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NOTICE OF AVAILABILITY

OF A DRAFT ENVIRONMENTAL IMPACT REPORT

The California Energy Commission (CEC) has prepared a Draft Environmental Impact Report (DEIR) in accordance with the California Environmental Quality Act (CEQA) for the proposed San Jose Data Center (SJDC or project).

Microsoft Corporation (Microsoft or applicant) is seeking a Small Power Plant Exemption (SPPE) from the CEC's jurisdiction to proceed with local approval rather than requiring certification by the CEC for the project. The DEIR also may be used by the City of San Jose and Bay Area Air Quality Management District (BAAQMD), as responsible agencies as defined by CEQA, in their respective permitting processes for the project. The DEIR describes the proposed project and evaluates the potential environmental impacts associated with its construction and operation. The DEIR also analyzes one project alternative in addition to a "no project" alternative. Pursuant to CEQA, the DEIR includes sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.

The DEIR was released for public review on December 23, 2021. The DEIR will be available on the CEC project webpage, as listed below in this notice. Comments on the DEIR will be received for a 45-day period, commencing on December 23, 2021 and ending on February 7, 2022.

PROJECT LOCATION AND DESCRIPTION

The SJDC includes natural gas-fired generators (to provide emergency backup power) that would constitute a thermal powerplant with a generating capacity in excess of 50 megawatts (MW). The generating capacity of the backup generators would not exceed 100 MW. The CEC has the exclusive authority to certify all thermal power plants (50 megawatts [MW] and greater) and related facilities proposed for construction in California. The Small Power Plant Exemption (SPPE) process allows applicants with facilities between 50 and 100 MW to obtain an exemption from CEC's jurisdiction and proceed with local permitting rather than requiring CEC certification. CEC can grant an exemption if it finds that proposed facility would not create a substantial adverse impact on the environment or energy resources. Public Resources Code section 25519(c) designates CEC as the lead agency, in accordance with CEQA, for all facilities seeking an SPPE.

The applicant proposes to construct and operate the project, located at 1657 Alviso-Milpitas Road in San Jose, California. The project would consist of two single-story data center buildings. To provide reliable operation of the project in the event of loss of electrical service from the local electric utility provider, Pacific Gas and Electric Company (PG&E), the project includes 224 renewable natural gas (natural gas) generators each rated at 0.45 megawatt (MW) output capacity to provide electrical power to support the data center uses during utility outages, certain onsite electrical equipment interruptions or failure, and for load shedding, demand response and behind-the-meter resource adequacy ancillary services. The maximum electrical load of the project would be 99 MW, although the estimated load is 77 MW, inclusive of information technology (IT) equipment, ancillary electrical/ telecommunications equipment, and other electrical loads (administrative, heat rejection, and safety/ security). In addition, the project includes two Tier 4 diesel-powered generators (designated as administrative generators), with a 1.25 MW standby generator for the northern building and a 0.5 MW standby generator for the southern building. The project also includes an onsite 115 kilovolt (kV) substation located in the northwestern corner of the project site with two 115 kV underground electrical supply lines (approximately 0.2 mile) that would connect to PG&E's Los Esteros Substation, located adjacent to the site. The project would require offsite linears for potable water, reclaimed water, storm water, sanitary sewer, natural gas, and electrical. Natural gas is also proposed for comfort heating of the data center buildings.

HAZARDOUS WASTE SITES

The project parcels are not listed on the California Hazardous Waste and Substances Sites List (also known as the Cortese List), published under Government Code section 65962.5.

ANTICIPATED ENVIRONMENTAL EFFECTS

Typical of projects proposing to use large amounts of fossil fuel, the project's potential impacts of concern largely center on the proposed burning of natural gas. The project would emit greenhouse gases (GHGs); criteria air pollutants, including nitrogen oxides (NOx) and particulate matter (PM); and non-criteria air pollutants, including ammonia and diesel particulates. These emissions not only have the potential to impact public health, but also, in the case of NOx, have the potential to result in impacts to biological resources. Operation of the engines also may produce noise impacts with the potential to affect nearby workers or businesses. Construction of the project also has the potential to affect cultural and tribal resources, paleontological resources, transportation, and air quality. Staff considered all these potential impacts, as well as others, in its evaluation.

The proposed project would result in no impacts to agricultural and forestry resources, mineral resources, and wildfire. The project would have less than significant impacts without mitigation to aesthetics, energy and energy resources, hydrology and water quality, land use and planning, population and housing, public resources, recreation, and utilities and service systems.

The DEIR evaluates potentially significant impacts requiring mitigation in the following technical areas:

- **Air Quality.** The project would not conflict with or obstruct implementation of the applicable air quality plan. The project would not expose sensitive receptors to substantial pollutant concentrations. The project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Air quality impacts during project construction would be reduced with implementation of mitigation measure **AQ-1**. This measure requires incorporation of the BAAQMD's best management practices to control fugitive dust. This measure also incorporates exhaust control measures to reduce emissions from construction equipment. During operation of the engines, the NOx (as an ozone precursor) emissions of the standby generators would be fully offset through the permitting process with the BAAQMD. With implementation of these measures during construction and NOx offsets for operations through BAAQMD's permitting requirements, the project would not cause a cumulatively considerable net increase of any criteria pollutant, and impacts would be reduced to a less than significant level.

- **Biological Resources.** The project would not adversely affect any species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS), with mitigation incorporated. Staff proposes **BIO-13** entailing development and use of a worker environmental awareness program (WEAP) to actively train on-site personnel in identifying and avoiding special-status species, **BIO-15** for the Congdon's tarplant, **BIO-16** for the San Francisco dusky-footed woodrat and ringtail cat, **BIO-17** for potential impacts to the salt marsh harvest mouse, **BIO-1** through **BIO-5** for nesting migratory birds, burrowing owl, and mitigation for burrowing owl habitat, **BIO-20** for temporary and permanent losses of agricultural lands (Santa Clara Valley Habitat Plan Fee Zone B) which may provide foraging habitat for special-status species, and **BIO-18** for a one-time nitrogen deposition fee payment (nitrogen deposition may adversely affect special-status plants, and in turn, the wildlife dependent upon them).

  The project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local plans, policies, and regulations or by the CDFW or USFWS, with implementation of the following mitigation measures as proposed by staff: **BIO-7**, a storm water pollution prevention plan, and **BIO-13**, **BIO-18**, and **BIO-11,** which require adherence to all state, federal, and local laws with respect to riparian habitat.

  Without mitigation, the project could adversely affect state or federally protected wetlands, (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. Staff proposes **BIO-8**, requiring a biological monitor, **BIO-9**, requiring limited removal of wetland vegetation and/or trees, **BIO-10**, requiring reseeding with locally native or sterile

nonnative species, and **BIO-13** and **BIO-14**, requiring an aquatic resources delineation. **BIO-11** would also be protective of wetlands as the measure requires compliance requirements of the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), or CDFW for riparian habitats or areas regulated by these agencies. Should onsite wetlands be impacted, staff has further proposed **BIO-19**, a wetland development fee pursuant to the Santa Clara Valley Habitat Plan.

The project would not interfere with the movement of any native resident or migratory fish or wildlife species or established wildlife corridors, or impede the use of native wildlife nursery sites, and would comply with local ordinances and policies regarding use of artificial lighting.

With mitigation, the project would not conflict with any local policies or ordinances protecting biological resources. To avoid conflict with City of San Jose (City) policies and its Municipal Code regarding tree removal and protection of the Heritage Trees, staff proposes measure **BIO-12** specifying protection measures to reduce impacts during project construction. Staff also proposes **BIO-1** specifying pre-construction nesting bird surveys, **BIO-2**, **BIO-3** through **BIO-7**, and **BIO-18** through **BIO-20**. These measures would ensure all impacts are reduced to a less than significant level.

- **Cultural and Tribal Cultural Resources.** The project would not impact any known resources that could meet CEQA's criteria for historical resources, unique archaeological resources, or tribal cultural resources. However, previous cultural resources studies in the project area indicate that buried archaeological or ethnographic resources could be encountered during ground disturbing activities at the site. Staff recommends a series of mitigation measures, **CUL-1** through **CUL-6**, to address the discovery of previously unknown buried cultural resources, including human remains. In addition, **CUL-1** proposes to require monitoring by both a qualified archaeological resources specialist and a Native American monitor, and implement a WEAP. With implementation of these mitigation measures, potential impacts on cultural and tribal cultural resources would be reduced to a less than significant level.

- **Geology and Soils** Construction would temporarily increase sedimentation and erosion by exposing soils to wind and runoff until construction is complete and new vegetation is established. The city's National Pollutant Discharge Elimination System Municipal Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing erosion control measures through the grading and building permit process. In accordance with General Plan policies, implementation of the regulatory programs and policies in place would reduce possible impacts of accelerated erosion during construction to a less than significant level. Continuous operation work would not result in increased erosion or topsoil loss. The probability that construction, operation of the proposed project would have an impact on the risk of loss, injury, or death involving rupture of an earthquake fault during

operation is remote. As the project site is relatively flat with no open faces or slopes near the site, there is low potential for landslides. A project-specific geotechnical engineering report, along with the final project design, would be required to address, as needed, any potential issues arising from expansive soils, liquefaction, unstable geologic or soil units that could result from construction of this project. With implementation of applicable design criteria per the California Building Standards Code, as well as the incorporation of the anticipated project-specific mitigation recommendations in the final geotechnical engineering report, seismic hazards would be minimized, to the extent feasible with conformance to the applicable seismic design criteria of the California Building Standards Code located on expansive soil such that it would create substantial direct or indirect risks to life or property, and therefore impacts would be less than significant. Earth moving during project construction has the potential to disturb paleontological resources. Staff proposes **GEO-1**, to train construction personnel and guide recovery and processing of any significant paleontological finds. Staff concludes that with implementation of **GEO-1**, impacts to unique paleontological resources would be reduced be to a less than significant level.

- **Greenhouse Gas Emissions.** The greenhouse gas (GHG) emissions from the facility's stationary sources would have average annual GHG emissions that would exceed the 10,000 $MTCO_2e$/yr BAAQMD significance threshold for GHG emissions from stationary sources. This represents a potentially significant impact that requires mitigation. Staff recommends mitigation measure **GHG-1** to require the SJDC project stationary sources to use renewable fuels to ensure that operation of the generators would not hinder California's efforts to achieve 2030 or 2045 GHG reduction goals and to bring the facility's stationary source emissions below the BAAQMD significance threshold. With this measure, the project's GHG emissions from stationary sources would not have a significant direct or indirect impact on the environment.

  The City of San Jose's GHG Reduction Strategy is a Qualified Climate Action Plan under CEQA. This project would comply with the requirements of that plan with implementation of **GHG-2**, which would require the applicant to participate in San Jose Clean Energy at the Total Green level. Participating at the Total Green level would allow the project to comply with the renewable energy development component of the City's 2030 GHGRS. Therefore, staff proposes **GHG-2** to require the project owner to participate in San Jose Clean Energy at the Total Green level, or negotiate an electricity contract with San Jose Clean Energy that accomplishes the same goals as the Total Green level, to ensure compliance with the City's 2030 Greenhouse Gas Emissions Reduction Strategy.

  Pursuant to California Code of Regulations, title 14, section 15183.5, the CEC may rely on that compliance in its analysis of GHG emissions impacts. Accordingly, staff concludes with implementation of **GHG-2**, the project's GHG emissions would not have a significant direct or indirect impact on the environment. With implementation

of the efficiency measures to be incorporated into the project, and **GHG-2**, GHG emissions related to the project would not conflict with the City's GHG Reduction Strategy or other plans, policies, or regulations adopted for the purpose of reducing the emissions of GHGs. Because the project would be consistent with applicable plans and policies adopted to reduce GHG emissions and would comply with all regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions, the potential for the project to conflict with an applicable plan, policy or regulation for GHG reductions would be less than significant. With implementation of **GHG-2**, impacts related to GHG emissions would be reduced to less than significant.

- **Hazards and Hazardous Materials.** During the construction phase of the project, the only hazardous materials used would be paints, cleaners, solvents, gasoline, motor oil, welding gases, and lubricants. When not in use, any hazardous material would be stored in designated construction staging areas in compliance with local, state, and federal requirements. Any impacts resulting from spills or other accidental releases of these materials would be limited to the site due to the small quantities involved and their infrequent use. The transportation of the diesel fuel to the site would take a few tanker truck trips for the initial fill and during operation, one fuel truck delivery would occur every three months. Diesel fuel has a long history of being routinely transported and used as a common motor fuel. The risk to the off-site public or environment through the routine transport, use or disposal of hazardous materials would have a less than significant impact.

  Hazardous materials would be stored, handled, and used in accordance with applicable regulations. Personnel would be required to follow instructions on health and safety precautions and procedures to follow in the event of a release of hazardous materials. All equipment and materials storage would be routinely inspected for leaks. Records would be maintained for documenting compliance with the storage and handling of hazardous materials. In addition, there would be engineering controls for the diesel and natural gas hazardous materials such as a double walled tank for the diesel fuel and leak detection and shut off valves for the natural gas that would mitigate the risk of a spill or release. The risk to the off-site public or environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials would have a less than significant impact.

  Ground disturbing activities associated with the removal of underground utilities, and construction of the project would have the potential to encounter the identified contaminated soil. Staff proposes mitigation measures requiring the preparation of a Site Management Plan to establish proper procedures to be taken when contaminated soil is found and how to dispose of the contaminated soil properly (**HAZ-1**) and a Health and safety Plan to establish provisions for personal protection and procedures if contaminated soil is encountered (**HAZ-2**). Staff concludes that with implementation of **HAZ-1** and **HAZ-2**, impacts to the public or the

environment due to contaminated soils, would be reduced to a less than significant level.

- **Noise.** While the City Municipal Code does not specify a threshold for construction noise level increases to be considered an impact, staff considers an increase of 10 dBA or more during the day to be an impact because it can trigger a community reaction and therefore warrants additional measures to address. Staff found that construction activities could elevate noise levels at businesses nearest the project site by 10 dBA or more. With implementation of staff's proposed **NOI-1** requiring a complaint and redress process be implemented, the project's construction noise impact would be less than significant.

  Staff calculated the projected operational noise levels at the nearby commercial building and residences and concluded that the increases in noise levels at those receptors due to project operation would be no more than 3 dBA. Staff also found that the projected noise levels both at the closest businesses and residences would be within the respective noise levels specified by the City Code for those uses, therefore, there would be no significant noise impact due to project operation.

  Sources of groundborne vibration associated with project operation would include the backup generators and rooftop equipment. These pieces of equipment would be well-balanced, as they are designed to produce very low vibration levels throughout the life of a project. In most cases, even when there is an imbalance, they could contribute to ground vibration levels only in the vicinity of the equipment and would be dampened within a short distance. Furthermore, the backup generators would be equipped with specifications that ensure sufficient exhaust silencing to reduce vibration. Therefore, vibration impacts due to project operation would be less than significant.

  The project site is not in the vicinity of a private airport and it would not place sensitive land uses within an airport noise contour (the site is 13.4 miles from the Norman Y. Mineta San Jose International Airport). Thus, the project would not combine with the airport to expose people to excessive noise levels.

- **Transportation.** Project construction would not significantly obstruct any transit, roadway, bicycle, or pedestrian facilities in the area. Construction activities would occur mostly onsite and not in the public right-of-way, with the exceptions of a Class I Bikeway Trail extension connecting the existing trail Coyote Creek segment to the new Nortech Parkway extension; interconnection to water and transmission lines west of the project site; two independent natural gas pipelines (approximately 75 feet in length) at the southern border of the project; and several roadway improvements along Zanker Road. In addition, Nortech Parkway extension would be constructed east of Zanker Road to provide direct access to the site. Project construction would not otherwise temporarily or permanently alter any public roadways or intersections. Project operation would occur on-site.

The project would not result in hazards to aircraft from either a geometric design feature, such as structure height, or incompatible uses, including land uses or thermal plumes. The project would not increase any other hazards. Emergency vehicle access would be provided by two driveways, one at the northern boundary of the site and the other at the southern boundary of the site. The project would not physically block any access roads or result in traffic congestion that could significantly compromise timely access to this facility or other facilities located within the project vicinity during construction and operation.

Project-generated vehicle miles traveled (VMT) per employee would exceed the City's industrial threshold of 14.37 VMT per employee. Staff proposes **TRA-1,** which requires the project owner to implement multi-modal infrastructure improvements, a parking reduction measure, and Transportation Demand Management (TDM) measures, to reduce the project VMT to a less than significant level. Staff concludes that with implementation of **TRA-1** to lower project generated VMT to a level below the city's industrial VMT threshold, impacts to VMT would be reduced to a less than significant level.

The DEIR evaluates the potential for the proposed project to result in growth inducing effects and associated secondary environmental impacts. This DEIR also considers whether the proposed project would result in a cumulatively considerable contribution to existing significant cumulative environmental effects when combined with other past, present, and reasonably foreseeable future projects.

The DEIR concludes that all potential impacts from the project would be less than significant with implementation of identified mitigation measures.

PUBLIC REVIEW PROCESS

The purpose of this Notice, consistent with Sections 15086 and 15087 of the State CEQA Guidelines, is to consult with and request comments from responsible agencies, organizations, and interested parties regarding the environmental analyses presented in the DEIR. The DEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the State CEQA Guidelines, the CEC has scheduled a 45-day public review period for the DEIR, ending on February 7, 2022.

Extended by Executive Order (EO) N-80-20 until the State of Emergency due to the COVID-19 pandemic is terminated, certain CEQA noticing requirements (e.g., the requirement to publicly post and file materials concerning the project with the county clerk) have been suspended as authorized by Governor Newsom's previous EO N-54-20. Therefore, access to the Draft EIR and other project information/reports will be available electronically through the CEC's project docket website at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04 and at the State Clearinghouse through the CEQANet Database at: https://ceqanet.opr.ca.gov/.

Consistent with subparagraphs (a) through (c) of Paragraph 8 of EO N-54-20, this Notice of Availability of a Draft Environmental Impact Report has also been mailed to nearby property owners, responsible and trustee agencies, and the county clerk, and sent to the California State Clearinghouse. Persons who cannot access the materials through the link above are encouraged to email the CEC at: lisa.worrall@energy.ca.gov with a subject line "San Jose Data Center", or call 916-661-8367 to arrange for alternative means of access to project materials.

The DEIR is available for review on the project's docket page, at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04.

Written comments on the DEIR may be submitted to the project's docket submittal page, at: https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=19-SPPE-04. Alternatively, comments may be submitted to: lisa.worrall@energy.ca.gov.