

COMMENT LETTERS RECEIVED ON THE INITIAL STUDY

Comment Letter From

Date

- A. Adams Broadwell Joseph & Cardozo
- B. Clark & Associates

October 13, 2020
October 12, 2020

A. Adams Broadwell Joseph & Cardozo (dated October 13, 2020)

Comment A.1: On behalf of Santa Clara Citizens for Sensible Industry (“Santa Clara Citizens”), we submit these comments on the Initial Study/Mitigated Negative Declaration (“IS/MND”), prepared pursuant to the California Environmental Quality Act (“CEQA”) by the City of Santa Clara (“City”) for the 1111 Comstock Data Center Project (“Project”), proposed by Prime Data Centers (“Applicant”). The Project proposes to demolish an existing 23,765-square-foot industrial building and construct a four-story, 121,170-square-foot data center building on the 1.38-acre project site (APN 224-08-092). The data center building would house computer servers designed to provide 10 megawatts (“MW”) of information technology power; backup generators; underground fuel storage containers; and mechanical cooling equipment on the building’s roof. The site, zoned as Light Industrial with a General Plan designation of Low Intensity Office/R&D, is located north of Comstock Street, east of Kenneth Street, south of Bayshore Freeway, and west of Lafayette Street within the City of Santa Clara.

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

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

These comments were prepared with the assistance of James J.J. Clark, Ph.D. of Clark & Associates Environmental Consulting, Inc. Dr. Clark’s comments and curricula vitae are attached to this letter as Attachment A. For the reasons discussed herein, and in the attached expert comments, Santa Clara Citizens urges the City to remedy the deficiencies in the IS/MND by preparing a legally adequate environmental impact report (“EIR”) pursuant to CEQA.

I. STATEMENT OF INTEREST

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

Since its founding in 1997, CURE has been committed to building a strong economy and a healthier environment. Its members help solve the State’s energy problems by building, maintaining, and operating conventional and renewable energy power plants and transmission facilities. CURE

members have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Individual members live, work, recreate, and raise their families in Santa Clara. They would be directly affected by the Project's environmental and health and safety impacts. Its members may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.

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

Santa Clara Citizens and its members are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits such as decent wages and benefits. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City and the surrounding region, and by making it less desirable for businesses to locate and people to live and recreate in the City, including in the vicinity of the Project. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities. Santa Clara Citizens' members therefore have a direct interest in enforcing environmental laws that minimize the adverse impacts of projects that would otherwise degrade the environment. CEQA provides a balancing process whereby economic benefits are weighted against significant impacts to the environment. It is for these purposes that we offer these comments.

II. LEGAL BACKGROUND

A. CEQA

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

In addition, public agencies must adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts and describe those mitigation measures in the EIR. A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. "Feasible" means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.

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

B. An EIR is Required

The EIR is the very heart of CEQA. A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact. “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.” An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”

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

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

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR. In short, when “expert opinions clash, an EIR should be done.” “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.” In the context of reviewing a mitigated negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.” Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”

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

Response A.1: The preceding comment provides an overview of basic CEQA requirements and makes no specific claims requiring a detailed substantive response. As discussed in the detailed responses below, the comment letter does not present substantial evidence supporting a fair argument that the project would result in significant unavoidable environmental impacts. Therefore, an EIR is not required for the project.

Comment A.2: III. THE CITY FAILED TO PROVIDE THE DOCUMENTS REFERENCED IN THE IS/MND FOR THE ENTIRE COMMENT PERIOD

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

CEQA and the CEQA Guidelines require that “all documents referenced” and “all documents incorporated by reference” in a negative declaration shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period. The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment. It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.

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

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

Response A.2: The comment misrepresents the law and the facts. CEQA Guidelines Section 15072(g)(4) previously required that the City notify the public of the following for the review period:

“The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) **and all documents referenced** in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency’s normal working hours.”

But, as revised on December 28, 2018, Guideline 15072(g)(4) reads as follows:

“The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) **and all documents incorporated by reference** in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.”

Under the prior regulation, the City had to provide the location of all documents “referenced” in an MND. Under the newer (2018) regulation, the City only has to provide the location of documents “incorporated by reference”, not all documents referenced. The assertion that all referenced documents must be made available “during the entire comment period” is no longer an accurate statement of the law.

For the 1111 Comstock Project, the only documents incorporated by reference are the appendices. Initial Study, page iii (“All appendices are incorporated by this reference into this document. No other documents are incorporated by reference.”). The initial study, MND, and all of the appendices were available on the City’s webpage and at City Hall for the entire comment period. In addition, a website address was listed for most of the documents referenced in the initial study and MND (see Initial Study, pages 146 to 150). The only two documents “referenced” that were not available on the web (two short emails) were emailed to the Commenter. As the City has been in full compliance with CEQA for the entire comment period, no extension of time was warranted.

Comment A.3: IV. THE IS/MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR “set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.” Similarly, an IS/MND must present a complete and accurate description of the project under consideration. “The scope of the environmental review conducted for the initial study must include the entire project. [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.” A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its

environmental cost, consider mitigation measures, assess the advantage of terminating the proposal... and weigh other alternatives in the balance.”

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

Response A.3: A thorough project description is included in Section 3.0 of the IS. Regarding the specific project components mentioned in the comment, the project description discusses the demolition of existing improvements on the site, the duration of construction, the number of generators and their power generating capacities, and the generator testing schedule. The project description provides adequate detail to evaluate the impacts of the project. Where additional project details were relied upon for technical analyses (i.e., specific assumptions regarding equipment used during demolition and construction activities, rooftop cooling equipment, etc.), that information is included in the impact discussions in the IS and/or in the appendices to the IS containing technical reports. The comment fails to acknowledge the presence of this information in the IS and does not provide specificity as to how the information provided in the IS does not satisfy the public’s need for a complete description of the project.

Comment A.4: V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS

As noted above, under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration. An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. Substantial evidence can be provided by technical experts or members of the public. “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”

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

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

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

The Project includes six 3,000-kW and one 500-kW backup diesel generators that the City assumed would run 50 hours per year, which is the Bay Area Air Quality Management District's ("BAAQMD") stationary source rule's maximum allowable run time. The IS/MND notes that emergency situations, including power failures, as well as private utility work to restore services and protect property from damage, are exempt from the limits in BAAQMD's rules and that the City did not calculate or analyze emissions beyond the 50 hours.

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

Response A.4: The comment's reference to PG&E and San Jose Clean Energy is misguided, neither would serve the project and therefore are irrelevant. CEQA does not require evaluation of emergency conditions, as that involves substantial speculation. The IS appropriately focused on the reasonably foreseeable operations of the proposed facility, and CEQA does not require lead agencies to attempt to evaluate conditions under future emergency situations, including power outages. As described in project description in the IS, the proposed emergency backup generators would each be tested once per month for up to one hour, or 12 hours per generator per year. Per direction from BAAQMD, only emissions from routine testing and maintenance, not emissions from potential emergency operations, were considered in the analysis. The procedure is in accordance with BAAQMD Regulation 2, Rule 5 and the number of non-emergency operation hours per year is limited to 50 hours per the Airborne Toxic Control Measure for Stationary Toxic Compression Ignition Engines (Section 93115, Title 17 CCR). The District's procedure for permitting emergency generators is to consider operation of the generators for up to 50 hours per year. For purposes of estimating emissions and potential air quality impacts from the engines in the IS, it was assumed that each engine could be operated for 50 hours per year (maximum operation hours allowed by the State's Air Toxic Control Measure and BAAQMD for testing and maintenance). By evaluating emissions of the maximum allowed 50 hours of operation per year instead of the 12 hours per year proposed by the project, the IS overestimates the project's emissions. This represents a conservative maximum impact scenario based on the allowed operation per CARB and BAAQMD permit conditions.

To date, Public Safety Power Shutoff (PSPS) events have not resulted in outages within Silicon Valley Power's (SVP) service area. Based on SVP data, over the last 10 years there were 31 outages on its 60kV system (to which the proposed data center would connect), only four of which resulted in customers being without power. This means that in 27 of these outages the redundant design of the system prevented

customers from being without power, meaning data centers would not have isolated from the grid and would not have relied on their back-up generators. Only two outages from 2009 to 2019 affected data centers in the SVP service territory. One approximately 7.5-hour outage on May 28, 2016, which was the result of two contingencies (a balloon and a breaker failure), affected two data centers. Another 12-minute outage on December 2, 2016 affected four data centers. SVP's root cause analysis of this outage resulted in changes in maintenance procedures to ensure that breakers are reset before power is restored to a portion of the system that was down for maintenance. Outages have been extremely rare, and the consequences or effects on data centers, almost negligible.¹

Even if an outage were to occur at the project site, the longest recorded outage in the last 10 years lasted roughly 7.5 hours. As described previously, each generator would operate 12 hours per year for routine testing and maintenance. An additional 7.5 hours of operation per generator, such as would occur if the project experienced an outage equivalent to the worst outage in the last 10 years, would still be below the 50 hours of operation analyzed in the IS. For these reasons, evaluation of up to 50 hours of annual operation is a reasonable, conservative approach that tends to overestimate the project's actual operation, and to assume more than 50 hours of annual operation requires speculation. Therefore Dr. Clark's contention that more than 50 hours of annual operation should be the basis for the IS's analysis is not based on any substantial evidence about the actual history of outages within the SVP service area, and does not constitute a fair argument that requires preparation of an EIR. Expert opinion that is not based on facts is not substantial evidence supporting a fair argument. Additionally, CEQA does not require analysis of emergency events, nor worst-case events that may never occur, or very rarely over a project's lifespan. The focus on emissions generated by typical project operations under normal conditions in the IS is, therefore, appropriate for the analysis of air quality impacts.

Comment A.5: B. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate the Project's Potentially Significant Public Health Impacts

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

The IS/MND's Air Quality Assessment erroneously states that the "closest sensitive receptors to the proposed project site are existing residences about 3,315 feet north of the project site ..." The Granada Islamic School is much closer— 1,700 feet—to the Project site.

¹ California Energy Commission. Mission College Data Center Initial Study and Proposed Negative Declaration. April 2020. Available at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05>

Response A.5: The IS states on pages 30 and 36 that the Granada Islamic School is the closest sensitive receptor to the project site, and so this comment is incorrect. Further, as discussed in prior Response A.4, the IS was not required to evaluate the use of generators beyond 50 hours per year, which is already a conservative overestimation of the generators' expected annual usage. Therefore, the IS did adequately disclose, analyze, and mitigate the project's health risk impacts.

Comment A.6: Potential health impacts from operation of the Project's generators were evaluated using air quality dispersion modeling and applying BAAQMD recommended health impact calculation methods. Though the IS/MND states that "[t]he maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million," it is unclear where those numbers came from. Nothing in the Assessment indicates whether the evaluations of health impacts were actually performed at the Granada Islamic School or at the residences further away. The Assessment's initial erroneous assumption that the closest sensitive receptors were the residences more than 3,000 feet from the Project site does not appear to have been corrected during calculations of health risks, as Figure 2 in the Assessment does not include the Granada Islamic School in its display of sensitive receptors. As asserted by Dr. Clark, such an oversight would significantly alter the assumptions and conclusions of the IS/MND. The City must re-analyze the Project's impacts in an EIR.

Response A.6: This comment contradicts the prior Comment A.5 by acknowledging the IS correctly identifies the Granada Islamic School is the closest sensitive receptor. BAAQMD recommends calculating health risks for sensitive receptors within 1,000 feet of a proposed project site. As stated in the BAAQMD Guidelines: "For assessing community risks and hazards, a 1,000 foot radius is recommended around the project property boundary. BAAQMD recommends that any proposed project that includes the siting of a new source or receptor assess associated impacts within 1,000 feet..."² To be conservative, the Air Quality technical report included as Appendix A to the IS calculated health risks at the nearest residences, even though they are well over 1,000 feet from the site. The results showed health risks well below relevant thresholds. Subsequent to completion of the Air Quality technical analysis, the air quality consultant completed additional calculations of health risks at the Granada Public School even though it is also located over 1,000 feet from the site. Using the same modeling methodology as was used for the residential receptors, the cancer risk for a nine-year school child exposure assuming 12 hours/day for 250 days per year was calculated and determined to be 0.02 per million, which is well below (by a factor of 500 times) the residential risk of 10 cases per million. The conclusion in the IS that the project would not result in significant health risks is valid and supported by substantial evidence.³ Nothing in the comment or in Dr. Clark's assertions provides substantial evidence that the project's health risk impacts would be 500 times higher

² BAAQMD. CEQA Guidelines. May 2017.

³ James Reyff, Illingworth & Rodkin, Inc. Personal Communication. September 1, 2020.

than forecast in the IS and, therefore, exceed the BAAQMD health risk thresholds used in the IS.

Comment A.7: As required by CEQA, the City must prepare a site-specific baseline health risk assessment (“HRA”) that calculates the excess incremental lifetime risk for all of the nearby receptors. As Dr. Clark points out, “[t]he City’s emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation.”

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. It has been linked to a range of serious health problems, including an increase in respiratory disease, lung damage, cancer, and premature death. Dr. Clark asserts that, given the Project’s proximity to sensitive receptors and the nature of the TACs emitted, an HRA, prepared in accordance with the Office of Environmental Health and Hazard Assessment and analyzing the Project’s potentially significant public health impacts from TACs emitted from the diesel particulate matter, is essential.

Response A.7: An HRA was completed for the project and is included in Appendix A to the IS. The results of the HRA are summarized on pages 36-37 of the IS. The HRA used the 2015 Office of Environmental Health and Hazard Assessment (OEHHA) risk assessment guidelines and California Air Resources Board (CARB) guidance. Additionally, BAAQMD has adopted recommended procedures for applying the newest OEHHA guidelines as part of Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. Exposure parameters from the OEHHA guidelines and the recent BAAQMD HRA Guidelines were used in HRA. Therefore, the IS has appropriately modeled and disclosed the health risk presented by the project to surrounding sensitive receptors, and the conclusion that the project would not result in significant health impacts is adequately supported by substantial evidence and no substantial evidence is provided in this comment supporting a fair argument the project would have significant health effects according to OEHHA and CARB guidance.

Comment A.8: C. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Potentially Significant Greenhouse Gas Impacts

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

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

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

The IS/MND indicates that total Project emissions are calculated as 10,323 MTCO₂e/year. The BAAQMD CEQA Guidelines, meanwhile, provide the following thresholds of significance for operational-related GHG emissions for land use development projects: "Compliance with a qualified GHG Reduction Strategy; or annual emissions less than 1,100 MTCO₂e/yr; or 4.6 MTCO₂e/SP/yr (residents + employees)."

Even subtracting from the total emissions the 522 MTCO₂e/year attributed to generators (since stationary sources are subject to different thresholds than nonstationary sources), Project emissions are significant. As stated in BAAQMD's CEQA Guidelines, "[i]f annual emissions of operational-related GHGs exceed [threshold] levels, the proposed project would result in a cumulatively considerable contribution of GHG emissions and a cumulatively significant impact to global climate change."

Response A.8: The analysis of GHG impacts in the IS was completed consistent with the requirements of Section 15064.4(a) of the CEQA Guidelines, which gives the lead agency discretion to determine, in the context of a particular project, whether to:

- (1) Quantify greenhouse gas emissions resulting from a project; and/or
- (2) Rely on a qualitative analysis or performance based standards.

Case law has consistently confirmed that when CEQA provides a lead agency with discretion, a fair argument cannot then be made by arguing the opposite or alternate from what approach or method the lead agency has selected, otherwise the discretion would be meaningless. Therefore, given the City had discretion whether to quantitatively or qualitatively address the project's GHG emissions, and chose the latter, a fair argument cannot now be made on the basis of the failure to apply a quantitative threshold, given that would render moot the City's discretion to not quantify GHG emissions at all. The IS quantified the project's estimated GHG emissions to disclose the overall magnitude of emissions for the public and decision-makers benefit, and yet ultimately relied on a qualitative analysis, as permitted by 15064.4(a)(2), to determine that the project would not result in a significant GHG impact. As discussed in the IS, because i) the project would receive electricity from a utility on track to meet the SB 32 2030 GHG emission reduction target, ii) would result in lower emissions (43.5 percent) than the statewide average for an equivalent facility due to SVP's power mix, iii) would include energy efficiency measures to reduce emissions to the extent feasible, and iv) would be consistent with applicable plans and policies adopted to reduce GHG emissions, the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

The comment suggests that the IS should have used the BAAQMD thresholds of 1,100 MTCO₂e/yr or 4.6 MTCO₂e/SP/yr. These thresholds, however, were established to achieve the State's 2020 GHG reduction goal under AB 32 and are no longer applicable to development projects that would become operational after 2020. BAAQMD recently confirmed that these thresholds should no longer be used to determine CEQA impacts for development projects.⁴ Additionally, as explained above, the City has discretion whether to apply a quantitative GHG threshold at all, and in this case, determined a qualitative approach was the most appropriate basis to evaluate the project's GHG emissions.

Comment A.9: 2. Compliance with Plans and Policies Does Not Establish that the Project's GHG Emissions Would Be Less Than Significant

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

As stated above, the Project's total operational emissions amount to 10,323 MTCO₂e annually-significantly higher than the 1,100 MTCO₂e/year threshold established by BAAQMD. The IS/MND fails to describe how this might be abated through the Project's compliance with GHG reduction strategies.

Response A.9: Please refer to Response A.8. The BAAQMD threshold referenced in the comment is no longer relevant or recommended for use by BAAQMD. Further, as noted above in Response A.8, a fair argument cannot be made based on a numeric threshold when CEQA allows a lead agency discretion whether to employ a quantitative threshold or qualitative analysis, and in this case the City elected the latter approach.

Comment A.10: Furthermore, the IS/MND relies on obtaining the status of less-than- significant for the Project's emissions from a plan that is set to expire before the Project is implemented. The City's Climate Action Plan, adopted in 2013, contains projected emissions and measures designed to help the City meet statewide 2020 goals established by AB 32. As acknowledged in the IS/MND, "consistency with the CAP cannot be used to determine significance under CEQA."

Response A.10: Although the IS discusses the project's consistency with the City's Climate Action Plan (CAP), it does not rely on the project's consistency with the CAP to determine the project's GHG impact under CEQA. As stated on page 67 of the IS: "Because the project would not become operational prior to the end of 2020, consistency with the CAP cannot be used to determine significance under CEQA."

⁴ California Energy Commission. Mission College Final Decision. August 21, 2020. Available at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05>

The project, however, would still be required to be consistent with the requirements of the CAP, and implementation of required Climate Action Plan measures would reduce GHG emissions from the project.” As stated in Response A.8, and discussed in detail in the IS, because i) the project would receive electricity from a utility on track to meet the SB 32 2030 GHG emission reduction target, ii) would result in lower emissions (43.5 percent) than the statewide average for an equivalent facility due to SVP’s power mix, iii) would include energy efficiency measures to reduce emissions to the extent feasible, and iv) would be consistent with applicable plans and policies adopted to reduce GHG emissions, the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

Comment A.11: The IS/MND argues that because electricity—by far the biggest source of the Project’s emissions—is provided by Silicon Valley Power, “a utility on track to meet the 2030 GHG emissions reductions target established by SB 32,” the Project would generate lower emissions than the statewide average for an equivalent facility. Additionally, because the Project would allegedly comply with several applicable City and state plans, including green building and energy efficiency measures, and policies adopted to reduce GHG emissions, the IS/MND concludes that “the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.”

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

Response A.11: As described in the IS, the project would be consistent with plans and policies adopted to achieve the State’s GHG reduction targets. The State’s targets were established to ensure the State’s GHG emissions would not contribute substantially global climate change. The project’s consistency with these plans and policies, therefore, would ensure its contribution to global climate change would not be significant.

As described in Response A.8, the analyses in the IS was completed consistent with the requirements of Section 15064.4 of the CEQA Guidelines, which gives the lead agency discretion to rely on a qualitative analysis to determine a project’s GHG impacts. Additionally, the BAAQMD thresholds referenced in the comment are no longer relevant or recommended for use by BAAQMD. A fair argument cannot be made based on a numeric threshold when CEQA allows a lead agency discretion whether to employ a quantitative threshold or qualitative analysis, and in this case the City elected the latter approach.

Comment A.12: V. CONCLUSION

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

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter. Only by complying with all applicable laws will the City and the public be able to ensure that the Project's environmental impacts are mitigated to less than significant levels.

Response A.12: As discussed in Responses A.1 through A.12, the comment letter does not present substantial evidence supporting a fair argument that the project would result in significant unavoidable environmental impacts. Rather, the various comments rely on speculation or fail to acknowledge the discretion afforded to the City in determining whether to apply a quantitative or qualitative approach to determining the significance of the project's effects. Therefore, an EIR is not required for the project.

B. Clark & Associates (dated October 12, 2020)

Comment B.1: On At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the IS/MND for the above referenced project. The IS/MND was prepared by David J. Powers and Associates, Inc. for the City of Santa Clara Community Development Department.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the project record. If we do not comment on a specific item this does not constitute acceptance of the item.

General Comments:

The City's analysis of the air quality impacts of emissions from the construction and operational phases of the project are unsupported and flawed. The analysis in the IS/MND fails to quantify the total emissions in a meaningful manner in which yearly and daily emissions may be compared to relevant and appropriate standards, fails to address necessary mitigation measures to reduce significant impacts, and makes assertions about the impacts to the surrounding communities without a clear and reproducible methodology. Several mitigation measures outlined in the DEIR are merely aspirational and may not effectively reduce emissions from the project. These flaws are detailed below, making the conclusions in the IS/MND unsupported. The City must update their analysis as an Environmental Impact Report (EIR) to correct the unsupported conclusions presented in the IS/MND.

Response B.1: As discussed in the detailed responses below, the comment letter does not present substantial evidence supporting a fair argument that the project would result in significant unavoidable environmental impacts. Therefore, an EIR is not required for the project.

Comment B.2: Project Description

According to the IS/MND, the approximately 1.38-acre project site, located at 1111 Comstock Street (APN 224-08-092) in Santa Clara, is currently developed with a one-story, 23,765 square foot (sf) industrial building and a paved parking lot. The site is zoned as Light Industrial, and has a General Plan designation of Low Intensity Office/R&D. The project proposes to demolish the existing improvements on the site to construct a four-story, 121,170 sf data center building. The data center building would house computer servers for private clients in a secure and environmentally controlled structure and would be designed to provide 10 megawatts (MW) of information technology (IT) power. Mechanical equipment for building cooling would be located on the roof. Standby backup emergency electrical generators would be installed to provide for an uninterrupted power supply. Six 3,000-KW diesel-fueled engine generators and one 500-kW diesel-fueled engine generator would be located within a generator room on the first floor of the building. Fuel for the generators would be stored in two 30,000-gallon underground storage tanks which would feed individual 160-gallon daytanks located adjacent to each generator.

The data center building would be approximately 80 feet in height, with parapets extending to a height of 87.5 feet. A metal roof screen would extend to a height of 98 feet to shield mechanical equipment. The building would be located in the southern, central portion of the site and set back

approximately 15 feet from the southern property line on Comstock Street, 45 feet from the northern property line, 50 feet from the western property line, and 25 feet from the eastern property line.

Access to the site would be provided by a primary driveway on Comstock Street. The primary driveway would be approximately 26 feet wide and would be located in the southwestern portion of the site in the same location as the existing driveway entrance. A secondary driveway entrance for emergency access would be constructed on Comstock Street in the southeastern portion of the site and would be approximately 22 feet wide. The emergency driveway would wrap around the perimeter of the building and would include a curb and handicap ramp. The project would provide approximately 24 parking spaces, including one accessible space and two clean air/vanpool/EV spaces, located along the western side of the building.

Generator Testing Schedule

The seven emergency backup generators would each be tested once per month for up to one hour. Tests would be conducted with no load for 11 months out of the year, and at with full load one month out of the year.

Existing Project Site

The existing improvements on the site would be demolished to allow for construction of the project. Demolition and construction activities would last approximately 12 months. Excavation for utilities would extend to depths of up to eight feet. Roughly 860 cubic yards of soil would be removed from the site as a result of excavation activities. Augered foundation piles would extend to a depth of 80 feet. The site would be graded to direct stormwater flows towards the biotreatment area located along the western boundary of the site.

The project proposes to remove approximately 24 existing trees on-site and plant five replacement trees. New landscaping consisting of trees, shrubs, sedge, perennials, bulbs, annuals and groundcover would be installed in the northeastern, northwestern, and southwestern corners of the site, as well as the southern perimeter of the site, and the western side of the proposed building.

The project proposes to construct a stormwater treatment area between the west side of the building and the parking lot. The existing storm drain line on the site would be removed and a new 12-inch storm drain line would connect the treatment area to the existing storm drain line in Comstock Street. Pedestrian walkways would be composed of permeable pavers. The site would have a total of approximately 28,337 sf of pervious surface, which would be an increase compared to existing condition.

Specific Comments:

1. The IS/MND Fails To Model The Diesel Particulate Matter (DPM) Concentration At the Closest Sensitive Receptor To The Site

According to the IS/MND the project will be a source of air pollutant emissions during construction and operation, with the main source being backup generator testing and maintenance. The diesel-fueled generators emit diesel particulate matter (DPM), which is a known toxic air contaminant

(TAC). The generators are also a source of PM_{2.5}, which is also known to induce adverse health effects.

Based on the assumption that each of the six 3000-kW generators and one 500-kW generator would operate up to 50 hours a year during testing and maintenance, the City calculated that approximately 49 lbs of DPM per year would be emitted. Dispersion modeling in the IS/MND attempts to define the concentration of DPM to which sensitive receptors would be exposed over time.

The IS/MND defines Sensitive Receptors as persons who are most likely to be affected by air pollution: infants, children under 18, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, churches and places of assembly, and parks. According to the IS/MND the closest sensitive receptors to the proposed project site are the Granada Islamic School, located about 1,700 feet (approximately 536 meters) northwest of the project site; existing residences about 3,315 feet north of the project site; and additional residences about 4,330 and 4,590 feet south of the project site. The maximum average annual off-site DPM concentrations were used to calculate potential increased cancer risks from the project. Average annual DPM concentrations were used as being representative of long-term (30-year) exposures for calculation of cancer risks.

According to the Proponent, the maximum modeled annual DPM and PM_{2.5} concentration from operation of the generators at the data center was 0.0001 µg/m³ at several residential receptors north of the project site on Lafayette Street. Concentrations at all other existing residential locations would be lower than the maximum concentration.

Based on the maximum modeled DPM concentrations that assume operation for 50 hours per year per generator, maximum increased cancer risks and non-cancer health impacts were calculated using BAAQMD recommended methods. The maximum increased cancer risk at the closest sensitive receptor, Granada Islamic School, would be 0.02 in one million, and the maximum increased cancer risk at the closest residence would be 0.1 in one million. These conclusions are not supported by the data presented within the report.

A review of Appendix A to the IS/MND, the Air Quality and GHG Emissions Assessment prepared by the Illingworth and Rodkin, Inc., shows that the closest sensitive receptor (Granada Islamic School) and all of the closest worker receptors are not included in the AERMOD model of the emissions from the site. The report within Appendix A is originally dated November 11, 2019 and was updated May 19, 2020. On pages 6 and 15 of the Illingworth and Rodkin report, it states that the closest sensitive receptors to the proposed project site and additional residences are about 4,330 and 4,590 feet south of the project site. DPM and PM_{2.5} concentrations were calculated at the locations of existing residences in the project area. The report does not indicate if any other receptors are included in the analysis. Figure 2 of Appendix A clearly indicates the nearest sensitive receptors identified by the proponent. What the figure does not identify is the location of the Granada Islamic School.

The figure above clearly indicates the location of the Granada Islamic School, which is much closer than the residences indicated by the yellow crosses on the figures above. This oversight significantly

alters the assumptions and conclusions contained within the IS/MND. The City must re-analyze the project impacts and present them in an EIR for the site.

Response B.2: Please refer to Responses A.5 and A.6, above. The Granada Islamic School was identified as a sensitive receptor in the IS, and the project's impacts to the School were evaluated and determined to be less than significant.

Comment B.3: 2. The IS/MND's Analysis of Risk Fails to Meet Its Obligation to Calculate the Risk from Emissions to the Maximum Exposed Individual (MEI).

According to the BAAQMD CEQA Guidelines, emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 10.0 in one million, assuming a 70-year lifetime exposure. The Maximum Exposed Individual (MEI) is normally defined as an individual who is present at the point of maximum impact (PMI) as outlined in the Office of Environmental Health and Hazard Assessment's (OEHHA's) Air Toxic Hot Spots Program Risk Assessment Guidelines⁶ (Toxic Hot Spots). Under Section 4.7.1 of the OEHHA Guidance, the modeling analysis should contain a network of receptor points with sufficient detail (in number and density) to permit the estimation of the maximum concentrations. Locations that must be identified include:

- The maximum estimated off-site impact or point of maximum impact (PMI),
- The maximum exposed individual at an existing residential receptor (MEIR),
- The maximum exposed individual at an existing occupational worker receptor (MEIW).

The modeling performed for the IS/MND fails to identify the PMI and the MEIW. This oversight significantly alters the assumptions and conclusions contained within the IS/MND. The City must re-analyze the project impacts and present them in an EIR for the site.

Response B.3: The comment refers to OEHHA Air Toxic Hot Spots Program Risk Assessment Guidelines for conducting health risk assessments. BAAQMD, like other air districts and CARB, uses these guidelines to develop their procedures for conducting health risk assessments (described under Regulation 2, Rule 5). BAAQMD's CEQA Guidelines identify thresholds for health risk assessments. These thresholds only apply to sensitive receptors. The City, as the lead agency, uses BAAQMD's guidance for CEQA evaluation. In accordance with the BAAQMD CEQA guidelines, the IS evaluated the project's impact at the MEI, which is the nearest residence to the project site.

For the purposes of the CEQA evaluation of the project, the PMI and MEIW referenced in the comment are not required to be identified. During the permitting process of sources such as the project's diesel engines, BAAQMD addresses the various types of receptors that the OEHHA identifies. BAAQMD will not issue a permit to construct or operate these engines if they find that health risks at these receptors are unacceptable.

Comment B.4: 3. The Proposed Emission Controls Assumes that Testing and Maintenance Operations Can Be Performed in Approximately One-Fourth of the Normally Required Time

Emissions from combustion engines for stationary uses, including diesel generators, are generally regulated by the U.S. Environmental Protection Agency (U.S. EPA) and the California Air Resources Board (CARB). Engine emission standards are promulgated in a tiered system that designates maximum pollutant emissions. Unlike Off-Road Diesel-Powered Engines for Mobile Sources (currently utilizing Tier 4 Interim and Final technology which reduce PM_{2.5} emissions by 90% and more) all new generators have U.S. EPA Tier II rating and need to be outfitted with diesel particulate filters. Diesel-powered generator engines should be fueled using ultra-low sulfur diesel fuel with a maximum sulfur content of 15 parts per million (ppm). According to the City, all generator engines would be equipped with California Air Resources Board (CARB) Level 3 verified diesel particulate filters (DPFs) with a minimum control efficiency of 85 percent removal of particulate matter.

In the absence of stricter emission control devices, the City is proposing to reduce the number of hours of potential operation for testing and maintenance on an annual basis. Rather than assuming testing would occur for up to 50 hours per year for each generator, the City is assuming that the same types of maintenance and testing that needs to be performed to ensure the operations of the generators can be accomplished in 24% of the time generally assumed to be required (12 hours instead of 50 hours). Given the complexity of the equipment, reducing the maintenance and testing period by 76% seems like an illogical and unsustainable mitigation measure. The proponents must evaluate the emissions again considering the required maintenance period and include all of the maintenance for the whole campus in this evaluation.

Response B.4: As described in project description in the IS, the proposed emergency backup generators would each be tested once per month for up to one hour, or 12 hours per generator per year. This is the testing and maintenance schedule proposed by the project applicant. For purposes of estimating emissions and potential air quality impacts from the engines in the IS, it was assumed that each engine could be operated for 50 hours per year (maximum operation hours allowed by the State's Air Toxic Control Measure and BAAQMD for testing and maintenance). By evaluating emissions of the maximum allowed 50 hours of operation per year instead of the 12 hours per year proposed by the project, the IS overestimates the project's emissions. This represents a conservative maximum impact scenario based on the allowed operation per CARB and BAAQMD permit conditions.

Comment B.5: 4. The City Must Prepare A Site-Specific Baseline Health Risk Assessment Using Methods from the Office of Environmental Health and Hazard Assessment to Analyze Diesel Particulate Matter Emissions

The City has failed in its obligation to perform a site-specific health risk assessment (HRA) for the project that calculates the excess incremental lifetime risk for all of the nearby receptors, as required by CEQA. The City's emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation. Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term

(acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death. Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction. DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM_{2.5} and PM₁₀.

The IS/MND fails to include a site-specific analysis of the Project's construction or operational health risk posed by DPM emissions. Given the proximity of sensitive receptors to the site and the nature of the TACs emitted, a health risk assessment, prepared in accordance with OEHHA guidance for the baseline, construction, and future years of the project, is essential.

Response B.5: An HRA was completed for the project and is included in Appendix A to the IS. The results of the HRA are summarized on pages 36-37 of the IS. The HRA used the 2015 Office of Environmental Health and Hazard Assessment (OEHHA) risk assessment guidelines and California Air Resources Board (CARB) guidance. Additionally, BAAQMD has adopted recommended procedures for applying the newest OEHHA guidelines as part of Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. Exposure parameters from the OEHHA guidelines and the recent BAAQMD HRA Guidelines were used in HRA. Therefore, the IS has appropriately modeled and disclosed the health risk presented by the project to surrounding sensitive receptors, and the conclusion that the project would not result in significant health impacts is adequately supported by substantial evidence and no substantial evidence is provided in this comment supporting a fair argument the project would have significant health effects according to OEHHA and CARB guidance.

Comment B.6: 5. The IS/MND's Greenhouse Gas Emissions Analysis Is Unsupportable and Flawed

In its analysis of the Project's greenhouse gas (GHG) emissions the City ignores the 1,100 MT CO₂e- per-year threshold contained in BAAQMD's CEQA Air Quality Analysis; the IS/MND indicates, however, that operational emissions from area sources, water, solid waste and energy demand total 10,323 MT CO₂e per year— higher than the 10,000 MT CO₂e per year threshold for new stationary sources. The cumulative estimate of 10,323 MT CO₂e per year makes the project a significant emitter of GHGs based on BAAQMD's guidance. Since the City's Climate Action Plan (CAP) does not have quantitative thresholds for GHG emissions, the BAAQMD's threshold will remain in effect. The City must revise its analysis and present a correct assessment of total GHG

emissions from the project as significant. The results should be presented in an EIR along with mitigation measures to correct the impacts.

Response B.6: The comment suggests that the IS should have used the BAAQMD threshold of 1,100 MTCO₂e/yr. This threshold, however, was established to achieve the State's 2020 GHG reduction goal under AB 32 and are no longer applicable to development projects that would become operational after 2020. BAAQMD recently confirmed that these thresholds should no longer be used to determine CEQA impacts for development projects.⁵ The comment also suggests the IS should have compared the project's overall GHG emissions to BAAQMD's 10,000 MTCO₂e/yr threshold for stationary sources. This threshold would only be applicable to stationary sources such as the project's diesel generators (which are estimated to emit 522 MTCO₂e/yr), not other components of the project that are not defined as stationary sources, such as the project's electricity use.

The analysis of GHG impacts in the IS was completed consistent with the requirements of Section 15064.4(a) of the CEQA Guidelines, which gives the lead agency discretion to determine, in the context of a particular project, whether to:

- (1) Quantify greenhouse gas emissions resulting from a project; and/or
- (2) Rely on a qualitative analysis or performance based standards. Case law has consistently confirmed that when CEQA provides a lead agency with discretion, a fair argument cannot then be made by arguing the opposite or alternate from what approach or method the lead agency has selected, otherwise the discretion would be meaningless. Therefore, given the City had discretion whether to quantitatively or qualitatively address the project's GHG emissions, and chose the latter, a fair argument cannot now be made on the basis of the failure to apply a quantitative threshold, given that would render moot the City's discretion to not quantify GHG emissions at all.

The IS quantified the project's estimated GHG emissions to disclose the overall magnitude of emissions for the public and decision-makers benefit, and yet ultimately relied on a qualitative analysis, as permitted by 15064.4(a)(2), to determine that the project would not result in a significant GHG impact. As discussed in the IS, because i) the project would receive electricity from a utility on track to meet the SB 32 2030 GHG emission reduction target, ii) would result in lower emissions (43.5 percent) than the statewide average for an equivalent facility due to SVP's power mix, iii) would include energy efficiency measures to reduce emissions to the extent feasible, and iv) would be consistent with applicable plans and policies adopted to reduce GHG emissions, the project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.

⁵ California Energy Commission. Mission College Final Decision. August 21, 2020. Available at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-05>

Comment B.7: Conclusion

The facts identified and referenced in this comment letter lead me to conclude that the Project could result in significant unmitigated impacts if the air quality analysis is not corrected and the conditions of approval are not binding.

Response B.7: As discussed in Responses B.1 through B.6, the comment letter does not present substantial evidence supporting a fair argument that the project would result in significant unavoidable environmental impacts. Therefore, an EIR is not required for the project.

Appendix A: Comment Letters
