Proposed Mitigated Negative Declaration and SPPE Recommendation

Mission College Data Center Project

19-SPPE-05

1. Proposed Mitigated Negative Declaration

1.1 Project Information

Project: Mission College Data Center
2305 Mission College Boulevard
Santa Clara, California

Applicant: Oppidan Investment Company
Represented by DayZen, LLC
2501 Capitol Avenue, Suite 201
Sacramento, CA 95816

Oppidan Investment Company (Applicant) filed an application with the California Energy Commission (CEC) requesting a Small Power Plant Exemption (SPPE) for the Mission College Backup Generating Facility (MCBGF), which would provide up to 78.1 megawatts (MW) of backup generation to support the Mission College Data Center (MCDC), collectively the "project", in Santa Clara, California.

The CEC is responsible for reviewing, and ultimately approving or denying, all thermal power plants, 50 megawatts (MW) and greater, proposed for construction in California. The SPPE process allows applicants with thermal power plants between 50 and 100 MW to obtain an exemption from the CEC's jurisdiction and proceed with local permitting rather than requiring certification by the CEC. The CEC can grant an exemption if it finds that the proposed facility would not create a substantial adverse impact on the environment or energy resources. Section 25519(c) of the Public Resources Code designates the CEC as the California Environmental Quality Act (CEQA) lead agency, as provided in section 21165 of the Public Resources Code, for all thermal power plants that seek an exemption from the CEC's power plant certification process. CEQA requires the lead agency to consider the whole of the action; therefore, CEC staff has included the construction and operation of the data center in the environmental analysis of the backup generation facility.

1.2 Introduction

Pursuant to CEQA, the CEC staff prepared an Initial Study (IS) for the proposed project to determine if any significant adverse effects on the environment would result from project implementation. The IS utilizes the environmental checklist outlined in Appendix G

of the *CEQA Guidelines*. If the IS for the project indicates that a significant adverse impact could occur, an Environmental Impact Report would be required.

According to Article 6 (Negative Declaration Process) and Section 15070 (Decision to Prepare a Negative Declaration or Mitigated Negative Declaration) of the *CEQA Guidelines*, a public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

1.3 Project Description

The project site is located at 2305 Mission College Boulevard within the City of Santa Clara. The project would include construction of two, three-story data center buildings encompassing a total square footage of 490,000, and a backup generating facility with a generation capacity of up to 78.1 MW to support the need for the MCDC to provide uninterruptible power supply for its tenant's servers. The generation facility would consist of 43, 2.5-MW diesel-fired emergency backup generators, arranged in two generation yards, each designed to serve one of the two data center buildings with backup power and redundant backup power. Project elements would also include switchgear and distribution cabling to interconnect the two generation yards to their respective buildings. Two house power diesel fired generators, each capable of generating 600 kilowatts (kW) to support its respective building phase in an emergency, are also proposed. The MCDC would be supplied electricity by Silicon Valley Power (SVP) through a new distribution substation constructed by Oppidan in the northeast corner of the MCDC site and to be owned and operated by SVP.

1.4 Environmental Determination

The IS was prepared to identify the potential environmental effects resulting from proposed project implementation, and to evaluate the level of significance of these effects. The IS is based on information from the applicant's SPPE application and associated submittals, site visits, data requests and responses, and additional staff research.

Based on the analysis in the IS, staff has determined that all project-related environmental impacts could be reduced to a less than significant level with applicant proposed design measures or the incorporation of feasible mitigation measures. Therefore, adoption of a Mitigated Negative Declaration (MND) will satisfy the requirements of CEQA. In accordance with the criteria in Section 15370 of the *CEQA Guidelines*, the mitigation measures included in this MND are designed to reduce or eliminate the potentially significant environmental impacts described in the IS. Where a measure has been previously incorporated into the project as a specific project design feature, this is noted in the technical sections.

1.5 Project Design Measures

The applicant has incorporated features and best management practices in the project design that are intended to avoid and reduce potential impacts from the project. These project design features are consistent with best practices and existing regulatory requirements. Staff has treated the measures listed below as part of the project being analyzed.

Air Quality

PD AIR-1: The project will implement the following measures identified in the 2018 MND[1] during construction.

Basic Measures:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

1 This is a reference to the 2018 Mitigated Negative Declaration prepared by the City of Santa Clara and included as an appendix to the SPPE application.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Applicable Enhanced Control Measures:

- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- Avoid tracking of visible soil material on to public roadways by employing the following measures if necessary: (1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel and (2) washing truck tires and construction equipment of prior to leaving the site.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Minimizing the idling time of diesel-powered construction equipment to two minutes.

Exhaust Control Measures:

- The project shall develop a plan demonstrating that the off-road equipment (more than 25 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 28 percent NO_x reduction and 70 percent PM reduction compared to the CalEEMod modeled average used in this report, to meet the emission values as summarized in Table 4.3-7 above. Acceptable options for reducing emissions include the use of late

model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. The following are examples of feasible methods:

- All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 2 verifiable diesel emission control devices that altogether achieve a 85 percent reduction in particulate matter exhaust; alternatively (or in combination)
- Use of diesel construction equipment that meets U.S. EPA Tier 4 interim or Tier 4 final emission standards.
- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.

Biological Resources

PD BIO-1: The project will incorporate the following measures to reduce impacts to nesting birds.

- If removal of the trees on-site would take place between January and September, a pre-construction survey for nesting raptors will be conducted by a qualified ornithologist to identify active nesting raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys will be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys will be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area to be disturbed by these activities, and the ornithologist shall, in consultation with the State of California, Department of Fish and Wildlife (CDFW), designate a construction-free buffer zone (typically 250 feet) around the nest until the end of the nesting activity.
- The applicant shall submit a report indicating the result of the survey and any designated buffer zones to the satisfaction of the Director of Planning and Inspection prior to the issuance of a tree removal permit by the City Arborist.

PD BIO-2: The project will incorporate the following measures to reduce impacts to existing trees to be preserved.

- Barricades – Prior to initiation of construction activity, temporary barricades would be installed around all trees in the construction area. Six-foot high, chain link fences would be mounted on steel posts, driven two feet into the ground, at no more than 10-foot spacing. The fences shall enclose the entire area under the drip

line of the trees or as close to the drip line area as practical. These barricades will be placed around individual trees and/or groups of trees.

- Root Pruning (if necessary) – During and upon completion of any trenching/grading operation within a tree's drip line, should any roots greater than one inch in diameter be damaged, broken or severed, root pruning to include flush cutting and sealing of exposed roots should be accomplished under the supervision of a qualified Arborist to minimize root deterioration beyond the soil line within 24 hours.
- Pruning – Pruning of the canopies to include removal of deadwood should be initiated prior to construction operations. Such pruning will provide any necessary construction clearance, will lessen the likelihood or potential for limb breakage, reduce 'windsail' effect and provide an environment suitable for healthy and vigorous growth.
- Fertilization –Fertilization by means of deep root soil injection should be used for trees to be impacted during construction in the spring and summer months.
- Mulch – Mulching with wood chips (maximum depth of three inches) within tree environments should be used to lessen moisture evaporation from soil, protect and encourage adventitious roots and minimize possible soil compaction.

Cultural Resources

PD CUL-1: The following project-specific measures would be implemented during construction to avoid significant impacts to unknown subsurface cultural resources.

- A Secretary of the Interior-qualified archaeologist and a Native American cultural resources monitor shall be on site to monitor grading of native soil once all pavement is removed from the project site. The project applicant shall submit the name and qualifications of the selected archaeologist and Native American Monitor to the Director of Community Development prior to the issuance of a grading permit. Preference in selecting Native American monitors shall be given to Native Americans with:
    - Traditional ties to the area being monitored.
    - Knowledge of local historic and prehistoric Native American village sites.
    - Knowledge and understanding of Health and Safety Code, Section 7050.5 and Public Resources Code, Section 5097.9 et seq.
    - Ability to effectively communicate the requirements of Health and Safety Code, Section 7050.5 and Public Resources Code, Section 5097.9 et seq.
    - Ability to work with law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.
    - Ability to travel to project sites within traditional tribal territory.

- Knowledge and understanding of Title 14, California Code of Regulations, Section 15064.5.
- Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding CEQA mitigation provisions.
- Ability to read a topographical map and be able to locate site and reburial locations for future inclusions in the Native American Heritage Commission's Sacred Lands Inventory.
- Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

After removal of pavement and prior to grading, the archaeologist shall conduct a pedestrian survey over the exposed soils to determine if any surface archaeological manifestations are present.

- After demolition of the existing building and paved parking lot on the site, a qualified archaeologist shall complete mechanical presence/absence testing for archaeological deposits and cultural materials. In the event any prehistoric site indicators are discovered, additional backhoe testing will be conducted to map the aerial extent and depth below the surface of the deposits. In the event prehistoric or historic archaeological deposits are found during presence/absence testing, the significance of the find will be determined. If deemed significant, a Treatment Plan will be prepared and provided to the Director of Community Development. The key elements of a Treatment Plan shall include the following:
  - Identify scope of work and range of subsurface effects (include location map and development plan),
  - Describe the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found),
  - Develop research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information),
  - Detail field strategy used to record, recover, or avoid the finds (photogs, drawings, written records, provenience data maps, soil profiles, excavation techniques, standard archaeological methods) and address research goals.
  - Analytical methods (radiocarbon dating, obsidian studies, bone studies, historic artifacts studies [list categories and methods], packaging methods for artifacts, etc.).
  - Report structure, including a technical and layman's report and an outline of document contents in one year of completion of development (provide a draft for review before a final report),
  - Disposition of the artifacts,

- Appendices: site records, update site records, correspondence, consultation with Native Americans, etc.

The archaeologist will monitor full-time all grading and ground disturbing activities in native soils associated with construction of the proposed project. If the archaeologist and Native American monitor believe that a reduction in monitoring activities is prudent, then a letter report detailing the rationale for making such a reduction and summarizing the monitoring results shall be provided to the Director of Community Development. Department of Recreation 523 forms shall be submitted along with the report for any cultural resources encountered over 50 years old.

- In the event that prehistoric or historic resources are encountered during on-site construction activities, all activity within a 50-foot radius of the find shall be stopped, the Director of Community Development shall be notified, and a Secretary of the Interior-qualified archaeologist shall examine the find and record the site, including field notes, measurements, and photography for a Department of Parks and Recreation 523 Primary Record form. The archaeologist shall make a recommendation regarding eligibility for the California Register of Historical Resources, data recovery, curation, or other appropriate mitigation. Ground disturbance within the 50-foot radius can resume once these steps are taken and the Director of Community Development has concurred with the recommendations. Within 30 days of the completion of construction or cultural resources monitoring, whichever comes first, a report of findings documenting any cultural resource finds, recommendations, data recovery efforts, and other pertinent information gleaned during cultural resources monitoring shall then be submitted to the Director of Community Development. Once finalized, this report shall be submitted to the Northwest Information Center at Sonoma State University.
- Prior to and for the duration of ground disturbance, the project owner shall provide Worker Environmental Awareness Program training to all existing and any new employees. This training should include: a discussion of applicable laws and penalties under the laws; samples or visual aids of artifacts that could be encountered in the project vicinity, including what those artifacts may look like partially buried, or wholly buried and freshly exposed; and instructions to halt work in the vicinity of any potential cultural resources discovery, and notify the city-approved archaeologist and Native American cultural resources monitor.

PD CUL-2: The project proposes to implement the following measure to ensure the project's impacts to human remains are less than significant:

- In the event that human remains are discovered during presence/absence testing or excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or

whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines. All actions taken under this mitigation measure shall comply with Health and Human Safety Code § 7050.5(b).

Geology and Soils

PD GEO-1: In order to ensure the project design conforms to the requirements of a final geotechnical engineering investigation and California and local building standards and codes, the following is proposed as mitigation incorporated into the project. Incorporation will ensure seismic hazards are reduced to less than significant levels.

- To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building redevelopment design and construction at the site shall be completed in conformance with the recommendations of a design-level geotechnical investigation, which will be included in a report to the City. The report shall be reviewed and approved by the City of Santa Clara's Building Division as part of the building permit review and issuance process. The building shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code, as adopted or updated by the City. The project shall be designed to withstand potential geologic hazards identified on the site and the project shall be designed to reduce the risk to life or property to the extent feasible and in compliance with the Building Code.

PD GEO-2: The project proposes to implement the following measures to ensure the project's erosion impacts are less than significant:

- Because this project involves a land disturbance of more than one acre, the project is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity.
- This project will be required to prepare and submit an Erosion Control Plan with the Grading and Drainage Plan for review and approval by the Department of Public Works.
- All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized.
- Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
- Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.

Hazards and Hazardous Materials

PD HAZ-1: The project proposes to implement the following measures which would reduce potentially significant soil and or groundwater impacts to construction workers to a less than significant level.

- Prior to the issuance of grading permits, shallow soil samples shall be taken in areas where soil disturbance is anticipated to determine if contaminated soils with concentrations above established construction/trench worker thresholds may be present due to historical agricultural use and from historical leaks and spills. The soil sampling plan must be reviewed and approved by the Santa Clara Fire Department Fire Prevention and Hazardous Materials Division prior to initiation of work. Once the soil sampling analysis is complete, a report of the findings will be provided to the Director of Community Development and other applicable City staff for review.
- Documentation of the results of the soil sampling shall be submitted to and reviewed by the City of Santa Clara prior to the issuance of a grading permit. Any soil with concentrations above applicable ESLs or hazardous waste limits would be characterized, removed, and disposed of off-site at an appropriate landfill according to all state and federal requirements.
- A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; a summary of the analytical results from soil sampling; preparation of a Health and Safety Plan by an industrial hygienist; protocols for conducting earthwork activities in areas where impacted soil and/or groundwater are present or suspected; worker training requirements, health and safety measures and soil handing procedures shall be described; protocols shall be prepared to characterize/profile soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be implemented; notification procedures if previously undiscovered significantly impacted soil or groundwater is encountered during construction; notification procedures if previously unidentified hazardous materials, hazardous waste, underground storage tanks are encountered during construction; on-site soil reuse guidelines; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage groundwater that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the Santa Clara County Environmental Health Department, the City's Director of Community Development, and/or the Santa Clara Fire Department Fire Prevention and Hazardous Materials Division.
- If contaminated soils are found in concentrations above risk-based thresholds pursuant to the terms of the SMP, remedial actions and/or mitigation measures will be taken to reduce concentrations of contaminants to levels deemed

appropriate by the selected regulatory oversight agency for ongoing site uses. Any contaminated soils found in concentrations above thresholds to be determined in coordination with regulatory agencies shall be either (1) managed or treated in place, if deemed appropriate by the oversight agency or (2) removed and disposed of at an appropriate disposal facility according to California Hazardous Waste Regulations and applicable local, state, and federal laws.

- Sanitary Sewer Sampling and Analysis Plan: Prior to removing or decommissioning the sanitary sewer line on-site, a Sampling and Analysis Plan shall be prepared presenting the protocols for line removal and confirmation sampling. These plans shall be submitted to the Community Development Director for review and approval prior to construction.

Hydrology and Water Quality

PD HYD-1: The project will incorporate the following into the design and these measures should be treated as mitigation incorporated into the project. The following will reduce construction-related water quality impacts:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- All paved access roads, parking areas, and staging areas adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.

Noise

PD NOI-1: The project proposes to implement the following measures to reduce temporary construction noise to less than significant levels.

- The project applicant shall prepare a construction noise control plan, which shall be submitted for review and approval by the Director of Community Development prior to issuance of demolition, grading, and building permits.

This plan shall include, at a minimum, the following measures:

- Construction activities shall be limited to hours between 7:00 a.m. and 6:00 p.m. on weekdays and 9:00 a.m. and 6:00 p.m. on Saturdays. No construction is permitted on Sundays or Holidays.
- Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Unnecessary idling of internal combustion engines should be strictly prohibited.
- Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used to reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.
- A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler,

etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

PD NOI-2: The project proposes to implement one of the following measures, either of which would reduce MCDC operational noise to less than significant levels.

- The project shall include a parapet or screen wall reaching a height of at least 10 feet along the western side of the Phase II building. The parapet or screen will be constructed without any gaps or cracks and have a minimum surface weight of 3 pounds per square foot (such as 1-inch-thick wood, ½-inch laminated glass, masonry block, concrete, or metal one-inch); or
- The project shall equip the HVAC penthouse structure located on the rooftop of the Phase II building with an acoustical louver. The applicant shall submit documentation that the louver would reduce noise to acceptable levels to the satisfaction of the Director of Planning and Inspection prior to the issuance of a certificate of occupancy.

1.6 Required Mitigation Measures

Staff identified mitigation measures in the technical areas of Biological Resources and Geology and Soils. These measures, and information on the applicant design measure language being replaced (where applicable) are described in **Section 5.4 Biological Resources** and **5.7 Geology and Soils** and are listed below. See *Applicant Acceptance of Mitigation Measure Language* (TN 232673) for more information.

Biological Resources

MM BIO-1: Nesting Bird Avoidance and Minimization Measures. If construction, tree removal, or vegetation clearing occurs during the nesting season (February 1 through August 31), an ornithologist or other qualified biologist shall conduct pre-construction nest survey(s) no more than 14 days prior to the initiation of the aforementioned activities within 500 feet of trees/vegetation. Surveys shall be repeated if project activities are suspended or delayed for more than 14 days during the nesting season. The ornithologist or other qualified biologist (with at least a bachelor's degree in a biological science field and demonstrated field expertise in avian species) shall be approved by the City of Santa Clara. The size of all buffer zones shall initially be a 250-foot radius around the nest of non-raptors and a 500-foot radius around the nest for raptors. Any changes to a buffer zone must be approved by the City of Santa Clara in consultation with California Department of Fish and Wildlife (CDFW). The nests and buffers shall be field checked weekly by the approved ornithologist or other qualified biologist. The approved buffer zone shall be marked in the field with exclusion fencing, within which no construction, tree removal, or vegetation clearing shall commence until the ornithologist or other qualified biologist

and the City of Santa Clara to verify that the nest(s) are no longer active. If Western burrowing owl are discovered residing on the project at any time during construction outside the nesting season, then a buffer area shall be established and observed, until the animal can be passively relocated out of the construction area in accord with the CDFW 2012 guidance titled "Staff Report on Burrowing Owl Mitigation" and/or any applicable future guidance.

MM BIO-2: Nesting Bird Survey Report. The qualified biologist shall submit a copy of the pre-construction nest survey report(s) to the City of Santa Clara planning department prior to construction for review and approval. The report(s) shall contain maps showing the location of all nests, species nesting, status of the nest (e.g. incubation of eggs, feeding of young, near fledging), and the buffer size around each nest. The report shall be provided within 10 days of completing a pre-construction nest survey.

Geology and Soils

MM GEO-1: Implement a Worker Environmental Awareness Training Program that would provide training to construction personnel regarding proper procedures (including identification and notification) in the event fossil materials are encountered during construction. If a fossil is found and determined by the approved paleontologist to be significant and avoidance is not feasible, the qualified paleontologist shall develop and implement an excavation and salvage plan in accordance with Society of Vertebrate Paleontology standards. Construction work in these areas shall be halted or diverted to allow recovery of fossil remains in a timely manner. Fossil remains collected during the monitoring and salvage portion of the mitigation program shall be cleaned, repaired, sorted, and cataloged. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall then be deposited in a scientific institution with paleontological collections. A final Paleontological Mitigation Plan Report shall be prepared that outlines the results of the mitigation program. The city shall be responsible for ensuring that the paleontologist's recommendations regarding treatment and reporting are implemented.

1.7 Hazardous Waste Sites

According to a review of the Envirostor and GeoTracker databases, the project site does not have any known, open cases on the hazardous materials sites compiled pursuant to Government Code section 65962.5.

1.8 Airport Impacts

CEQA requires that prior to adoption of a mitigated negative declaration for a project located within the boundaries of a comprehensive airport land use plan, the lead agency must first consider whether the project will result in a safety hazard or

noise problem for persons using the airport or for persons residing or working in the project area.[2]

The project site is located approximately 1.6 miles northwest of the Norman Y. Mineta San Jose International Airport. This location is within the Airport Influence Area and subject to the Comprehensive Land Use Plan (CLUP) for the airport, but outside all Airport Safety Zones identified in the CLUP. The IS concluded that the project would not result in hazards to aircraft from either a geometric design feature, such as structure height, or incompatible uses, including thermal plumes. The IS also determined that the project would comply with City of Santa Clara noise standards and that noise from the project would not combine with the airport's noise to expose people to excessive noise levels. Further, staff found the project consistent with the policies of safety, height, and noise contained within the CLUP. Staff therefore concludes that the project would not result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

2 Proposed CEQA Finding

Based on the Initial Study, staff proposes that the CEC find that the project will not have a significant effect on the environment.

3 Small Power Plant Exemption Recommendation

As discussed in detail in **Appendix A** of the Initial Study, staff calculated a net deliverable or useable electricity capacity of more than 50 MW and less than 100 MW from the MCBGF, qualifying it for a Small Power Plant Exemption under the capacity criterion. While the backup generating facility has an apparent installed generation capacity greater than 100 MW (43 gensets, each with 2.5 MW peak capacity), the "extra" MW installed are redundant and not able to operate unless other generating units fail to operate; that is, there are physical constraints that would prevent them from operating. The proposed redundancies built into the design of the facility are to ensure performance reliability, not to generate and supply the MCDC with more than 78.1 MW of electricity.

Staff recommends that the MCBGF be exempted from CEC jurisdiction and that permitting be handled at the local level because:

1. The facility will not generate electricity in excess of 100 megawatts.
2. The construction and operation of the facility will not result in a substantial adverse impact on the environment.
3. The construction and operation of the facility will not result in a substantial adverse impact on energy resources.

2 CEQA Guidelines, § 15074, subd. (e).