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Comment Received From: Adam Petersen
Submitted On: 7/13/2021
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City of San Jose Comments - Great Oaks South Draft EIR

Additional submitted attachment is included below.

July 13, 2021

Lisa Worrall
Senior Environmental Planner
California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 9th Street, MS-40,
Sacramento, CA 95814

RE: City of San José Comments - Great Oaks South Backup Generating Facility Small Power Plant Exemption Draft Environmental Impact Report (SCH 2020100431)

Dear Lisa Worrall,

Thank you for including the City of San José Planning, Building, and Code Enforcement Department in the environmental review process for the subject project. The Planning Division oversees the City's General Plan and zoning policies; review applications for planning permits; and engage the community on development proposals. The following comments are based on our review of the June 2021 Draft EIR for the Great Oaks South Backup Generating Facility Small Power Plant Exemption DEIR.

Project Background

The City of San José approved a Special Use Permit (SP15-031) and Initial Study/Mitigated Negative Declaration (IS/MND) on January 25, 2017. The Special Use Permit approved the construction of three data center buildings, totaling 579,000 square, and associated site modifications on the 18.56-gross acre site. The three data centers are comprised of buildings with associated electrical and mechanical yards. The project included the removal of thirteen on-site trees (nine ordinance-size and four non-ordinance size) and three off-site trees. An entrance on Great Oaks Boulevard and San Ignacio Avenue facilitates vehicular ingress and egress to the site, while Via Del Oro provides delivery truck access. The project provided 253 parking spaces.

Each of the proposed data center buildings were proposed to be two stories in height (approximately 50 feet) and include seven generators (six primary and one redundant; 21 total) located adjacent to the buildings. Each generator would have an electric capacity of three megawatts (MW) and provide standby backup electricity for the new buildings. Diesel fuel for the generators will be stored in 8,000 gallon above-ground tanks under each generator.

The project proposed to construct a new substation (Santa Teresa Substation), a 115 kV transmission line extension to the substation from the existing Metcalf-Edenvale 115 kV transmission line, and two new 21 kilovolt (kV) distribution feeders that would extend along Via Del Oro to the data center site. Although existing facilities would provide adequate power to the proposed data centers in the short-term, a new substation would be required to serve the proposed data centers in the future.

The City prepared an IS/MND for the above described Special Use Permit entitlement. The City mitigated all impacts to air quality, biological resources, cultural resources, and noise from the project to less than significant levels.

Project Understanding

SV1, LLC, a wholly owned subsidiary of Equinix, LLC (SV1 or applicant) filed a Small Power Plan Exemption (SPPE) application seeking an exemption from the California Energy Commission's (CEC) jurisdiction for the Great Oaks South Backup Generating Facility (GOSBGF) (20-SPPE-01). The GOSBGF would be part of the Great Oaks South Data Center (GOSDC) to be located in the City of San José. Since its approval, SV1, LLC has made project design changes and is now seeking approval of an SPPE for the GOSBGF.

The GOSDC would consist of three 182,350 square foot, two-story data center buildings. The GOSBGF would include 36 3.25-MW diesel-fired generators in six generation yards that would each be separately electrically interconnected to the three data center buildings. The GOSBGF would be used exclusively to provide backup generation and uninterruptible power supply for the GOSDC, and other than for routine maintenance and testing, would only operate in the event of a failure of the electrical service from Pacific Gas and Electric Company (PG&E) to the data center. In addition, the GOSBGF would include three life safety diesel fired generators, each capable of generating 0.50 MW. GOSBGF would have a generating capacity of up to 99.0 MW.

The GOSDC would connect to a new PG&E substation via five new 21 kilovolt (kV) distribution feeders that would extend underground along Via Del Oro and/or Santa Teresa to the project site. The California Public Utilities Commission has granted PG&E approval to construct the new substation, which is called the "Santa Teresa Substation."

City of San José Comments

The City of San José is a Responsible Agency pursuant to CEQA Guidelines Section 15052 because it is called on to grant an approval for the GOSBGF, which is subject to CEQA, for which the CEC is the appropriate Lead Agency. Accordingly, San José has reviewed the administrative draft EIR for the GOSBGF and offers the following comments:

Table 1-1 Summary of Impacts:

Ensure all City-implemented mitigation measures have the "Director of Planning Building and Code Enforcement or Director's Designee" as the person responsible for implementation, not the Director of Community Development.

Biological Impacts:

The project design measure includes bird surveys 14 days prior to construction activities from February 1 to August 31. City staff requests this project design measure be changed to a mitigation measure and reflect mitigation measures used by the City, which require pre-construction surveys 14-days prior between February 1st through April 30th inclusive, and 30-days prior from May 1st through August 15th inclusive.

Cultural Resources Impacts:

Staff requests that the following words be added to Mitigation Measure MM CUL-3 be revised to include the following red text: "If prehistoric, **archaeological**, and/or historic resources are encountered during construction, all activity within a 50-foot radius of the find will be stopped..."

Greenhouse Gas Impacts:

The applicant proposes the following replacement mitigation in their letter dated July 6, 2021:

PD GHG-1: To ensure compliance with the City of San Jose Climate Action Plan, the project owner shall implement one, or a combination of the following measures:

1. Install solar panels, solar hot water, or other clean energy power generation sources;
2. Purchase electricity through San Jose Clean Energy Total Green level (i.e., 100% carbon-free electricity), or through negotiation of an electricity contract with San Jose Clean Energy that accomplishes the same goals as the Total Green Level; or
3. Purchase Renewable Energy and/or Renewable Energy Credits which comply with the Greenhouse Gas Protocol and RE100 reporting standards in a sufficient quantity equal to that portion of the project's actual nonrenewable electricity consumption. These purchases are also reviewed and validated annually to be in compliance with afore mentioned standards by Equinix's external third party auditor. The project owner shall keep records of the measures implemented and provide an annual report to the City of San Jose to demonstrate compliance with this the above requirements. If the Project Owner utilizes the purchase of Renewable Energy Credits, such credits must be in the same form used by the San Jose Clean Energy to achieve its Total Green Level.

The applicant's proposed measures seek coverage under the City's 2030 Greenhouse Gas Reduction Strategy adopted by City Council in fall 2020. The first measure is already one of the Strategies in the 2030 GHGRS, Renewable Energy Development (GHGRS Strategy #3). However, this strategy alone is not typically sufficient to achieve the necessary reduction in GHG emissions for projects requiring significant energy. Therefore, Strategy #3 accounts for only approximately 5% of the total required reduction in the GHGRS.

The second measure is also one of the major strategies (Strategy #1), and accomplishes the goals of mitigation measure MM-GHG-1 in the Draft EIR. Strategy #1 is one of the primary strategies driving the City's GHGRS, accounting for about 55% of the total reduction.

If purchasing electricity through San Jose Clean Energy at the Total Green level is not feasible, then the 2030 GHGRS provides the applicant with the ability to propose Alternative Measures that achieve the same level of GHG emissions reduction. As explained on page 3 of the Compliance Checklist, any proposed Alternative Measures must include the following additional information:

1. A qualitative description of what measure will be implemented, why it is proposed, and how it will reduce GHG emissions.
2. A description of how the alternative project measure would achieve the same or greater level of greenhouse gas reductions as the GHGRS strategy it replaces, including documentation or calculations to support the Alternative Measure.
3. A description of how the measure will be implemented, such as measures incorporated as part of the project design or as an additional measure that is not part of the project (e.g., purchase of carbon offsets).

If the applicant's third proposed measure is pursued, it would be an Alternative Measure and the information above will need to be evaluated by the City to determine that the measure is sufficient to

bring GHG reduction in line with the 2030 GHGRS. Such a review may include a peer-review by an environmental consultant on the City's list of Approved Environmental Consultants.

Noise Impacts:

Staff requests the following changes in red text be made to PD NOI-1, consistent with prior mitigation measures approved for the project:

- **Prohibit all unnecessary idling of internal combustion engines within 200 feet of commercial uses is strictly prohibited.** Equipment shall be turned off when not in use and the maximum idling time shall be limited to five minutes.
- Utilize “quiet” air compressors and other stationary noise sources where technology exists. **A letter from a qualified acoustic specialist shall be attached to the noise logistics plan along with a list of proposed construction equipment, including air compressors and other stationary noise sources, certifying that the proposed construction equipment includes the best available noise attenuating technologies.**
- Equip all internal combustion engine-driven equipment **with best available noise control practices and equipment (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds).** ~~intake and exhaust mufflers that are in good condition and appropriate for the equipment.~~ **A letter from a qualified acoustic specialist shall be attached to the noise logistics plan along with a list of proposed construction equipment, certifying that the proposed construction equipment includes the best available noise attenuating technologies.**

Include the following items in the mitigation measure NOI-1:

- Locate staging areas and construction material areas at least 200 feet from adjacent office and commercial land uses to the greatest extent feasible.
- Construction is not permitted on weekends or holidays. Pile driving shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.

Section 2.0 Introduction:

Staff requests the following edit be made to Section 2.2, as shown in the red text below:

Upon granting of an exemption, the local permitting authority—in this case the City of San José **servicing as a Responsible Agency pursuant to CEQA Section 15052** —would perform any follow-up CEQA analysis and impose mitigation, as necessary, for granting approval of the project.

Section 3.5 Project Overview:

As a Responsible Agency, the City of San José will be certifying the EIR for the proposed entitlements, which is a Special Use Permit Amendment (SPA). The EIR should identify that the EIR analyzes the development of the project as a whole while the SPA considered by the City is only for the following changes to the project:

- Rename buildings onsite;
- Change the site layout and number of parking stalls;
- Change building footprint and equipment layout: overall building square footage would be reduced from an approved 579,000 sf. to 547,050 sf.; the allocation of square footage would be reduced as well from 15,066 approved sf. to 15,000 sf.;
- Increase height from 49'-6" to 72'-3"
- Increase the number of generators onsite from 21 approved generators to 36 generators; and
- Removal of one tree on-site and five trees off-site, one of which is an ordinance size trees.

San José staff requests a summary table in the project overview section that identifies the project being evaluated in the EIR versus the project approved in 2017. As written, the EIR appears to evaluate the entire Great Oaks South Data Center which was previously approved by the City of San José. The project overview section can be enhanced by explaining why the EIR considers the entire data center in its analysis when the City of San José approved the data center, 21 generators, and substation in 2017.

Section 3.11.2:

This section refers to Tables 2.3-1 and 2.3-2 in the Project Description. However, these tables are not in the project description. Please update the EIR with these tables.

Page 3-15:

PD BIO-1 – Replace the \$300 per mitigation tree with the following: Trees removed shall be replaced at these ratios, or the applicant shall pay an in-lieu fee to Our City Forest to compensate for the loss of trees on-site. See note below about standard condition of approvals.

Page 4.1-2 Local Regulatory Setting:

As in other sections of the EIR, please include the following policies from the City of San José General Plan:

Envision San José 2040 Relevant Aesthetic Policies

| Policies | Description |
|----------------|---|
| Policy CD-1.1 | Require the highest standards of architecture and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses. |
| Policy CD-1.7 | Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways. |
| Policy CD-1.8 | Create an attractive street presence with pedestrian-scaled building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity through the City. |
| Policy CD-1.11 | To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent facades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays. |
| Policy CD-1.23 | Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance |

Envision San José 2040 Relevant Aesthetic Policies

| Policies | Description |
|-----------------|---|
| | of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas. |
| Policy CD-1.27 | When approving new construction, require the undergrounding of distribution utility lines serving the development. Encourage programs for undergrounding existing overhead distribution lines. Overhead lines providing electrical power to light rail transit vehicles and high tension electrical transmission lines are exempt from this policy. |
| Policy CD-1.18 | Encourage the placement of loading docks and other utility uses within parking structures or at other locations that minimize their visibility and reduce their potential to detract from pedestrian activity. |
| Policy CD-10.2: | Require that new public and private development adjacent to Gateways, freeways (including U.S.101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87), and Grand Boulevards consist of high-quality architecture, use high-quality materials, and contribute to a positive image of San José. |
| Policy CD-10.3: | Require that development visible from freeways (including U.S.101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87) be designed to preserve and enhance attractive natural and man-made vistas. |

Page 4.3-24 and Page 4.3-29:

Include a brief description of the BAAQMD permitting process for offsetting NOx emissions.

Page 4.3-27:

In addition, ~~staff recommends~~ **the project is subject to** mitigation measure (MM) **MM AQ-1** to minimize the exhaust emissions during construction and be consistent with the estimates provided by the applicant.

Page 4.3-33 and 4.3-43:

The EIR relies on an applicant prepared study using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD [Version 19191]) to estimate ambient air quality impacts. The EIR needs to state if this study and the inputs used were peer reviewed and/or verified by the CEC or a consultant of the CEC to support the outputs from the model.

The EIR notes that construction would occur for 10 hours per day. However, this estimate is inconsistent with the PD NOI-1 on page 1-29, which limits construction to 12 hours per day. The EIR will need to reconcile how an additional two hours of construction factors into emissions in the AERMOD dispersion model.

Page 4.4-6:

Replace the PD BIO-1 with the following:

Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table ____ below, as amended.

| Table ____: Tree Replacement Ratios | | | | |
|--|-----------------------------------|-------------------|----------------|--|
| Circumference of Tree to be Removed | Type of Tree to be Removed | | | Minimum Size of Each Replacement Tree |
| | Native | Non-Native | Orchard | |
| 38 inches or more | 5:1 | 4:1 | 3:1 | 15-gallon |
| 19 up to 38 inches | 3:1 | 2:1 | none | 15-gallon |
| Less than 19 inches | 1:1 | 1:1 | none | 15-gallon |

x:x = tree replacement to tree loss ratio
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 24-inch box tree = two 15-gallon trees
 Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

- Since one (1) onsite ordinance trees would be removed, the one tree would be replaced at a 3:1 ratio. The total number of replacement trees required to be planted would be four (4) trees. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Page 4.4-8:

Consistent Mitigation Measure MM BIO-1.1 previously approved for the project, update the first bullet point of PD BIO-3 to the following:

- If possible, construction should be scheduled between September and January (inclusive) to avoid the nesting season. If this is not possible, pre-construction surveys for nesting raptors and other migratory breeding birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation onsite and within 250 feet of the site. Between February and April (inclusive) pre-construction surveys shall 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 shall 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 for nests.

Further analysis on pages 4.4-9 and elsewhere in the EIR will need to be updated based on revisions to PD BIO-3.

Page 4.4-17:

As previously noted, mitigation measures are mandatory for the project. Please revise the wording on page 4.4-17.

Page 4.5-26:

City of San José staff supports the implementation of Mitigation Measures (MM) CUL-1 through MM CUL-4.

Page 4.7-11:

Please note that the project would be subject to the following standard condition of approval:

- Prior to issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils and undocumented fill. Options to address these conditions may range from the use of deep foundations and/or removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, to design and construction improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.

Page 4.8-6:

Include the City's Green Building Policy as follows:

City of San José Private Sector Green Building Policy (6-32). In October 2008, the City adopted the Private Sector Green Building Policy (6-32) that establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. This policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards. The proposed project would be subject to this policy. Since the proposed commercial/industrial project would be greater than 25,000 square feet, the proposed data center buildings would be required to achieve LEED Silver certification, at minimum.

Page 4.10-4:

Include the following policies for the hydrology and water quality regulatory setting section:

Envision San José 2040 Relevant Hydrology and Water Quality Policies

| Policies | Description |
|---------------|---|
| Policy IN-3.7 | Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties. |
| Policy IN-3.9 | Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards. |
| Policy MS-3.4 | Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution. |
| Policy ER-8.1 | Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies. |

- Policy ER-8.3 Ensure that private development in San José includes adequate measures to treat stormwater runoff.
- Policy EC-4.1 Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and stormwater controls.
- Policy EC-5.7 Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
- Policy EC-5.16 Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.

Page 4.13-3:

Include General Plan Policy EC-1.7 as specified below:

Policy EC-1.7 Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:

- Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.

Page 4.13-4:

Revise PD-1 as follows:

- Locate stationary noise-generating equipment such as air compressors or portable power generators at least 200 feet from adjacent office and commercial uses ~~to the greatest extent feasible.~~
- Locate staging areas and construction material areas at least 200 feet from adjacent office and commercial land uses to the greatest extent feasible.

Page 4.13-5 and -6 – Construction Noise:

For CEQA purposes, the City of San José analyzes noise impacts based on the General Plan. Staff requests that the noise analysis disclose that some construction would be within 200 feet of existing office uses on San Ignacio Avenue, Via del Oro, and Great Oaks Boulevard for a period greater than 12 months.

Page 4.13-7:

Include a brief analysis of the impacts to noise from project traffic. The hazardous materials section notes that the project would generate approximately 20 vehicle trips per year for refueling and the project would generate traffic. Accordingly, include an analysis of traffic noise impacts from the project.

Thank you for including the City of San José in the environmental review process. Should you have any questions regarding this letter, please contact Adam Petersen, contract environmental planner at adam.petersen@sanjoseca.gov.

Sincerely,



David Keyon, Supervising Environmental Planner