

**DOCKETED**

<b>Docket Number:</b>	21-SPPE-01
<b>Project Title:</b>	CA3 Backup Generating Facility-Vantage
<b>TN #:</b>	242980
<b>Document Title:</b>	Vantage Data Centers' Response to Committee Question and Objection to Notice of Intent to Take Official Notice
<b>Description:</b>	N/A
<b>Filer:</b>	Scott Galati
<b>Organization:</b>	DayZenLLC
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	5/9/2022 2:11:36 PM
<b>Docketed Date:</b>	5/9/2022

Scott A. Galati  
**DAYZEN LLC**  
1720 Park Place Drive  
Carmichael, CA 95608  
Telephone: (916) 900-8026

STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant  
Exemption for the **CA3 Backup  
Generating Facility**

**DOCKET NO: 21-SPPE-01**

**VANTAGE DATA CENTERS'  
RESPONSE TO COMMITTEE  
QUESTION AND OBJECTION TO  
NOTICE OF INTENT TO TAKE  
OFFICIAL NOTICE**

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Vantage Data Centers (VDC) hereby files this Response to Committee Question and Objection to Notice of Intent to Take Official Notice outlined in the Committee's **NOTICE OF CONTINUANCE OF EVIDENTIARY HEARING, NOTICE OF INTENT TO TAKE OFFICIAL NOTICE OF BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S JUSTIFICATION REPORT, AND RELATED ORDERS**, dated May 6, 2022, TN242971 (Committee Notice and Order).

**OFFICIAL NOTICE**

On April 22, 2022, BAAQMD published a document entitled "Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans" (Justification Report).<sup>1</sup> The Committee Notice provided its Notice of Intent to take Official Notice of the Justification Report. VDC objects to the document on the ground that it is not relevant to the current proceeding.

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<sup>1</sup> CEQA Thresholds and Guidelines Update at <https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>

The BAAQMD adopted the Justification Report along with other implementing documents at its Board Meeting on April 20, 2022. The resolution the BAAQMD passed at the Board Meeting includes the following language, at page 3, relating to the effective date of the use of the Justification Report and its GHG emission CEQA significance thresholds for land use plans and projects.

BE IT FURTHER RESOLVED that the District believes that the Climate Impact Thresholds are most appropriately applied to CEQA projects for which a Notice of Preparation is issued and environmental analysis is begun ***after the date of adoption of this Resolution.***<sup>2</sup> (***emphasis added***)

The CA3BGF and CACDC Notice of Preparation was issued on August 20, 2021 (TN 239401). The environmental analysis was underway prior to August 20, 2021. The Final Environmental Impact Report (FEIR) (TN242451-TN242454) which completed the environmental analysis was issued on April 14, 2022. According to the resolution it was the BAAQMD's intent that the Justification Report and Climate Impact Thresholds be applied to projects that begin after April 20, 2022. Therefore, the Justification Report and the impact thresholds are not relevant to this proceeding as they were never intended by the BAAQMD Board to be used for anything other than new projects that begin after the effective date of April 20, 2022.

VDC objects to the taking of Official Notice of the Justification Report on the grounds that it is not relevant to the current proceeding.

### COMMITTEE QUESTION

The Committee ordered the parties to respond to the following question.

Mitigation measure GHG-1 in the FEIR requires the Project to reduce the time the backup generators operate for readiness testing and maintenance on an annual basis to comply with any new threshold of significance for stationary sources adopted by BAAQMD on or before CA3 receives its Authority to Construct permit. How do BAAQMD's new thresholds of significance for land use plans and projects affect GHG-1 or any other mitigation measure in the FEIR, if at all?

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<sup>2</sup> The BAAQMD Board Agenda packet which contained the Justification Report also included the draft Resolution attached to this Response and Objection. Proof that the draft resolution was adopted as final can be found at the following video of the BAAQMD Board Meeting at 2:46 through 2:52; [https://baha.granicus.com/MediaPlayer.php?clip\\_id=10777](https://baha.granicus.com/MediaPlayer.php?clip_id=10777)

As described above, the thresholds adopted by the BAAQMD as outlined in the Justification Report are not applicable to the CA3BGF or the CA3DC and therefore do not affect GHG-1 or any other mitigation measure contained in the FEIR.

Dated: May 9, 2022

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott A. Galati", written over a horizontal line.

Scott A. Galati  
Counsel to Vantage Data Centers

Attachment



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

## ATTACHMENT 5

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT ADOPTING  
CEQA THRESHOLDS FOR EVALUATING THE SIGNIFICANCE  
OF CLIMATE IMPACTS FROM LAND USE PROJECTS AND PLANS**

## **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

### **RESOLUTION NO. 2022-**

#### **A Resolution of the Board of Directors of the Bay Area Air Quality Management District Adopting CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans**

#### **RECITALS**

WHEREAS, Section 15064.7 of the California Environmental Quality Act (CEQA) Guidelines encourages public agencies to adopt thresholds of significance to use in the determination of the significance of environmental effects, and states that thresholds of significance adopted for general use as part of the agency's environmental review process must be adopted by ordinance, resolution, rule or regulation; developed through a public review process; and supported by substantial evidence;

WHEREAS, pursuant to Section 15067.4, CEQA Thresholds of Significance are identifiable, quantitative, qualitative, or performance levels of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant under CEQA, and compliance with which means the effect normally will be determined to be less than significant under CEQA;

WHEREAS, on June 2, 2010, the Board of Directors (Board) of the Bay Area Air Quality Management District (District) adopted "Thresholds of Significance for Use in Determining the Significance of Projects' Environmental Effects under the California Environmental Quality Act" (2010 CEQA Thresholds), including thresholds of significance for greenhouse gas (GHG) emissions by non-stationary source projects and stationary source projects;

WHEREAS, since adoption of the 2010 CEQA Thresholds, a general consensus has been reached by the scientific and international community that global warming must be limited to no more than 1.5 degrees Celsius above pre-industrial levels to maintain a sustainable global climate and avoid catastrophic consequences of climate change;

WHEREAS, since adoption of the 2010 CEQA Thresholds, analytical methodologies as well as GHG reduction strategies and technologies have progressed and improved;

WHEREAS, since the adoption of the 2010 CEQA Thresholds, State law, policy, and guidance documents have evolved to reflect current scientific knowledge and understanding regarding greenhouse gas emissions and climate change, further resulting in updated case law, and these changes and updates necessitated review of the GHG thresholds in the 2010 CEQA Thresholds;

WHEREAS, the Board finds it appropriate to adopt the updated "CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans" (Climate Impact Thresholds) as set forth in Exhibit A, attached hereto and incorporated herein by reference, for use

by District staff and by other appropriate agencies at their discretion in determining whether projects may have a significant GHG impact for purposes of CEQA analyses;

WHEREAS, the Climate Impact Thresholds do not alter the existing procedural and substantive requirements of CEQA under California law, but simply clarify the level at which, in the District's considered opinion, an environmental effect should normally be considered "significant" for purposes of existing CEQA law;

WHEREAS, the Climate Impact Thresholds were developed through an extensive public review process, which included numerous focus groups with local government planning staff, builders, affordable housing developers, environmental advocates and community organizations; publication of the *Draft Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans* on February 16, 2022; a 30-day public comment period from February 16, 2022 through March 18, 2022; two virtual public workshops held on December 9, 2021 and March 10, 2022; and staff's presentation of the initial concepts and recommendation of the final proposed thresholds of significance to the Mobile Source and Climate Impacts Committee of the Board of Directors on September 23, 2021 and on March 24, 2022;

WHEREAS, District staff considered and responded in writing to all written comments received during the comment period;

WHEREAS, the Climate Impact Thresholds are supported by substantial evidence as documented in the *Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans (Justification Report)*, and other documentation compiled by District staff;

WHEREAS, the substantial evidence as documented in the *Justification Report* and other documentation establishes that the Climate Impact Thresholds reflect the levels at which environmental effects should be considered "significant" for the purposes of CEQA;

WHEREAS, the Climate Impact Thresholds are consistent with the principles and jurisprudence of CEQA law as set forth in CEQA, its implementing regulations, and applicable judicial interpretations;

WHEREAS, the April 20, 2022 public meeting of the Board to consider adoption of the Climate Impact Thresholds was properly noticed and convened in accordance with all requirements of law;

WHEREAS, at the April 20, 2022 Board meeting, the subject matter of the Climate Impact Thresholds was discussed with interested persons in accordance with all provisions of law;

WHEREAS, the April 20, 2022 Board meeting and other public review opportunities that the District has provided regarding the Climate Impact Thresholds constitute a public review process as required by Section 15064.7;

WHEREAS, District staff has prepared and presented to this Board the *Justification Report* and the written responses to the comments received during the comment period, which have been considered by the Board;

WHEREAS, the documents and other materials that constitute the record of the public review process under Section 15064.7, on which this Resolution is based, are located at the Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, 94105, and the custodian for these documents is Ms. Marcy Hiratzka, Clerk of the Boards;

WHEREAS, District staff recommends that the Board adopt the Climate Impact Thresholds;

WHEREAS, the Board concurs with recommendation of District staff regarding the Climate Impact Thresholds;

WHEREAS, the Climate Impact Thresholds are not subject to CEQA review, based on the following:

1. The District complied with CEQA Guidelines Section 15064.7 in establishing the Climate Impact Thresholds. Section 15064.7 establishes the required procedure for enacting generally applicable thresholds of significance such as the Climate Impact Thresholds and does not require CEQA review of such thresholds.
2. The Climate Impact Thresholds are advisory only, administrative in nature, do not affect air emissions from any sources, and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Any potential impact would be speculative. Accordingly, they are not a project within the meaning of CEQA. (Pub. Resources Code, § 21065.)
3. The Climate Impact Thresholds have no possibility of causing significant environmental effects within the meaning of CEQA. (CEQA Guidelines, § 15061(b)(3).)

## **RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED that pursuant to the authority granted to it by law, the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Climate Impact Thresholds, as set forth in Exhibit A, with instructions to staff to correct any typographical or formatting errors before final publication of the Climate Impact Thresholds.

BE IT FURTHER RESOLVED that the District believes that the Climate Impact Thresholds are most appropriately applied to CEQA projects for which a Notice of Preparation is issued and environmental analysis is begun after the date of adoption of this Resolution.

BE IT FURTHER RESOLVED that the above Recitals are true and correct and are hereby incorporated by reference.



The foregoing Resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 2022 by the following vote of the Board:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Karen Mitchoff  
Chairperson of the Board of Directors

ATTEST:

\_\_\_\_\_  
Davina Hurt  
Secretary of the Board of Directors

**EXHIBIT A**

**PROPOSED CEQA THRESHOLDS FOR EVALUATING  
THE SIGNIFICANCE OF CLIMATE IMPACTS  
FROM LAND USE PROJECTS AND PLANS**

DRAFT

## EXHIBIT A

### Thresholds for Land Use Projects (Must Include A or B)

- A. Projects must include, at a minimum, the following project design elements:
  - 1. Buildings
    - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
    - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
  - 2. Transportation
    - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA:
      - i. Residential projects: 15 percent below the existing VMT per capita
      - ii. Office projects: 15 percent below the existing VMT per employee
      - iii. Retail projects: no net increase in existing VMT
    - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

### Thresholds for Plans (Must Include A or B)

- A. Meet the State's goals to reduce emissions to 40 percent below 1990 levels by 2030 and carbon neutrality by 2045; or
- B. Be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).