment used exclusively for...the storage of fuel oils with a gravity of 40 API or lower and having a capacity of 10,000 gallons or less" would be exempt from permitting. Diesel fuel has an API of less than 40, so these tanks would be exempt.

While we did not explicitly review the emissions analysis, we agree with the City's consultant's assessment and emissions from the diesel storage tanks would have minimal impacts.

Emergency Diesel Generators

The commenter claims that emissions could be significant and unmitigated due to the emergency operation of the generators. However, CEQA analyses do not require consideration of speculative emergency operations. Thus, this point is not valid.

The suggestion that Selective Catalytic Reduction (SCR) should be required for the emergency generators is absurd. SCR is a control option involving ammonia, which would introduce a whole new type of emissions not present at the site, and risks related to ammonia storage. SCR is typically only required for utility-scale power plants, not emergency generators.

Cumulative Impacts were Not Evaluated

The commenter notes that, unlike for cancer risk, air quality and GHG cumulative impacts were not evaluated. BAAQMD indicates that projects are only considered "cumulatively considerable" to the Bay Area air quality when project emissions are above the thresholds of significance. Therefore, emissions were identified as having a non-significant or significant cumulative impact based on whether emissions are below project-level thresholds. Since emissions from the Project are below significant thresholds with mitigation, no additional evaluation of cumulative impacts is required.

LOZEAU DRURY LLP LETTER #1

Air Quality

Unsubstantiated Input Parameters

Failure to Include All Land Uses

The commenter states that the construction and operational emissions are underestimated because the Project land uses were misrepresented in the submitted CalEEMod analysis. Specifically, the 495,610 sf of office space was evaluated as a 400,000 sf office. We agree this is an error in the analysis, but it does not change the overall conclusions of the report. For operational analyses, CalEEMod uses building size to calculate emissions for a variety of different sources, usually as a direct scaling factor. Calculated emissions from a given land use should increase roughly proportionately with an increase in land use size. Therefore, the presented results do underestimate operational land use emissions. However, the correction is only a 24% increase in land use size. Even if all CAP emissions were increased by 24% for sources calculated using CalEEMod (i.e., sources other than the diesel generators), the significance conclusions for the Project would not change.

The commenter also indicates that a 75 space parking lot should have been included. The addition of a parking lot would increase electricity consumption, and thus GHG emissions, slightly. However, as discussed, GHG emissions are not quantified and are instead determined to be less than significant due to compliance with the GHG Reduction Plan. Thus, this slight increase is not relevant. The parking lot would not generate more mobile trips, so mobile emissions would not be affected. The parking lot would generate additional ROG emissions from painting the striping in the parking lot. These emissions would be very minor compared to the painting of the entire data center. ROG emissions are 20% of the threshold. This increase in ROG emissions from strip painting is minimal and would not change the conclusions made in the IS/MND.

The effect of this change on construction emissions would also be minimal. Default construction activity assumptions are dependent on project size, but the construction analysis is based on project-specific data provided by the Project Sponsor. As such, there would be minimal change in the construction emissions due to this correction because emissions are based on the project-specific activity data that are not linked to CalEEMod land use size.

However, emissions from painting are based on default data and would change with CalEEMod land use size. However, this increase would be minimal and would not affect the findings in the IS/MND.

The City's consultant re-ran CalEEMod with the correct land use size and found that conclusions did not change. We agree with this conclusion.

Unsubstantiated Reduction in Hauling Truck Trip Length

The commenter states that the construction emissions are underestimated because the hauling trip length was reduced from the default distance of 20 miles to 7.3 miles without justification. Illingworth & Rodkin explained in their memorandum dated April 16, 2018 that these trips were a model manipulation to estimate emissions from cement or asphalt deliveries.

Below is a table that summarizes key differences in vendor and haul trips in CalEEMod. This shows the units of the truck trips inputted, the default trip length, and the type of vehicle CalEEMod assumes.

	Input Units	Default Trip Length	Vehicle Type
Hauling	Total Trip	20 miles	Heavy Heavy Duty Trucks
Vendor	Trips per day of Construction	7.3 miles	50% Heavy Heavy Duty Trucks and 50% Medium Heavy Duty Trucks

Illingworth & Rodkin assert the haul trip input was used to simulate the cement and asphalt deliveries because the unit of the input was more convenient since they received total number of trips. Because Cement and asphalt deliveries would actually be considered vendor trips, the default trip length was updated to 7.3 miles.

By making this simplifying step, emissions are actually overestimated because CalEEMod would estimate the emissions from these trips using emission factors for Heavy Heavy Duty Trucks instead of the 50% split used for the vendor trip type. Emissions from bigger vehicles tend to be larger, so assuming cement and asphalt trips are Heavy Heavy Duty would overestimate emissions.

We agree with the City's response that this this trip length is correct and this method of emissions estimation would actually overestimate emissions.

Use of Incorrect Off-road Construction Equipment Usage Hours

The commenter claims that the off-road construction equipment usage was artificially reduced from CalEEMod defaults without justification. However, Appendix A to the IS/MND clearly states "Construction information **was provided** that includes the schedule of various construction phases, equipment usage assumptions for each phase, and the volume of material to be imported or exported." [*emphasis added*] The equipment usage information was provided by the Project Sponsor and is thus a more realistic representation of construction activity.

CalEEMod default off-road equipment usage is based on the acreage of a site only. It does not take into account building type, location or any other project specific information. This default information is almost always updated with Project Specific information provided by the applicant or the applicant's construction engineer for CEQA analyses to better represent construction activity for a specific project.

Furthermore, CalEEMod default information assumes most equipment would be running its engine for 8 hours per day for every day of a specific phase. While this may be true for some pieces of equipment, in reality, most equipment would be turned on and off periodically throughout the day and thus would not release emissions for a full 8 hours.

Therefore, we agree with the City's response that this update in construction equipment activity is justified.

Updated Analysis Indicates Significant Criteria Air Pollutant Emissions

The commenter states that emissions would exceed the BAAQMD threshold even with mitigation based on CalEEMod modeling performed by the commenter.

The commenter claims they used "correct, site-specific input parameters." However, the commenter used a CalEEMod default construction schedule, which is not site-specific data. Please see the section above for discussion on why CalEEMod default construction data is not appropriate.

Furthermore, the commenter used maximum daily emissions of NOx to compare against the threshold, which is incorrect and misleading. The City adopted BAAQMD thresholds of significance, which are average daily emissions as shown in Table 2-1 Air Quality CEQA Thresholds of Significance

in the BAAQMD CEQA Air Quality Guidelines and copied below for reference.[7] The commenter compares maximum daily emissions with the IS/MND average daily emissions and fails to point out the inconsistency, which is misleading.

Table 2-1
Air Quality CEQA Thresholds of Significance*

Pollutant	Construction-Related	Operational-Related	
Project-Level			
Criteria Air Pollutants and Precursors (Regional)	**Average Daily Emissions (lb/day)**	**Average Daily Emissions (lb/day)**	**Maximum Annual Emissions (tpy)**
ROG	54	54	10
NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10

CalEEMod outputs maximum daily emissions when the model is run in "Summer" or "Winter" mode. CalEEMod outputs total annual emissions which can be converted to average daily when the model is run in "Annual" mode. The commenter ran CalEEMod in "Summer" and "Winter" mode and thus emissions presented in its letter are maximum daily and not average daily. In its letter, the commenter reports construction-related NOx emissions to be 268 lb/day. However, when the average daily NOx emissions are calculated using the commenter's "Annual" CalEEMod output, emissions are only 40 lb/day. These emissions are still incorrectly higher than the IS/MND due to the use of the default construction schedule discussed above, but are not as high as the incorrect maximum daily emissions. The recalculated emissions are also still below the significance threshold.

Subsequent to the March comment letter, the commenter re-analyzed the Project's emissions with the project specific construction schedule. The commenter claimed that the City's analysis did not adequately take into account the number of construction days.

The commenter correctly points out that the number of work days in the construction schedule do not equal the total possible number of work days between the start and end date of each phase. However, just because a specific construction phase is expected to occur between two dates, construction activity with heavy equipment may not occur on every weekday. There may be holidays, days for safety training, or preparation days where heavy off-road equipment is not used. The Project specific schedule provides the number of work days, which takes into account these off-days and thus should be the number of construction days used in the analysis. Therefore, the commenter is incorrect in its correction of the number of construction days.

Furthermore, the project specific construction schedule provides a number of days of operation per piece of equipment. For example, in the demolition phase, excavators are estimated to only be operated for 50 days while the demolition phase lasts 100 days. Excavators are not needed for every day of the demolition phase. This reduction in activity was not taken into account in the commenter's analysis. This would greatly reduce the emissions the commenter estimated.

[7] BAAQMD. 2017. California Environmental Quality Act Air Quality Guidelines. May. Available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

Therefore, the commenter is not correct that construction emissions were underestimated in the IS/MND.

Diesel Particulate Matter Inadequately Evaluated

Use of Incorrect Emissions Estimates in Construction Health Risk Assessment

The commenter asserts that the model is incorrect due to incorrect emissions inputs. As discussed in the sections above, we find this assertion flawed and disagree with the conclusions.

Failure to Include Evaluation of All Emission Sources in Operational Health Risk Assessment

The commenter claims that the operational HRA should have taken into account "DPM emissions from 55 daily vehicle trips to and from the site throughout operation."

The City's consultant makes many points as to why these trips would have minimal effect on health risk, as summarized in the bullets below.

- Vehicle trips would only emit 0.001 tons per year of PM10, which is 1% of the emissions of the generators.
- Only a small portion of these PM10 emissions would be DPM. The remaining emissions are from gasoline vehicles, which are less toxic.
- Vehicle travel would be on the central and southern portions of the site, not in the vicinity of the nearby residences.
- The existing site has a similar land use and thus likely has similar traffic. Thus, the net increase in traffic, if any, is even smaller than the 55 daily trips.

We agree with all these points the City's consultant makes. Below are some additional reasons for why these daily trips should not be considered in the operational HRA.

BAAQMD CEQA Guidelines use 10,000 vehicles per day as a threshold for analysis of health impacts in CEQA analyses. If a roadway does not have significant traffic volume roadway, which is defined as "a freeway or arterial roadway with greater than 10,000 vehicles per day,"[8] further analysis is not needed. This asserts that health impacts of roadways with less than 10,000 vehicles per day are expected to be minimal and do not need to be analyzed. Project traffic would add 55 vehicles per day to any given roadway, which is much less than the 10,000 vehicles per day.

These 55 daily trips will mostly be performed by gasoline vehicles, that do not emit DPM. According to the California Air Resources Board's online on-road emissions estimator model, EMFAC2017, 94.7% of all vehicle travel in Santa Clara County is by gasoline vehicles. Further, 97.1% of passenger vehicles (light duty autos and light duty trucks) are gasoline fueled. The combined toxicity of toxic air contaminants from gasoline vehicles is much less than the toxicity of DPM. For example, health risk assessments of roadways have shown that where traffic from diesel fueled vehicles are less than 10% of total traffic, the impacts from DPM are 80 to 90% of the total risk. PM10 emissions from these vehicle trips are 1% of total PM10 emissions, but the actual fraction of this that would be DPM are much lower.

Furthermore, the 0.001 tons per year estimated in CalEEMod represents emissions from the total vehicle trip. Only a fraction of this trip occurs in the vicinity of the Project. Thus, the sensitive receptors around the Project would be exposed to an even smaller percentage of emissions.

[8] BAAQMD. 2017. California Environmental Quality Act Air Quality Guidelines. May. Available at: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

Updated Health Risk Assessment Indicates Significant Health Impacts
The commenter provides health risk assessment calculations using their revised CalEEMod emission rates, which we have already commented on earlier. The commenter also performs dispersion modeling using AERSCREEN, a screening model, rather than the refined model AERMOD used to support the IS/MND. The use of a screening model is much more conservative, since this type of model uses conservative default values rather than site-specific data used in refined modeling.

Replacing AERMOD with AERSCREEN is not appropriate in this case. It is common practice to start an analysis with a screening level model. If the screening analysis demonstrates that a project has impacts below allowable levels, then no further analysis is required. If not, a refined analysis should be done. So, a screening analysis does not provide that a project has unacceptable impacts. It merely indicates that a conservative, simplistic approach did not pass, so the additional work to gather site-specific information is warranted to determine more realistic impacts using refined modeling. In this particular case, a more refined analysis was performed.

Therefore, we agree with the similar points the City's consultant makes.

Mitigation Measures Available to Reduce Construction Emissions
The commenter provides additional mitigation measures that could be implemented to reduce impacts from construction.

The City's consultant explains that the IS/MND identified mitigation that would reduce construction impacts to a less than significant level.

We agree with the City's explanation and additional mitigation is not needed.

Feasible Mitigation Measures Available to Reduce Operational Emissions
The commenter stated the Project's operational DPM emissions may present a potentially significant impact, and therefore identifies mitigation measures for consideration.

The City's consultant explains that these measures all reduce emissions from vehicle trips, which are a small portion of overall emissions. Most of the emissions are from generator testing and maintenance of the emergency generators. These generators have Tier 4 engines, which are subject to the most stringent emissions standards available.

We agree with the City's explanation and additional mitigation is not needed.

Greenhouse Gases
Failure to Adequately Assess the Project's Greenhouse Gas Impacts

Updated Analysis Demonstrates Significant Greenhouse Gas Impacts

Additional Mitigation Measures Available to Reduce Greenhouse Gas Emissions

The comments related to quantification of GHG emissions and compliance with a qualified GHG reduction plan have been addressed above in the response to comments submitted by Adams Broadwell Joseph & Cardozo.

LOZEAU DRURY LLP LETTER #2

Air Quality
The commenter states that the City Staff Report reveals that each phase of construction will last longer than what has been evaluated in the IS/MND. The City Staff Report and the IS/MND each list the same duration (number of total days) for each phase of construction. However, the listed start and end dates do not match, so the commenter suggests the construction emissions should be revised as

a result. In reality, we believe that the start and end dates for construction periods simply allow for periods of downtime for each phase, providing a more realistic estimate. For example, the total number of days when demolition is occurring may be 100 days, but these may occur over a longer period than anticipated in the IS/MND. This is accounted for in the Staff Report by having longer periods of overlap for each phase, so the total schedule for construction is nearly identical.

Updated Analysis Indicates Significant Construction-Related Air Quality Impact
The commenter re-evaluated emissions using CalEEMod for a longer construction period. As discussed above, this is not warranted.

Failure to Consider Impacts from Other Data Center Projects Within the Area
The commenter claims that an additional 13 data centers that are or will be in operation near the Project may cause the Project to have a significant cumulative air quality impact. The commenter does not provide a quantitative analysis to support this claim.

The commenter states, "(t)hus, simply because a Project's individual emissions do not exceed thresholds does not mean that the Project will inherently have a less-than-significant cumulative air quality impact." However, BAAQMD's CEQA Guidelines indicate that this is the case. BAAQMD explicitly states that their CEQA significance thresholds were designed to evaluate this:

> "In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. Therefore, additional analysis to assess cumulative impacts is unnecessary. The analysis to assess project-level air quality impacts should be as comprehensive and rigorous as possible."[9]

So, once a project has been determined to have a less-than-significant impact on air quality, further analysis of cumulative impacts is not warranted, since the Project would not contribute significantly to these cumulative impacts.

It is also worth noting that the IS/MND did perform a cumulative impact analysis related to health risks, and determined that the Project's impact would be less than significant. The commenter did not address the health risk assessment analysis.

Potentially Significant Cumulative NOx Air Quality Impact Resulting from Energy Demands from Silicon Valley Power Gas-Fired Power Plants
The commenter suggests that, because the Project (and other data centers) will increase local electricity demand, the air quality impacts from power generation by Silicon Valley Power (SVP) should be analyzed in the IS/MND. These impacts would be addressed when any new power plants are sited, or when existing power plants are expanded, both through the CEQA process and through the air permit process. It is not common, not required, and also not appropriate to require this type of analysis of indirect air quality impacts due to new electricity demand in an area.

CONCLUSIONS

For the reasons discussed above, we believe the IS/MND has been appropriately prepared and the adopted mitigation is adequate to ensure that the Project will not have a significant impact on the environment. Any changes made in response to comments listed above would be minor and would not change the conclusions reached by the IS/MND.

[9] BAAQMD CEQA Guidelines, May 2017, p.2-1.

07/17/18 #4

Lynn Garcia

From:	Mayor and Council
Subject:	FW: Appeal of Approval of a MND and Architectural Review - 2305 Mission College Boulevard Data Center Project
Attachments:	4196-012j - Letter re CFEC Email re CURE and 2305 Mission College Blvd 7-16-18.pdf

From: Lorrie J. LeLe [mailto:ljlele@adamsbroadwell.com]
Sent: Monday, July 16, 2018 5:35 PM
To: Mayor and Council; Steve Le
Cc: Collin S. McCarthy
Subject: Appeal of Approval of a MND and Architectural Review - 2305 Mission College Boulevard Data Center Project

Please find the attached letter regarding the July 10, 2018 email from Mr. Eric Christen of the Coalition for Fair Employment in Construction concerning California Unions for Reliable Energy and the 2305 Mission College Boulevard Data Center Project.

If you have any questions, please contact Collin McCarthy directly.

Thank you,

Lorrie LeLe
Legal Assistant to Collin S. McCarthy
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POST MEETING MATERIAL

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COLLIN S. McCARTHY
LINDA T. SOBCZYNSKI

July 16, 2018

Via Email
Mayor & City Councilmembers
City Hall
1500 Warburton Avenue
Santa Clara, CA 95050
MayorandCouncil@santaclaraca.gov

Via Email
Steve Le, Assistant Planer
Sle@santaclaraca.gov

Re: **Appeal of Approval of a Mitigated Negative Declaration and Architectural Review for 2305 Mission College Boulevard Data Center Project**

Dear Mayor Gillmor and Councilmembers:

We are writing in regard to the July 10, 2018 email from Mr. Christen of the Coalition for Fair Employment in Construction ("CFEC") questioning the motives of California Unions for Reliable Energy ("CURE") in objecting to the approval of the 2305 Mission College Boulevard Data Center Project, which includes a 75-MW power plant component consisting of 120-diesel fueled backup generators ("Project"). Such baseless accusations from CFEC and other non-union contractor funded groups and individuals attempting to further their own political agenda are not unfamiliar to CURE. Nevertheless, as the City Council will soon consider CURE's appeal of the Project approval, we believe it is important to correct the mischaracterizations contained in that email and to clarify the interest of CURE and its members in the Project.

Contrary to Mr. Christen's claims, CURE has a long and well-documented record of participation in the permitting and regulatory process for power plants and other industrial facilities throughout California. Through these efforts, CURE has successfully secured design changes or conditions of approval for individual

projects to protect public and worker health and the environment.[1] CURE has also been instrumental in the adoption of new environmental and regulatory standards that apply to energy projects statewide. Among its many environmental achievements, CURE has led the fight for dramatic reductions in emissions of air pollutants, the use of water for power plant cooling and construction activities, and exposure to toxic chemicals.

Some of CURE's achievements in these areas are outlined below.

- In the High Desert and Sutter powerplant proceedings before the California Energy Commission ("CEC"), CURE's experts rebutted claims that the facilities' proposed NOx emissions rates of 4.0 and 3.5 ppm, respectively, reflected "state-of-the-art" design. Through environmental settlement agreements with CURE, the applicants agreed to further reduce NOx emission rates to 2.5 ppm.[2] This emission rate became a requirement in all future CEC licenses and air district permits.

- CURE was among the first to identify the significance of exhaust emissions from construction equipment and to advocate for the use of oxidizing soot filters to reduce emissions from such equipment. The environmental settlement agreement between CURE and Obsidian Energy, LLC in 2003 included a requirement that all construction diesel engines and drill rigs used in that project be equipped with soot filters.[3] The CEC now routinely recommends that these filters be used to reduce construction equipment emissions.

- In the Sutter powerplant proceeding, CURE identified significant impacts that would result if the project were cooled using groundwater, as originally proposed by Calpine. CURE advocated instead for the use of dry air cooling. After CURE showed that the additional cost would be relatively modest, Calpine agreed to use 100% air cooling for that project, thereby reducing groundwater impacts.

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[1] See Joint Statement of Palen Solar 1, LLC and the California Unions for Reliable Energy, Oct. 2010 (Attachment A).
[2] See Joint Statement of the High Desert Power Project and the California Unions for Reliable Energy, Apr. 1999 (Attachment B).
[3] See Joint Statement of Obsidian Energy, LLC and the California Unions for Reliable Energy, July 2003 (Attachment C).

- In the Three Mountain Power proceeding, water use was also a major concern. There, CURE and the applicant agreed to a parallel hybrid wet and dry cooling system that resulted in an 80% reduction in groundwater use.[4]

- For toxics, CURE was the first to identify the danger of acrolein emissions (even before the State officially recognized the levels of risk), and advocated for the use an oxidation catalyst to reduce the risk. CEC staff now routinely recommends that an oxidation catalyst be included as standard equipment.

As these examples demonstrate, CURE has a long history of participation in the power plant approvals process. Through this participation, CURE has played a significant role in achieving environmentally beneficial improvements in a number of California power plants – improvements far more significant than "watering down the dirt." Indeed, the quality of CURE's participation has been recognized by the CEC as "responsible and thoughtful."[5]

Bearing in mind this history, we write to you today to make clear that CURE's objective is, and always has been, to ensure that the Project proceeds in a safe and environmentally sustainable manner, consistent with applicable legal requirements.

Beginning with the first comment letter to the City of Santa Clara on April 12, 2018, CURE explained the direct and indirect interests of its members in the Project. CURE's participating organizations and their members live, recreate, work and raise families in the City of Santa Clara and Santa Clara County. Thus, CURE's participating organizations and their members will be directly affected by the environmental impacts of the Project. CURE's comments, which were prepared with the assistance of technical expert Dr. Phyllis Fox, detail numerous deficiencies in the MND while offering substantial evidence in support of a fair argument that the Project may result in significant noise, air quality, and greenhouse gas impacts.

CURE similarly has an interest in the enforcement of state laws intended to ensure the sustainable development of California's energy and natural resources. Environmental degradation can jeopardize future jobs by making it more difficult

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[4] See Joint Statement of Three Mountain Power, LLC and the California Unions for Reliable Energy, July 2000 (Attachment D).
[5] Sunrise Cogeneration and Power Project, Docket No. 98-AFC-4, Transcript of Evidentiary Hearing, p. 67 (May 25, 1999).

and more expensive for businesses and industry to expand, and by making it less desirable for businesses to locate and people to live in areas including the City of Santa Clara and Santa Clara County. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities for CURE's participating organizations and their members.

Finally, it should be noted that CFEC is a small, far right-wing political advocacy organization with a long history of opposing the efforts of organized labor groups to represent the interests of workers through public participation and advocacy. Like here, Mr. Christen and his associates travel the state attacking labor organizations and public officials, recycling the same baseless accusations and unsupported claims, hurling insults, and purporting to expose some ulterior motive in the name of the public interest. In reality, however, CFEC is nothing more than a lobbying organization funded by a very small number of non-union contractors to espouse the anti-worker and anti-union agenda of its members. It does not represent any meaningful segment of the California construction industry.

In sum, we are hopeful that the members of the City Council are able to see the email from CFEC for what it is and not let such politically-motivated accusations distract from consideration of the merits of the issues in this proceeding. To date, we have submitted numerous letters, as well as expert opinion, to support our claims that the City's approval of the Project violates the requirements of CEQA and the Warren Alquist Act. It is the City's duty to review these claims and to ensure approval of the Project proceeds in the manner required by law.

Thank you.

Sincerely,

Collin S. McCarthy

CSM:ljl

4196-012j

ATTACHMENT A

JOINT STATEMENT OF

PALEN SOLAR 1, LLC

AND

CALIFORNIA UNIONS FOR RELIABLE ENERGY

October, 2010

Palen Solar I, LLC, which is developing the Palen Solar Power Project, and California Unions for Reliable Energy ("CURE") are pleased to announce that they have reached an agreement to resolve the outstanding issues raised by CURE before the California Energy Commission ("CEC") concerning the Palen Solar Power Project ("Project"). Under this agreement, Palen Solar I, LLC ("PSI") will implement additional measures to avoid and minimize potentially significant impacts to desert washes, special status plants and wildlife, including desert tortoise, during Project construction and operation, and implement a response plan for removing unexploded ordnance and munitions and explosives of concern from the Project site where required prior to Project construction. In consideration of these additional measures as well as those to be imposed by the CEC, CURE believes that the construction and operation of the Project will benefit the State of California.

Under the agreement, PSI agrees to take the following measures:

A. Low Impact Development: PSI will avoid and minimize impacts on biological resources, state jurisdictional waters, and groundwater during construction and operation of the Project.

   i. A Designated Biologist will be present during the initial site preparation and construction of the rerouted washes to ensure that significant impacts to biological resources are mitigated.

   ii. A Designated Biologist will supervise the installation of material within the drainage channels to limit the use of concrete and cement to only those areas required by the conditions of certification of its CEC license.

   iii. Areas of temporary disturbance will be revegetated with native, locally occurring vegetation. Revegetation will occur in the late fall to capitalize on any winter rains and will be conducted using hand removal methods to minimize impacts to wildlife where feasible. The Project area will be monitored at the end of two years to ensure specific success criteria are met in the revegetation areas. The success criteria will be maintained for the life of the Project.

iv. The artificial drainage system on the Project site will be designed to manage the quality and quantity of the run-off from the Project site and to simulate the pre-existing condition for groundwater infiltration and flooding, at velocities that will be non-erosive. Areas downstream of the diffusers disturbed during construction will be revegetated with native, locally occurring vegetation.

v. The artificial drainage system on the Project site will be monitored regularly and after storm events to ensure that it is working properly and performing to its design objectives.

vi. The site preparation techniques for the artificial drainage channels, channel design, and channel maintenance procedures will be set forth in a revised Drainage Plan.

vii. All employees will be provided with information regarding all protected natural features and the artificial drainage system, explaining the area's biogeochemical, water quality, and flood conveyance functions and values, and outlining activities that are prohibited to adequately protect the channelized drainage features.

B. Desert Tortoise Relocation/Translocation Plan. PSI will adhere to the latest USFWS guidelines for translocating any desert tortoise found on the Project site. PSI will provide additional detailed information in its Desert Tortoise Relocation/Translocation Plan including descriptions of the site selection criteria and site characteristics and management actions to enhance the sites.

C. Avoiding and Minimizing Noise Impacts on Birds. PSI will avoid and minimize impacts on nesting birds during construction by avoiding certain construction activities.

D. Monitoring Evaporation Ponds. PSI will monitor the evaporation ponds or wildlife deaths or entanglements and will develop additional protective measures to further minimize the risk of harm to wildlife if any deaths or entanglements are detected.

E. Compensation Land and Enhancement Measures. PSI will provide the location, characteristics and acreage of compensation and enhancement lands to CURE pursuant to a non-disclosure agreement.

F. Protection of Workers and the Public from Potential On-Site Hazards. PSI will conduct an analysis to determine whether unexploded ordnance ("UXO") could be present on site. If UXO is found to be potentially present, PSI will prepare a UXO Identification, Training and Reporting Plan and

will ensure that appropriate screening for UXO is conducted in all areas where construction activities will occur.

ATTACHMENT B

JOINT STATEMENT OF THE HIGH DESERT POWER PROJECT AND THE CALIFORNIA UNIONS FOR RELIABLE ENERGY

April 1999

The High Desert Power Project, LLC (HDPP) and the California Unions for Reliable Energy (CURE), are pleased to announce that they have reached an agreement to resolve all of the outstanding environmental issues raised by CURE concerning HDPP's proposed electric generating plant in Victorville, California, except for issues relating to a 32 mile long natural gas pipeline. HDPP and CURE will jointly propose to the California Energy Commission that the applicable portions of their agreement be adopted as conditions of certification on the Commission's Facility Certification.

As a result of this agreement, HDPP has agreed to the following measures to protect the environment:

A. AIR QUALITY

1. The Project shall do all of the following during construction:

- Limit or expeditiously remove accumulated mud or dirt from adjacent public streets whenever there is visible accumulation on public streets. Dry rotary brushes shall not be used except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Blower devices shall not be used.

- Sandbags or other erosion control measures shall be placed to prevent silt runoff to public roadways from sites with a slope greater than 10%.

- Wind breaks shall be installed at windward side(s) of construction areas where soil disturbance is scheduled before soil is disturbed. The wind breaks shall be maintained until the soil is stabilized or permanently covered in that area.

- Gravel pads shall be installed at all access points to prevent tracking of mud onto public roads.

- When materials are transported off-site, all material shall be covered or effectively wetted to limit visible dust emissions.

- Trucks transporting fill material to and from the site shall be tarped from the point of origin or wetted to prevent material from blowing from trucks.

- Soot filters shall be used on all large off-road construction equipment with an engine rating of at least 100 bhp.

2. The Project shall meet a NO_x emission rate of no more than 2.5 ppmvd @ 15% 0_2, averaged over 1 hour during normal operation.

3. The Project shall meet a CO emission rate of no more than 4.0 ppmvd during normal operation.

4. The Project shall meet a VOC emission rate of no more than 1.0 ppmvd during normal operation.

5. The Project shall meet a cooling tower drift rate of no more than 0.0006%.

6. Any inter-basin, inter-pollutant offsets used to offset Project emissions shall be provided at a ratio of 2.1 to 1.0 (inclusive of all offset ratios required by applicable rules and regulations). Annual NO_x emissions will not exceed 205 tons per year. Annual VOC emissions will not exceed 144 tons per year. This will assure that the Project does not cause or contribute to any violation of state or federal ambient air quality standards for ozone downwind of the project location.

7. In addition to the offsets required under A.6, not later than commencement of construction, the Project will purchase twenty eight (28) tons of ozone precursor ERCs from the Southern California International Airport Authority to be donated to the Environmental Resources Trust who will retire the ERCs.

8. Not later than commencement of construction, the Project shall make a payment of $50,000 to the Southern California International Airport Authority to be used to acquire and deploy electric ground support equipment at the Southern California International Airport in lieu of new equipment or to replace equipment powered by combustion engines.

B. WATER RESOURCES

1. The Project shall either use dry cooling technology or shall obtain water from the State Water Project and establish a water banking system for use when State Water Project water is not available. The banking system shall meet all of the following criteria:

(a) The Project shall treat and inject twelve thousand (12,000) acre-feet of water from the SWP and an additional one thousand (1,000) acre-feet from the SWP (the "Additional Water") in accordance with Sections B.1.(b) and (c) of this Agreement as quickly as technically feasible after Project operations commence;

(b) All water injected into the groundwater system (i.e., "banked" water) on behalf of the Project shall be treated prior to injection to reduce all organic and inorganic constituents in the treated water to background levels and to eliminate all microbial contaminants;

(c) All banked water shall be injected at the same location from which Project-related groundwater withdrawals will occur;

(d) The Project may withdraw water deposited in the bank, provided that at no time shall cumulative Project-related groundwater pumping exceed the cumulative amount of water previously treated and banked in accordance with Sections B.1.(b) and (c) of this Agreement, and further provided that the Additional Water deposited in the bank shall never be withdrawn by the Project;

(e) Except during the last three years of operation, whenever Project-related groundwater pumping occurs, the Project shall expeditiously restore the water bank by treating and injecting an amount of water equal to the amount of water pumped in accordance with Sections B.1.(b) and (c) of this Agreement; and

(f) Victor Valley Water District Wells 21, 27, 32, 37, Adelanto Wells 4, 8A, and all Project groundwater wells shall be monitored quarterly for water level and water quality. Monitoring of the water levels and gradient in the Mojave River alluvial aquifer and riparian zone shall also be conducted quarterly.

2. Not later than commencement of construction, the Project shall make a $50,000 payment to the City of Victorville, California for development and implementation of a program to convert existing irrigation located on the site of the former George Air Force Base to using reclaimed water for irrigation.

C. HAZARDOUS MATERIALS

1. The Project shall not use anhydrous ammonia or aqueous ammonia with an ammonia concentration greater than 25%.

2. The Project shall reduce the size of the proposed ammonia storage tank by 50% to 50,000 gallons and shall either:

   (a) use a double-walled ammonia storage tank that is designed to comply with Uniform Building Code Seismic Zone 4 requirements for storage of hazardous liquids and is located in a liquid-tight bermed area sized to hold the entire contents of the tank and designed to minimize the surface area of an ammonia release; or

   (b) fully enclose the ammonia storage tank in a protective structure, such as another tank or a building, which provides a minimum interstitial space of 2 feet between the protective structure and the enclosed ammonia storage tank. Both the protective structure and the enclosed storage tank shall be designed to comply with Uniform Building Code Seismic Zone 4 requirements for storage of hazardous liquids.

3. The Project shall design the ammonia unloading area so that any ammonia released in the unloading area will drain into an underground sump capable of holding at least 8,000 gallons of aqueous ammonia.

HDPP previously announced other environmental improvements in its project in response to concerns raised by CURE and others.

- HDPP reduced its NO_x emission rate from 4.0 ppm to 2.5 ppm
- HDPP added an oxidation catalyst to reduce emissions of carbon monoxide and volatile organic compounds
- HDPP added a high quality water treatment system to prevent any degradation of groundwater
- HDPP agreed to a groundwater banking procedure that ensures no net withdrawal of groundwater
- HDPP eliminated proposed evaporation ponds that could have endangered wildlife
- HDPP will not discharge any process wastewater

With this agreement, HDPP and CURE believe that the Project will be a substantial asset to the City of Victorville and the surrounding area.

ATTACHMENT C

JOINT STATEMENT OF
CE OBSIDIAN ENERGY LLC
AND THE
CALIFORNIA UNIONS FOR RELIABLE ENERGY

July 2003

CE Obsidian Energy, LLC (CEOE) and the California Unions for Reliable Energy (CURE), are pleased to announce that they have reached an agreement to resolve the major environmental issues raised by CURE concerning CEOE's proposed Salton Sea Unit 6 Geothermal Power Plant near Calipatria in Imperial County, California. CEOE and CURE will jointly propose to the California Energy Commission that the applicable portions of their agreement be adopted as conditions of certification on the Commission's Facility Certification.

As a result of this agreement, CEOE has agreed to the following measures to protect the environment:

A. AIR QUALITY

1. The on-site air quality construction mitigation manager (AQCMM) shall submit to the CPM, in a monthly compliance report (MCR), a construction mitigation report that demonstrates compliance with the following mitigation measures:

   a. All large construction diesel engines, which have a rating of 100 hp or more, shall meet, at a minimum, the 1996 CARB or EPA certified standards for off-road equipment.

   b. All large construction diesel engines and drill rig engines, which have a rating of 100 hp or more, shall be equipped with catalyzed diesel particulate filters (soot filters) that achieve the maximum control efficiency commercially feasible, unless certified by engine manufacturers or the on-site AQCMM that the use of such devices is not practical for specific engine types.

   c. All paved roads within the construction site shall be swept twice daily. At least the first 500 feet of any public roadway exiting from the construction site shall be swept twice daily. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden.

d. All entrances into the construction site shall be treated with dust soil stabilization compounds. No construction vehicles shall enter the construction site unless through the treated entrance roadways. Install gravel pads at all access points to prevent tracking of mud on to public roads.

e. All storage piles and disturbed areas that remain inactive for longer than 10 days shall be covered, or be treated with appropriate dust suppressant compounds.

f. All vehicles used to transport solid bulk material and that have potential to cause emissions shall be provided with a cover, or the materials shall be sufficiently wetted and loaded into the trucks in a manner to provide at least one feet of freeboard. Use bedliners in bottom-dumping haul vehicles.

g. For backfilling during earthmoving operations, water backfill material or apply dust palliative to maintain material moisture or to form crust when not actively handling; cover or enclose backfill material when not actively handling; if required mix backfill soil with water prior to moving; dedicate water truck or large hose to backfilling equipment and apply water as needed; water to form crust on soil immediately following backfilling; empty loader bucket slowly; minimize drop height from loader bucket.

h. During clearing and grubbing, prewet surface soils where equipment will be operated; stabilize surface soil with dust palliative unless immediate construction is to continue; and use water or dust palliative to form crust on soil immediately following clearing/grubbing.

i. While clearing forms, use single stage pours where allowed; use water spray, sweeping and/or industrial shop vacuum to clear forms; and avoid use of high pressure air to blow soil and debris from the form.

j. During cut and fill activities, prewater with sprinklers or wobblers to allow time for penetration; prewater with water trucks or water pulls to allow time for penetration.

k. Post a publicly visible sign with the telephone number and person to contact regarding dust and noise complaints. This person shall respond and take corrective action within 24 hrs.

l. Building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

m. Enforce reduced speed by drilling and maintenance personnel on unpaved roadways under the control of CEOE.

2. In addition to a LO-CAT system abating H_2S in the process, CEOE shall install a polishing system using a solid bed H_2S removal scavenger system.

3. CEOE shall either purchase or maintain 19.6 tons of emission reduction credits, accounting for credit depreciation, committed to the Project to offset the Project's PM10 emissions for the life of the Project.

4. As a mean to decrease maximum impacts below the California ambient H_2S standard during transient conditions, CEOE shall move the four vent tanks to the emergency relief tank (ERT) location. The ERT's shall be removed from the project equipment and the relocated vent tanks will be called vent relief tanks (VRT). The steam routed to the VRT's will now be a mix of SP, LP and HP steams, versus the original dedicated pressure lines and vessel. The VRT stack heights shall be 80-feet in height above grade level.

5. As a mean to decrease maximum impacts below the California ambient H2S standard during well flow tests, CEOE shall limit the brine flow rate to 0.8 million pounds per hour during normal well flow testing for both the production wells and injection wells. In the event that large amounts of drilling mud are present in the well during test flow, brine flow rate may be temporarily increased up to 1.2 million pounds per hour.

B. BIOLOGICAL RESOURCES

1. The project shall utilize, to carry brine over the wetland between production well pad OB3 and the plant site, a concrete-lined carbon steel pipe contained within a second, outer carbon steel pipeline. The pipeline shall be isolated by block valves at the wellhead and along the pipeline, and monitored both externally, by daily visual inspections, and internally by pressure monitors. The pipeline shall also be subject to ultrasonic monitoring for corrosion. The pipeline shall contain emergency stop valves that are remotely actuated using Rexa actuators and can be controlled either remotely from the continuously manned control room or from the wall-site local control panel.

2. The Project shall schedule construction of Production Well Pads OB1, OB2, and OB3 outside the shore bird breeding season.

3. The Project shall utilize well pad lighting that is shielded to direct light downward onto the well pad equipment. Plant site lighting shall be directed inward toward the facilities to minimize offsite lighting impacts. All general lighting will be shielded and focused downward. Task lighting will be switched to facilitate maintenance activities, but will be switched off unless needed.

4. All proposed transmission lines located within one (1) mile from the Salton Sea shoreline shall be equipped with bird diverters.

5. CEOE shall use pile driver shield enclosures on all pile driving equipment to contain noise created by pile drivers during construction of the Project.

C. WATER RESOURCES

1. In consultation with IID and CEC staff, CEOE shall develop and implement a Project specific conservation program that will result in the conservation of 30 acre-feet per year ("AFY"). The conservation program shall be implemented beginning at commencement of commercial operation of the Project.

ATTACHMENT D

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of the Application for Certification for the Three Mountain Power Project.	Docket No. 99-AFC-2

JOINT MITIGATION PROPOSAL OF THREE MOUNTAIN POWER, LLC AND THE CALIFORNIA UNIONS FOR RELIABLE ENERGY (CURE)

I. Introduction and Overview

Three Mountain Power, LLC ("Three Mountain Power"), the applicant in this proceeding, and the California Unions for Reliable Energy ("CURE"), an intervenor and active party in this proceeding, have engaged in extensive discussions regarding the potential environmental impacts associated with the Three Mountain Power Project (the "Project"). As a result of these discussions, Three Mountain Power and CURE are pleased to announce that they have jointly developed and agreed upon a set of mitigation measures that will mitigate potential impacts associated with the Project to less than significant levels. These mitigation measures are generally described below, and will be described in more detail in a comprehensive mitigation package that Three Mountain Power will file by late July or early August. Three Mountain Power and CURE hereby request that these mitigation measures, as described in the detailed mitigation package, be incorporated in conditions of certification in the Committee's final decision approving the Project.

With the adoption of these mitigation measures, CURE and Three Mountain Power agree that (1) all of CURE's concerns regarding the Project will have been addressed and resolved to CURE's satisfaction, (2) the Project will conform to applicable laws, ordinances, regulations and standards (LORS), and will promote the policy goals stated in State Water Board Resolution 75-58, and (3) potential impacts associated with the Project will be reduced to less than significant levels, including potential impacts on air

quality, potential impacts on neighboring wells that might be affected by the Project's pumping of fresh groundwater from the local aquifer, potential impacts on Burney Falls, and potential impacts on the endangered Shasta Crayfish and other species. Importantly, the Project also will provide an environmentally sound source of needed additional generating capacity to the State of California. As a result, CURE now fully supports certification of the Project and believes that the Project will be a substantial asset to Burney, Johnson Park and the Intermountain area.

Part II below presents a summary of the mitigation measures that have been agreed to by Three Mountain Power and CURE. Part III below discusses the timetable for incorporating the mitigation measures into the detailed mitigation package that Three Mountain Power will file by late July or early August. This detailed mitigation package will be in a format that Staff can consider before preparing its Final Staff Assessment for the Project.

II. Summary of Mitigation Measures

The mitigation measures outlined below mitigate the Project's potential impacts in three critical resource areas: Soils and Water Resources, Biological Resources and Air Quality. These three resource areas have been the most heavily contested topics in this proceeding.

(a) Soils and Water Resources and Biological Resources.

CURE raised several concerns regarding the potential impacts associated with the Project's proposed use of approximately 2900 acre-feet per year ("AFY") of fresh groundwater for power plant cooling purposes. In particular, CURE voiced its concern that the Project's use of 2900 AFY of fresh groundwater could have a significant adverse impact on (1) neighboring wells that might be affected by the Project's pumping of fresh groundwater from the local aquifer, (2) the quantity of flows over Burney Falls, which could alter the aesthetic qualities of Burney Falls, and (3) springs and streams in the vicinity of the Project that provide important habitat for the endangered Shasta Crayfish

and other aquatic biota. Other intervenors in this proceeding raised similar concerns regarding the Project's proposed use of 2900 AFY of fresh groundwater.

In response to concerns expressed by CURE and others, Three Mountain Power will install a parallel hybrid wet and dry cooling system at the Project and also will retrofit the existing Burney Mountain Power plant ("BMP") with parallel hybrid wet and dry cooling. This will result in a reduction of the Project's new pumping of fresh groundwater from 2900 AFY to no more than 600 AFY. Water for Project use will be supplied from the following sources.

(1) Approximately 300 AFY will be supplied by reclaimed water from the Burney Water District. The Project's use of this reclaimed water will be subject to confirmation that use of such water would not result in the creation of a hazardous waste or cause other solid waste discharge or handling problems, and will be further subject to its availability from the Burney Water District. To the extent reclaimed water is not available, the Project will not increase the Project's use of fresh groundwater, as described below. To the extent reclaimed water is available, there will be no limit on the amount of such reclaimed water that may be used by the Project.

(2) Additionally, no more than 950 AFY will be supplied by fresh groundwater. However, of this amount, only 600 AFY will be fresh groundwater that is not currently being used for power plant cooling purposes. The remaining amount of fresh groundwater (not to exceed 350 AFY) reflects the amount of fresh groundwater that historically has been used by BMP for power plant cooling purposes, but that now will be more efficiently used by both BMP and the Project. In order to make a substantial portion of this fresh groundwater available for use by the Project, BMP will be retrofitted to use a hybrid parallel wet and dry cooling system. This retrofit will involve the installation of a dry cooling system at BMP that will be used in parallel with BMP's existing wet cooling system. As a result, BMP's and the Project's separate operations each will use a portion of the

350 AFY that historically was used exclusively by BMP for cooling purposes. If BMP is shut down, the full 350 AFY will be available for use by the Project.

(3) All of the fresh groundwater that the Project will use will be purchased from the Burney Water District and pumped from Burney Water District wells. To ensure that the combined use of fresh groundwater by BMP and the Project does not exceed 950 AFY (*i.e.*, the total of the 350 AFY that BMP has historically used and the additional 600 AFY of new fresh groundwater that the Project may use), Three Mountain Power and BMP will enter into a contract that restricts the use of water by BMP so that the total amount of fresh groundwater pumped by BMP, and by the Burney Water District for use by the Project, will not exceed 950 AFY.

Three Mountain Power also will install a wastewater treatment process that uses a crystallizer to distill and recycle any wastewater from the Project. With the crystallizer, there will be zero discharge of wastewater from the Project. There will be sanitary water discharges to the Burney Water District and stormwater discharges. The proposed evaporation ponds will not be built.

CURE agrees with Three Mountain Power that these mitigation measures will dramatically decrease the Project's use of fresh groundwater and, as a result, will reduce potential impacts associated with the Project's water use to less than significant levels. Whereas Three Mountain Power previously proposed to use 2900 AFY of new fresh groundwater for cooling, the mitigation measures will result in the Project using only 600 AFY of new fresh groundwater: a 79% reduction. This change will result in several important benefits that should expedite the Committee's consideration of the Project.

First, the mitigation measures discussed above will cause the Project to conform to applicable LORS. In particular, the installation of a parallel hybrid wet and dry cooling system that uses approximately 300 AFY of reclaimed water (to the extent feasible), that more efficiently uses 350 AFY of fresh groundwater that already has been dedicated to use for power plant cooling purposes, and that reduces proposed new groundwater pumping from 2900 AFY to 600 AFY, promotes the policy goals of State Water Board

Resolution 75-58. As a result, CURE agrees that it is not necessary for Three Mountain Power to provide, or for the Committee or any party to consider, any additional information regarding the economics of dry cooling, including any additional information regarding the cost estimates that Three Mountain Power has submitted previously, or any vendor quotes that Three Mountain Power has obtained for the Project. CURE agrees that it therefore is not necessary for the Committee to grant the Joint Petition to Compel the Production of Information that CURE filed jointly with other intervenors in this proceeding on May 11, 2000 (the "Joint Petition"). Accordingly, CURE hereby withdraws its support for the Joint Petition.

Second, the Project's new cooling system and the substantial reduction in the Project's use of fresh groundwater will reduce to less than significant levels (1) potential impacts on groundwater supplies and neighboring wells that might be affected by the Project's pumping of fresh groundwater from the local aquifer, (2) potential impacts on Burney Falls, including the aesthetic qualities of Burney Falls, and (3) potential impacts on springs and streams in the vicinity of the Project and on the endangered Shasta Crayfish and other species that may inhabit those springs and streams.

Third, the Project's proposed use of reclaimed water from the Burney Water District will have the added potential benefit of improving the quality of groundwater in the Burney Basin. The Burney Water District currently discharges treated wastewater to percolation ponds, where it filters into the aquifer. By sending this treated wastewater to the Project for use in its cooling system, the wastewater will be consumed, and then distilled and recycled by the crystallizer, with any remaining solid waste to be disposed of off-site in the appropriate landfills. In this way, the salts and other dissolved solids that are found in the Burney Water District wastewater no longer will percolate into the aquifer.

Finally, the installation of a crystallizer that eliminates all discharge of wastewater from the Project will have the added benefit of avoiding any potential impact on biological

resources, including waterfowl and other wildlife, that may have resulted from the proposed evaporation ponds.

(b) Air Quality.

CURE also raised several issues concerning the emission limits that were included in the Preliminary Determination of Company ("PDOC") that was issued for the Project in January of this year by the Shasta County Air Quality Management District ("SCAQMD"). CURE advocated lowering the emission limits for carbon monoxide (CO) and ammonia slip from the limit of 10 ppm that was proposed for each pollutant in the PDOC. In response to CURE's comments and suggestions, Three Mountain Power agreed to accept lower emission rates for CO and ammonia slip. On June 8, 2000, Three Mountain Power sent a letter to R. Michael Kussow, the Air Pollution Control Officer for the SCAQMD, informing the SCAQMD that Three Mountain Power would accept an emission rate of 4.0 ppm for CO and an ammonia slip limit of 5.0 ppm. These lower emission rates for CO and ammonia slip were included in the Final Determination of Compliance and Authority to Construct/Prevention of Significant Deterioration permit that was issued by the SCAQMD on June 9, 2000. The emission rate for CO is lower than that of any merchant power plant previously permitted in California. The ammonia slip rate is as low as the lowest rate of any merchant power plant previously permitted in California.

CURE also raised concerns about the Project's emissions of nitrogen oxides (NOx). To address these concerns, Three Mountain Power will install a Selective Catalytic Reduction (SCR) system that is designed to meet a NOx emission limit of no more than 2.0 ppm, based on a 1-hour rolling average (the "Demonstration Limit"), and guaranteed by the SCR vendor to meet the Demonstration Limit, to the extent that the SCR vendor will provide such a guarantee to Three Mountain Power. Three Mountain Power will install, operate, and maintain the SCR system in a manner designed to achieve the Demonstration Limit, and in conformance with the SCR vendor's installation, operation, and maintenance procedures. For a period of three years commencing with

commercial operations of the Project, Three Mountain Power will conduct a demonstration program with the SCAQMD to determine whether Three Mountain Power is able to reliably and continuously operate and maintain the Project in conformance with the Demonstration Limit. Upon conclusion of this three-year demonstration program, if the SCAQMD determines that Three Mountain Power can reliably and continuously operate and maintain the Project in conformance with the Demonstration Limit, Three Mountain Power will accept the Demonstration Limit as the NOx emission limit in the Project's Permit to Operate.

(c) Other Environmental Improvements.

In addition to the foregoing, Three Mountain Power previously announced other environmental improvements to the Project in response to concerns raised by the CEC Staff, CURE and other intervenors. When Three Mountain Power initially described its proposal to offset the Project's emissions of PM_{10} by paving a portion of unpaved road in the Burney area, concern was expressed by Staff, CURE and other intervenors that paving roads may not provide adequate PM_{10} offsets during the winter months, when PM_{10} concentrations are highest in the Burney area due to emissions from wood-burning stoves and other heating devices. Three Mountain Power agreed to offset the Project's PM_{10} emissions during the winter months by funding a voluntary wood stove replacement program that will provide strong incentives for local residents and businesses to replace inefficient stoves with clean-burning EPA-certified stoves. CURE fully supports this voluntary wood stove replacement program as an effective means of addressing local air quality impacts and agrees that, if local residents and businesses participate in the program, it will offset the Project's emissions of PM_{10} during the winter months and potentially improve air quality in the Burney area.

III. Next Steps for Implementing the Mitigation Measures

Having reached an agreement with CURE regarding these mitigation measures, Three Mountain Power is now in the process of preparing a detailed mitigation package that implements these measures. Three Mountain Power expects to complete and submit

this detailed mitigation package by late July or early August. Three Mountain Power also is incorporating these mitigation measures into the Biological Assessment that is being prepared to initiate the consultation process that will be conducted for the Project by the U.S. Environmental Protection Agency ("USEPA") and the U.S. Fish and Wildlife Service ("USFWS") pursuant to Section 7 of the federal Endangered Species Act. Three Mountain Power will submit the Biological Assessment to USEPA, which will forward it to the USFWS in order to initiate the Section 7 consultation. Importantly, the substantial reduction in the Project's use of new fresh groundwater, and the resultant elimination of potential significant impacts on the endangered Shasta Crayfish and other aquatic biota, should expedite and simplify the Section 7 consultation process considerably.

In recommending the approval of these mitigation measures, Three Mountain Power and CURE recognize that the California Regional Water Quality Control Board – Central Valley Region ("RWQCB") is currently considering the Report of Waste Discharge ("ROWD") that was submitted by Three Mountain Power requesting approval of the previously proposed wastewater discharge plan, evaporation ponds, and other related matters. Because the mitigation measures eliminate any wastewater discharge from the Project, concurrently with the filing of this joint mitigation proposal, Three Mountain Power will notify the RWQCB that the ROWD is being withdrawn. Accordingly, the Project no longer will be subject to the jurisdiction of the RWQCB.

IV. Conclusion

As discussed above, Three Mountain Power and CURE are confident that the mitigation measures that Three Mountain Power has agreed to implement will cause the Project to conform to applicable LORS and will reduce potential impacts associated with the Project to less than significant levels. With these mitigation measures in place, Three Mountain Power and CURE agree that the Project will be a substantial asset to Burney, Johnson Park and the Intermountain area. Importantly, the Project also will provide the State of California with an environmentally sound source of needed additional generating

capacity. For all of these reasons, the Project, with the mitigation measures described above, should be certified by the Commission at the earliest possible date.

Respectfully submitted,

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