

**DOCKETED**

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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application For Small Power Plant  
Exemption for the **GREAT OAKS  
SOUTH BACKUP GENERATING  
FACILITY**

**DOCKET NO: 20-SPPE-1**

**SV1, LLC'S RESPONSES TO  
COMMITTEE QUESTIONS**

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**INTRODUCTION**

SV1, LLC (SV1), in accordance with the Committee Order Requesting Supplemental Information In Response to Committee Questions (Order) dated August 26, 2021 (TN 239482), hereby files its Responses to the Order and in support its Application for Small Power Plant Exemption (SPPE) for the Great Oaks South Backup Generating Facility (GOSBGF).

SV1 reproduces each question identified in the Order in ***bold italics*** below. SV1's responses immediately follow each question.

**RESPONSES TO COMMITTEE QUESTIONS**

1. ***The project description in the FEIR states that the project will receive electricity from a new substation, known as the Santa Teresa Substation, via five new 21 kilovolt (kV) distribution feeders that would extend***

***underground along three proposed trench route.<sup>6</sup> The California Public Utilities Commission has granted PG&E approval to construct the Santa Teresa Substation.<sup>7</sup> Are the individual effects of the construction and operation of the Santa Teresa Substation and five new 21-kV distribution feeder lines evaluated in the FEIR?***

***If so, then how are these facilities addressed in sections that do not mention them? Would the Santa Teresa Substation have growth-inducing impacts?***

***If not, what is the basis for not evaluating them in the FEIR? What are the environmental impacts of the project relative to the Santa Teresa Substation and distribution feeders, i.e., cumulative impacts?***

## **RESPONSE TO COMMITTEE QUESTION 1**

The Santa Teresa Substation has been previously approved by the CPUC and is under construction. The Santa Teresa Substation is not part of the project before the Commission as it was the subject of an earlier environmental document certified by the City of San Jose and used at the CPUC to grant PG&E the authority to construct and operate it. As described in PG&E's responses to CEC Staff questions (TN 234392 also included as Appendix B to the FEIR), the Santa Teresa Substation is in response to customer demand in the area and has a "planned" and "ultimate" design. The "ultimate" design is capable of serving the full demand of the GOSDC at full buildout but since this substation is a network upgrade to serve future demand in the region and not built specifically for the GOSDC, ultimately PG&E would serve customers based on their actual load forecast and commitment to receive electricity at a site. SV1 has estimated its total planned development of three data centers at the site and while they are planned (and therefore subject to CEC jurisdiction) the ultimate buildout timing is not known. Therefore, SV1 has not requested full output commitments to the site and will do so as each phase of the GOSDC is built out over time.

This is also proof that the Santa Teresa Substation is not part of the "whole of the action" because it is being constructed prior to GOSDC and is serving other projects as a network upgrade. Therefore, no section of the FEIR prepared to look at the environmental impacts of the GOSBGF and GOSDC needs to address impacts

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<sup>6</sup> TN 239063, pp. 3-6 — 3-7.

<sup>7</sup> *Id.* at p. 3-1.

associated with the Santa Teresa Substation. Similarly, any growth inducing impacts from the Santa Teresa Substation, are not part of this project.

The five new feeders (2 per trench and 1 in its own trench) are part of the “whole of the action” and would exclusively serve the GOSDC as they are constructed over time and as the phases of the GOSDC are completed. SV1 worked with PG&E who provided a complete description of the likely location of the three trenches including depths of excavations and one-line diagrams. (See Responses to Data Requests 44-48, TN 233005-1 through -4, Supplemental Data Response 58, TN 233875, and Appendix B to the FEIR). In addition, SV1 provided revised construction emission calculations to CEC Staff to accommodate the minimal increase in construction emissions from the three trenches (See Supplemental Response to Data Request TN 235566). Additionally, the five feeders would not induce growth because they would exclusively be dedicated to supplying electricity to the GOSDC.

**2. *How is the 10 dBA threshold that the FEIR applies to the project’s construction- related noise effects<sup>8</sup> consistent with the City of San Jose’s General Plan Policy EC- 1.7?<sup>9</sup> What is the source of the 10 dBA threshold?***

**RESPONSE TO COMMITTEE QUESTION 2**

SV1 does not believe Staff used a 10 dBA significance threshold for construction-related noise effects but instead found that the affects would be temporary, the noisy portion of each phase of construction would be less than 12 months and SV1’s mitigation incorporated into the design of the project would reduce noise to acceptable levels. It is important to note that the City of San Jose’s General Plan Policy EC-1.7 establishes a presumption that **substantial** increases in noise within 500 feet of sensitive receptors would be considered significant, the policy prescribes noise mitigation measures which are incorporated by SV1 into its design measures. There are no residences within 500 feet of the site. Additionally, the majority of the noise and the loudest activities would take place during grading, which would be done for the whole site as part of the first phase and will be completed in less than 12 months. Later phases would not involve these activities. Therefore, SV1’s planned construction activities will result in less than significant noise impacts to sensitive receptors. This conclusion is supported in the Environmental Noise and Vibration Assessment, contained in Appendix H to the SPPE Application (TN232467-3).

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<sup>8</sup> *Id.* at p. 4.13-6.

<sup>9</sup> *Id.* at pp. 4.13-3 - 4.13-4.

3. ***What is the magnitude of change in noise from construction and operation of the project compared with the ambient noise level the FEIR identifies as the environmental setting? What threshold of significance applies to the magnitude of change in noise caused by the project: the threshold identified in the FEIR<sup>10</sup> or a different threshold of significance? If it is not necessary to evaluate the magnitude of change in noise levels, please explain why not, excluding the project's compliance with the absolute noise thresholds.<sup>11</sup>***

### **RESPONSE TO COMMITTEE QUESTION 3**

SV1 submitted Appendix H to the SPPE Application (TN232467-3) which included an Environmental Noise and Vibration Assessment. As described in Appendix H, SV1 had ambient noise measurements taken for the original City proceedings and updated in 2019 prior to filing the SPPE Application at nearby residences and at commercial locations. The ambient conditions for the residences all exceeded the city's daytime residential noise level limit of 55 dBA Leq and was almost entirely related to nearby traffic. The project contribution was well below the ambient noise levels. Therefore, the City's daytime residential noise level limit was more restrictive than identifying a threshold that measured the increase over ambient. Additionally, as discussed in the FEIR the modeled noise was from simultaneous operation of the generators when SV1 will only run one generator at a time for maintenance and testing and never at night. The FEIR compared the project's modeled noise at sensitive receptors to the measured ambient levels and found them to be below the ambient levels as well (see FEIR 4.13-8).

4. ***The FEIR states that it:***  
***evaluates cumulative impacts using the Addendum to the Envision San Jose 2040 General Plan Final Program Environmental Impact Report and Supplemental Environmental Impact Report for the Envision San Jose 2040 General Plan 4-Year Review (General Plan FPEIR) (San Jose 2016). The General Plan FPEIR identified that build out of the Envision San Jose 2040***

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<sup>10</sup> *Id.* at p. 4.13-2.

<sup>11</sup> *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal. App. 5th 814, 830, 892-894 (the magnitude of the noise increase must be addressed to determine the significance of change in noise levels).

***General Plan (General Plan) would contribute to five, significant and unavoidable cumulative impacts in the areas of biological resources, land use, noise, population and housing, and transportation.<sup>12</sup>***

***Please identify whether the cumulative impacts analysis in the FEIR relies on a list of projects or summary of projections within the meaning of Title 14, California Code of Regulations, section 15130, or relies on prior environmental analyses as provided by a different section of Title 14. If the former, please identify the list of projects and projections one which the FEIR relies. If the latter, on which section of Title 14 does the FEIR rely? On what prior analysis does the FEIR rely? Was the prior analysis updated to reflect changes that have occurred since it was prepared? Why or why not?***

#### **RESPONSE TO COMMITTEE QUESTION 4**

This question is most appropriately addressed by Staff, who decided over SV1 objection, that an EIR should be prepared rather than an Addendum to the prior City IS/MND which was included in Appendix K to the SPPE Application (TN232467-3).

- 5. The FEIR states that the exact amount and the source of the NOx offsets would be confirmed through the permitting process with the BAAQMD.<sup>13</sup> What are the specific levels of NOx emissions from the project on which BAAQMD would base its determination of the offset required, and what offsets are needed? How would the analysis of emissions predicted from Tier 4 equipment compare to the results of the emissions modeling performed for Tier 2 equipment?***

#### **RESPONSE TO COMMITTEE QUESTION 5**

As described in the FEIR, the BAAQMD would determine the offset requirement based on its ultimate determination of the what the total emissions from maintenance and testing would be. SV1 and Staff agree that at this time it is not certain that the engines will be operated long enough at testing and maintenance loads to reach temperatures necessary for the Miratech Selected Catalytic Reduction (SCR) would become fully operational. No test data exists as the use of Tier 4 SCR controls has recently been

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<sup>12</sup> *Id.* at p. 4.20-3.

<sup>13</sup> *Id.* at 4.3-19.

mandated and little operational testing of the temperature parameters exists. It is generally agreed that if the engine operates at full load the SCR will become fully operational and capable of reducing the oxides of nitrogen (NOx) by approximately 90 percent. However, since most testing and maintenance activities would be performed at loads lower than full load, without actual testing data, it is conservative to assume the SCR does not reduce NOx. This assumption is equivalent of Tier 2 equipment emission rates. Therefore emission's offsets for NOx have been based on Tier 2 for the entire testing and maintenance hours. Additionally, as described in the FEIR at page 4.3-18 and 19, SV1 will provide the offsets instead of relying on the BAAQMD Small Facility bank.

It is possible that by the time SV1 applies for individual permits for the generators it will install, the BAAQMD has test data upon which to allow SV1 to reduce its offset requirement based on the actual operational characteristics of the SCR at lower loads.

For CEQA purposes, the fact that the emissions will be offset in accordance with BAAQMD permits to be issued in the future ensures the impacts would be less than significance. CEQA instructs an agency to rely on a responsible agency enforcing its rules by permit and the Commission should continue to rely on BAAQMD in the same way it has for prior SPPE Final Decisions.

**6. The FEIR's response to comment A-13 describes how a person can redress a complaint about project noise,<sup>14</sup> as anticipated by MM NOI-1.<sup>15</sup> The FEIR states:**

***Typically, when a noise complaint is received the trained project coordinator investigates the nature of the complaint and the project takes action accordingly. If the complainant is not satisfied with the project's proposed resolution of the complaint, they can contact the permitting agency (in this case the City of San Jose) for further investigation and resolution.<sup>16</sup>***

***How does MM NOI-1<sup>17</sup> mitigate the project's noise identified in the FEIR?<sup>18</sup> Would it be feasible to add to MM NOI-1<sup>19</sup> a contact with the City of San Jose to elevate unresolved noise complaints? What response would the***

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<sup>14</sup> *Id.* at pp. 7-9 - 7-10.

<sup>15</sup> *Id.* at p. 4.13-9.

<sup>16</sup> *Id.* at pp. 7-9 - 7-10.

<sup>17</sup> *Id.* at p. 4.13-9.

<sup>18</sup> *Id.* at pp. 4.13-6 - 4.13-9, 4.20-6.

<sup>19</sup> *Id.* at p. 4.13-9.

***City of San Jose have to an elevated complaint? Would it be feasible to add a performance standard to MM NOI- 1 to provide for a physical change or other response to any report substantiated by the disturbance coordinator?***

#### **RESPONSE TO COMMITTEE QUESTION 6**

MM NOI-1 does not contain all of the measures that will ensure temporary construction noise is mitigated to a less than significant level. MM NOI-1 should be read in conjunction with the PD NOI-1 and NOI-2, which were originally proposed by SV1 by directly copying the mitigation measures drafted by the City of San Jose and incorporated into the IS/MND for the original project.

The City commented on the original measures and the Staff-proposed MM NOI-1 and Staff incorporated all of those suggestions. SV-1 agrees with the modifications. The Commission should give great deference to the City of San Jose, who drafted the original measures, commented on them suggesting modifications which were incorporated by Staff, and will ultimately enforce the measures as they will be the ones issuing a permit. The City of San Jose will review and approve the noise logistics plan and the content of the posting and notifications prior to and during construction. While SV1 does not believe a contact name is necessary to be included in MM NOI-1, since it would be part of the City's compliance process to enforce all of the mitigation measures and plans it approves, as it has agreed to do (See TN239476), SV1 would not object to such a modification if the City requires it.

***7. How does payment of the nitrogen deposition mitigation fee required in MM BIO-1<sup>20</sup> mitigate the project's potentially significant impacts of nitrogen deposition to less than significant levels?***

#### **RESPONSE TO COMMITTEE QUESTION 7**

SV1 does not believe that it would cause or contribute to existing potential nitrogen deposition impacts from its testing and maintenance operation of the proposed generators. Additionally, SV1 provided fees for potential nitrogen deposition impacts based on a significant overprediction of vehicle traffic assigned to it during the original IS/MND. As explained in the FEIR, nitrogen deposition fees are part of coverage under

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<sup>20</sup> *Id.* at p. 4.4-19.



the Santa Clara Valley Habitat Agency (SCVHA) Habitat Conservation Plan to be used by the SCVHA to restore and manage habitat for evasive weeds in sensitive area as required by the plan. Although SV1 has not objected to the inclusion of MM BIO-1 into the FEIR, it does not believe it is necessary to mitigate any impact that is not already mitigated by the previously paid fees to the SCVHA.

- 8. *When and how will the actions required pursuant to PD-TRA-1<sup>21</sup> take place? How does PD-TRA-1 mitigate the identified vehicle miles traveled impacts to less than significant levels as referenced in the FEIR?*<sup>22</sup>**

### **RESPONSE TO COMMITTEE QUESTION 8**

PD TRA-1 was suggested by the City of San Jose during the coordination process between Hexagon Transportation Consultants, Inc. (Hexagon) and the City of San Jose public works department regarding the transportation analysis for the GOSDC. Hexagon submitted a scope of work to prepare a Transportation Analysis (which included VMT) for the GOSDC to the City of San Jose for review and approval. The City of San Jose approved the scope of work and Hexagon produced a Draft Transportation Analysis (TN 236541). Based on comments received on the draft from the City, Hexagon produced a Final Transportation Analysis (TN 237150). The Final Transportation Analysis describes in detail how the San Jose approved VMT Evaluation Tool was used to determine the VMT of the GOSDC with and without the improvements identified in PD TRA-1. Specifically on pages 22 and 23 the measures incorporated into PD TRA-1 are described and assigned a Tier 2 level for use in the VMT Evaluation Tool. As described in Figures 11 and 12, the outcome of using the VMT Evaluation Tool with and without the measures is shown. With the measures contained in PD TRA-1, the GOSDC VMT will be below the VMT significance threshold. Staff summarizes this outcome in the FEIR.

- 9. *Staff's noise impacts analysis in the FEIR<sup>23</sup> relies on noise survey data collected between January 26, 2016 and December 3, 2019, including six short-term measurements, a 2016 long-term measurement from Santa Teresa Boulevard adjacent to the project site, and a 2018 long-term measurement from approximately 700 feet northeast of the project site at***

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<sup>21</sup> *Id.* at pp. 4.17-5 - 4.17-6.

<sup>22</sup> *Id.* at p.4.17-9.

<sup>23</sup> TN 239063, 4.13-1.

**6230 San Ignacio Avenue.<sup>24</sup> Please explain how the data sets discussed in the FEIR are appropriate for use as the environmental setting (baseline) for noise, particularly in light of the time between the date of the 2016 noise measurements and the date the CEC began preparation of the EIR?**

## **RESPONSE TO COMMITTEE QUESTION 9**

SV1 objected to Staff's determination to prepare an EIR to no avail. Notwithstanding SV1's objection the CEC and the Committee decided to prepare an EIR instead of simply preparing an Addendum to the IS/MND document that was previously certified by the City of San Jose and relied on to issue permits for the original project. The modifications proposed by SV1 to add additional backup generation should have warranted the legally adequate approach of an Addendum.

Notwithstanding the Commissions election to proceed with a full EIR, the CEC can and should rely on the previous IS/MND prepared by the City and should acknowledge that the City has previously approved the original version of the GOSDC.

It is correct that the original IS/MND incorporated ambient sound measurements from 2016 and 2018. However, sound level data was updated to December 2019 by SV1 and included in the Application for the SPPE filed in early 2020. The December 2019 data was collected prior to Covid-19 pandemic, which we know significantly altered traffic patterns. Collection of noise data in 2020 would have not yielded any meaningful background data because it would have produced sound levels with unsustainably low traffic levels caused by the Covid-19 quarantines. The ambient background data collected in 2016, 2018 and updated in 2019 all demonstrate that traffic noise is the primary noise contributor in the region (TN23467-3, Appendix H, Table 5) and that such background noise is significantly above the modeled noise levels from the daytime and nighttime GOSBGF and GOSDC operations (TN23467-3, Appendix H, Table 9 and pages 21). Additional background measurements would not yield any meaningful data as even now the region is still transitioning to post-pandemic traffic and work patterns.

**10. In comments on the DEIR, Applicant proposed a three-factor mitigation measure to provide alternatives to meet the City of San Jose's (City) climate action plan (CAP); the Applicant invited response from the City to its proposal.<sup>25</sup> The City responded to the Applicant's proposal in its**

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<sup>24</sup> TN 232467-3, Appx. H, pp. 9-11.

<sup>25</sup> TN 238707, p. 2.

**comments on the DEIR.<sup>26</sup> The City concluded that the proposal did not meet the requirements of its CAP. For example, the City pointed out that the use of an alternative to the San Jose Clean Energy Total Green energy program would need to be vetted by a consultant previously approved by the City. The City also stated that the appropriateness of the alternative would require a qualitative description of what measure will be implemented, why it is proposed, and how it will reduce greenhouse gas emissions. Finally, the City stated that any proposed mitigation measure would require a description of how the alternative project measure would achieve the same or greater level of greenhouse gas emission reductions as the City's 2030 Greenhouse Gas Reduction Strategy it replaces, including documentation or calculations to support the Alternative Measure.<sup>27</sup>**

**Staff then filed the Addendum,<sup>28</sup> which proposes changes to MM GHG-1; these changes provide an alternative to participating in the San Jose Clean Energy Total Green energy program based on Applicant's proposed three-factor mitigation measure.<sup>29</sup>**

**Based on the foregoing, how does the revised MM GHG-1 mitigate the potentially significant environmental impact of greenhouse gas emissions to less than significant levels? Please describe how the changes to MM GHG-1 address the comments filed by the City of San Jose relating to compliance with the City's previously adopted greenhouse gas emission reduction strategies and the law, including California Code of Regulations, title 14, sections 15064.5 and 15183.5.<sup>30</sup> What are the performance standards that ensure the mitigation goal will be achieved consistent with the requirement that a lead agency must not defer determinations of offset adequacy?<sup>31</sup>**

## **RESPONSE TO COMMITTEE QUESTION 10**

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<sup>26</sup> TN 238822, pp. 3-4.

<sup>27</sup> *Id.* at p. 3.

<sup>28</sup> TN 239361.

<sup>29</sup> *Id.* at p. 1, 20-21.

<sup>30</sup> *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 525 (greenhouse gas mitigation measures must be real, permanent, quantifiable, verifiable, enforceable, and additional to other, more traditional mitigation measures).

<sup>31</sup> *Id.* at 520 (lead agency must not defer determinations of offset adequacy).

The purpose of MM GHG-1 is not to mitigate its emissions with GHG emissions offsets but rather to ensure compliance with the City of San Jose 2030 GHG Reduction Strategy (GHG RS) which is a qualified greenhouse gas reduction plan pursuant to Title 14 CCR, Section 15183.5 (b). The holding in *Golden Door* only applies to using GHG emission offsets to mitigate significant GHG impacts and therefore is not applicable to a measure ensuring compliance with a qualified GHG emission reduction plan.

Title 14, CCR, Section 15183.5 (b) states:

Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document. A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

(2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project.

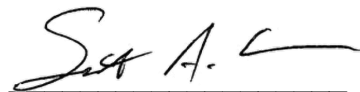
As described in the FEIR, the GHG RS was adopted in 2020 after SV1 filed its application and includes a requirement that a project install solar panels at the site; or participate in a community solar program, or purchase its electricity from San Jose Clean Energy (SJCE) at its Total Green Level to comply with GHGRS 1 and 2 outlined in the GHG RS. SV1 filed a checklist of how it intended to comply with the GHG RS (TN 236336) and propose an Alternative Measure to comply with the requirement without purchasing all of its electricity through the SJCE Total Green Level. The GHG RS specifically allows the use of Alternative Measures as long as it can be demonstrated that the Alternative Measure would achieve the same or greater level of GHG reductions as the GHG RS strategy it replaces. The City did not provide feedback on the checklist prior to Staff publishing the DEIR.

SV1 then proposed modifications to MM GHG-1 in its comments on the DEIR but had not yet had an opportunity to meet with the City to discuss its Alternative Measure. After the City rejected SV1's proposed modifications to MM GHG-1, SV1 met with the City to describe its Alternative Measure more completely. After meeting with City and SJCE Staff, SV1 filed TN 239199 (Revised Alternative Measure), which further elaborated on the existing program performed by SV1's parent company Equinix which demonstrates that it has been purchasing renewable energy and renewable energy credits in a manner that would offset its entire non-renewable electricity use by 100 percent for all its facilities in the United States. The Revised Alternative Measure describes the program and shared proof of independent auditing and proposed to the City that it would report annually that how the GOSDC's electricity use would be enrolled and covered by the existing Equinix Clean Energy Program. The City agreed that the Alternative Measure would be acceptable as compliance with the renewable energy GHG Reductions Strategies GHGRS 1 and 3. Therefore, based on the City's modifications to the MM GHG-1, Staff issued its Addendum.

Since the City will be implementing the Mitigation Measure as an Alternative Measure to comply with its properly adopted 2030 GHG RS, the CEC can rely on both of these facts and can determine that the GOSBGF and GOSDC will not have a significant cumulative impact pursuant to Title 14, CCR 15183.5.

Dated: September 2, 2021

Respectfully Submitted,



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Scott A. Galati  
Counsel to SV1, LLC