

DOCKETED	
Docket Number:	19-SPPE-04
Project Title:	SJ2
TN #:	243039
Document Title:	Microsoft SJ2 PreHearing Conference Statement
Description:	N/A
Filer:	Scott Galati
Organization:	DayZenLLC
Submitter Role:	Applicant Representative
Submission Date:	5/12/2022 3:02:39 PM
Docketed Date:	5/12/2022

Nadia Costa
MILLER STARR REGALIA
1331 N. California Blvd., 5th Floor
Walnut Creek, CA 94596
Telephone: (925) 935-9400

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 **SAN JOSE CITY
DATA CENTER**

DOCKET NO: 19-SPPE-04

**MICROSOFT'S PREHEARING
CONFERENCE STATEMENT AND
RESPONSES TO COMMITTEE'S
QUESTIONS; NOTICE OF AND
MOTION IN LIMINE TO EXCLUDE
INTERVENOR ROBERT SARVEY'S
PURPORTED REBUTTAL
TESTIMONY AND EXHIBITS AND
LIMIT PARTICIPATION AT
EVIDENTIARY HEARING**

Microsoft, the applicant for the San Jose City Data Center (SJCDC), in accordance with the **NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING, REVISED SCHEDULING ORDER, AND FURTHER ORDERS** dated April 29, 2022 (Committee Order)¹, hereby files its Prehearing Conference Statement for its Application for Small Power Plant Exemption (SPPE) for the San Jose City Data Center (SJCDC). Microsoft also includes in this PreHearing Conference Statement a Notice of Motion and

¹ TN 242888.

Motion to exclude evidence and an Order limiting Intervenor Sarvey's participation at the evidentiary hearing.

MOTION TO EXCLUDE EVIDENCE AND LIMIT INTERVENOR SARVEY PARTICIPATION AT EVIDENTIARY HEARING TO PROVIDING PUBLIC COMMENT

All of the parties to this proceeding had notice that the deadline for filing Opening Testimony was April 14, 2022 and for Rebuttal Testimony was April 28, 2022. These deadlines were included in the Revised Scheduling Order issued on March 15, 2022² and reaffirmed in the Committee Order. Microsoft timely filed Opening Testimony on April 4, 2022.³ Staff filed Opening Testimony on April 7, 2022.⁴ Neither Staff nor Microsoft filed Rebuttal Testimony because Staff and Microsoft were in agreement and have no disputes requiring adjudication by the Committee.

Intervenor CURE did not file any testimony and filed a motion to remove its party status from the proceeding on May 9, 2022.⁵

Intervenor Sarvey failed to file any Opening Testimony but then filed a document purported to be Rebuttal Testimony⁶ and referenced Proposed Exhibits⁷ on April 28, 2022; the deadline for Rebuttal Testimony set forth by the Committee in the prior Revised Scheduling Order and in the Committee Order.

The Committee Order contained the following ruling:

Failure by a party to file opening testimony shall preclude that party from filing rebuttal testimony.⁸

Microsoft hereby makes this motion to exclude Mr. Sarvey's purported Rebuttal Testimony and referenced Proposed Exhibits from the evidentiary record on the grounds they are precluded by the Committee Order because Mr. Sarvey did not file any Opening Testimony on or before April 14 2022.

² TN 242335

³ TN 242539

⁴ TN 242605

⁵ TN 242968

⁶ TN 242877

⁷ TN 242875 and TN 242876

⁸ Committee Order, page 10

The Committee Order also included the following ruling:

Failure by a party to comply with the filing requirements stated in this Order shall preclude that party from participating in the Evidentiary Hearing.⁹

Intervenor Sarvey failed to comply with the Committee Order by failing to file Opening Testimony as demonstrated above and his purported Rebuttal Testimony and Proposed Exhibits should not be allowed into the evidentiary record. Failure to file testimony demonstrates noncompliance with the Committee Order and Microsoft requests the Committee preclude Intervenor Sarvey from participating in the evidentiary hearing as explicitly stated in the Committee Order. Therefore, Microsoft requests the Committee specifically preclude Intervenor Sarvey from providing oral testimony, cross-examining witnesses, introducing and sponsoring evidentiary exhibits, making a closing statement, and any opening and rebuttal briefing. Mr. Sarvey should be limited to making public comment.

There is no requirement that Microsoft make a motion to exclude evidence prior to the evidentiary hearing; a party is authorized to object to the introduction of the evidence at the evidentiary hearing at the time such evidence is proffered. However, because the ultimate ruling on the evidence and subsequent participation of Intervenor Sarvey would substantially alter the conduct of the evidentiary hearing, Microsoft makes this Notice of Motion and Motion In Limine prior to the PreHearing Conference as a courtesy to the parties and the Committee so a ruling can be made at the PreHearing Conference.

PREHEARING CONFERENCE STATEMENT

This PreHearing Conference Statement has been prepared as if the Committee will enforce its own order and exclude from the evidentiary record the aforementioned documents and preclude Intervenor Sarvey from participating in the evidentiary hearing except to provide public comment.

1. **Subject Areas Complete And Ready to Proceed To Evidentiary Hearing**

Microsoft believes that all subject areas (and/or disciplines) are complete and ready for adjudication at the Evidentiary Hearings.

2. **Subject Areas Where Microsoft Proposes To Introduce Testimony In Writing Rather Than Through Oral Testimony**

Microsoft proposes to introduce all of its testimony in all areas in writing rather than through oral testimony. Microsoft is in complete agreement with Staff on every

⁹ Committee Order, page 10

issue. Microsoft will, however, have representatives available remotely for the evidentiary hearing to answer questions from the Committee.

3. **Subject Areas Not Complete and Not Ready To Proceed to Evidentiary Hearing**

None.

4. **Disputed Topic Areas Requiring Adjudication**

None.

5. **Proposed Witnesses**

Microsoft is not proposing any live oral testimony. However, Microsoft reserves the right to provide additional live oral witness testimony to answer questions from the Committee.

6. **Cross-Examination**

Microsoft does not request cross-examination of any of the Staff witnesses.

7. **Exhibit List**

Table 1 is Microsoft's Proposed Exhibit List.

8. **Proposed Briefing Schedule**


Microsoft does not propose any legal briefs unless directed by the Committee for discrete legal issues. If helpful to the Committee, Microsoft proposes a 10-minute closing statement at the end of the evidentiary hearing.

Dated: May 12, 2022

Respectfully Submitted,



Nadia Costa
Counsel to Microsoft



Scott A. Galati
Counsel to Microsoft

**Microsoft Corporation
San Jose Data Center (19-SPPE-04)**

Table 1 Exhibit List

EXHIBIT NO.	TN	TITLE	SUBJECT
1	230741	SJC02 SPPE Application Volume 1 Main application, absent appendices. 221 pages	All
2	230755	SJC02 SPPE Application Cover Letter SJC02 SPPE Application Cover Letter Cover Letter and Affidavit of Peter Witters. 2 pages	All
3	230762	SJC02 SPPE Application Volume 2 Appendix 1A (Partial) SJC02 SPPE Appendix 1A (Partial) Draft Environmental Impact Report for 237 Industrial Center Project 61 pages	All
4	530763	SJC02 SPPE Application Volume 2 Appendix 1A to Appendix 3-5A SJC02 SPPE Volume 2, Appendix 1A to Appendix 3-5A 444 pages	All
5	230765	SJC02 SPPE Application Volume 2 Appendix 3-7B to 3-19A SJC02 SPPE Volume 2, Appendix 3-7B to 3-19A 93 pages	Geology and Soils, Paleontological Resources, Traffic and Transportation, Tribal and Cultural Resources, Utilities and Service Systems
6	230770	SJC02 SPPE Application Volume 2 Appendix 3-7A SJC02 SPPE volume 2, Appendix 3-7A 138 pages	Geology and Soils
7	231774	SJC02 SPPE Data Response Set 1 SJC02 SPPE Data Response Set 1 169 pages	Project Description, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, Transportation, Tribal Cultural Resources
8	232027	SJC02 SPPE Data Response Set 2 SJC02 Data Response Set 2 22 pages	Air Quality, Transmission System Engineering, Soil and Water
9	232529	SJC02 MSR #1 SJC02 Monthly Status Report #1 5 pages	
10	232595	SJC02 SPPE Data Response Set 3 SJC02 Data Response Set 3 12 pages	Air Quality and Greenhouse Gas Emissions, Utilities and Service Systems
11	232843	SJC02 SPPE Applicant's Response to Revised Issue Identification Report SJC02 Response to Revised Issue Identification Report 3 pages	Traffic and Transportation, Utilities and Service Systems, Transmission System Engineering
12	232999	SJC02 MSR #2 SJC02 Monthly Status Report #2 3 pages	
13	233148	SJC02 SPPE Extension Request Data Request Set 5	Utilities and Service Systems, Transmission System Engineering

**Microsoft Corporation
San Jose Data Center (19-SPPE-04)**

Table 1 Exhibit List

		SJC02 Extension Request for DR Set 5 3 pages	
14	233448	Microsoft Response to CURE Microsoft Response to CURE Motion for Leave to File Data Request 3 pages	
15	233489	SJC02 MSR #3 SJC02 Monthly Status Report #3 3 pages	
16	233886	SJC02 MSR #4 SJC02 Monthly Status Report #4 2 pages	
17	233960	Microsoft Objections to CURE's DRs Microsoft Objections to CURE's Data Requests 4 pages	
18	234057	SJC02 Substantive Responses to CURE DR Set 1 SJC02 CURE Data Response Set 1 65 pages	Electricity Demand, Water Use, Air Quality, Project Description, Facility Design
19	234325	SJC02 MSR #5 SJC02 Monthly Status Report #5 3 pages	
20	234592	SJC02 Response to CURE Petition to Compel DR #24 Microsoft Response to CURE Petition to Compel Data Request Set #24 5 pages	
21	234716	SJC02 MSR #6 SJC02 Monthly Status Report #6 3 pages	
22	234926	SJC02 SPPE Response to CURE Data Request #24 SJC02 Response to CURE Data Request 24 4 pages	Air Quality, Greenhouse Gases
23	235251	SJC02 MSR #7 SJC02 Monthly Status Report #7 3 pages	
24	235456	SJC02 Reconductoring Analysis SJC02 Reconductoring Analysis 303 pages	All
25	235466	SJC02 SPPE Data Response Set 5 SJC02 Data Response Set 5 6 pages	Project Description, Transmission Systems and Engineering
26	235628	SJC02 MSR #8 SJC02 Monthly Status Report #8 1 page	
27	235948	SJC02 MSR #9 SJC02 Monthly Status Report #9 3 pages	
28	236296	SJC02 SPPE Data Response Set 1A SJC02 Data Response Set 1 23 pages	Cultural Resources
29	236329	SJC02 MSR #10 SJC02 Monthly Status Report #10 2 pages	
30	236813	SJC02 MSR #11 SJC02 Monthly Status Report #11 3 pages	

**Microsoft Corporation
San Jose Data Center (19-SPPE-04)**

Table 1 Exhibit List

31	236947	SJC02 SPPE DR Set 5A SJC02 Data Response Set 5A	Transmission System Engineering
32	237175	SJC02 MSR #12 SJC02 Monthly Status Report #12 3 pages	
33	237247	SJC02 SPPE Informal Data Response Set 1A SJC02 Informal Data Response Set 1A 4 pages	Project Description
34	237356	SJC02 SPPE Informal Data Request Response Set 1A SJC02 Informal Data Response Set 1A 4 pages	Project Description
35	237459	SJC02 MSR #13 SJC02 Monthly Status Report #13 3 pages	
36	237813	SJC02 MSR #14 SJC02 Monthly Status Report #14 2 pages	
37	238200	SJC02 MSR #15 SJC02 Monthly Status Report #15 3 pages	Traffic and Transportation
38	238222	SJC02 SPPE Traffic Assessment SJC02 Traffic Assessment 105 pages	Traffic and Transportation
39	238432	SJC02 MSR #16 SJC02 Supplemental Status Report #16 2 pages	
40	238901	SJC02 MSR #17 SJC02 Monthly Status Report #17 5 pages	
41	239309	SJC02 SPPE City Comments on Traffic Assessment SJC02 City of San Jose Comments on Traffic Assessment 2 pages	Traffic and Transportation
42	239329	SJC02 MSR #18 SJC02 Monthly Status Report #18 2 pages	
43	239409	SJC02 SPPE Supplement Volume 1 SJC02 SPPE Supplemental Filing Volume 1 146 pages	All
44	239410	SJC02 SPPE Supplement Volume 2 SJC02 SPPE Supplemental Filing Volume 2 56 pages	All
45	239411	SJC02 SPPE Supplement Appendix 1D Part 1 SJC02 SPPE Supplemental Filing Appendix 1D Part 1 156 pages	All
46	239412	SJC02 SPPE Supplement Appendix 1D Part 2 SJC02 SPPE Supplemental Filing Appendix 1D Part 2 57 pages	All
47	239413	SJC02 SPPE Supplement Appendix Air and Traffic Part 1 SJC02 SPPE Supplemental Filing Appendix Air-Traffic - Part 1 108 pages	Air Quality, Traffic and Transportation
48	239419	SJC02 SPPE Supplement Appendix Air and Traffic Part 2 SJC02 SPPE Supplemental Filing Appendix Air-Traffic-Part 2 104 pages	Air Quality, Traffic and Transportation
49	239420	SJC02 SPPE Supplement Appendix Air and Traffic Part 3	Air Quality, Traffic and Transportation

**Microsoft Corporation
San Jose Data Center (19-SPPE-04)**

Table 1 Exhibit List

		SJC02 SPPE Supplemental Filing Appendix Air-Traffic - Part 3 25 pages	
50	239421	SJC02 SPPE Supplemental Appendix Traffic Part 4 SJC02 SPPE Supplemental Filing Appendix Traffic - Part 4 84 pages	Traffic and Transportation
51	239422	SJC02 SPPE Supplemental Appendix Traffic Part 5 SJC02 SPPE Supplemental Filing Appendix Traffic - Part 5 13 pages	Traffic and Transportation
52	239597	SJC02 Final Transportation Assessment Report SJC02 Final Transportation Assessment Report 127 pages	Traffic and Transportation
53	239733	SJC02 MSR #19 SJC02 Monthly Status Report #19 4 pages	
54	239940	SJC02 Final Transportation Assessment Report SJC02 Final Transportation Assessment Report 127 pages	Traffic and Transportation
55	239941	SJC02 City of San Jose Transportation Comments #2 SJC02 City Comments on Transportation Assessment, Set 2 1 page	Traffic and Transportation
56	240082	SJC02 SPPE Data Response Set 6 SJC Data Center Response to Data Request Set #6 117 pages	Air Quality, Energy, Hazards and Hazardous Materials, Land Use and Planning, Project Description, Utilities and Service Systems.
57	240086	SJC02 MSR #20 SJC02 Monthly Status Report #20 3 pages	
58	240112	SJC02 SPPE CEC Information Request Set #2 SJC02 Information Request Set #2 - Geology figures 3 pages	Geology, Soil, Paleontology
59	240604	SJC02 MSR #21 SJC02 Monthly Status Report #21 3 pages	
60	240942	SJC02 City of San Jose Form 327, natural gas exemption request SJC Data Center, City of San Jose Form 327, Natural Gas Exception Request 9 pages	Greenhouse Gas
61	240946	SJC02 MSR #22 SJC02 Monthly Status Report #22 2 pages	
62	241204	SJC02 MSR #23 SJC02 Monthly Status Report #23 1 page	
63	241464	SJC02 SPPE Applicant Comments on Draft EIR Microsoft SJC02 Draft EIR Comments 10 pages	Project Description, Biological Resources, Greenhouse Gas, Air Quality, Cultural and Tribal Cultural Resources, Hazards and Hazardous Materials, Land Use and Planning, Transportation
64	241513	SJC02 City of San Jose DER Exception Approval SJC Data Center, City of San Jose DER Exception Approval 8 pages	Greenhouse Gas

**Microsoft Corporation
San Jose Data Center (19-SPPE-04)**

Table 1 Exhibit List

65	241545	SJC02 MSR #24 SJC02 Monthly Status Report #24 1 page	
66	241625	SJC02 SPPE Applicant Responses to BAAQMD on Draft Comments Microsoft SJC02 Response to BAAQMD Draft EIR Comments 12 pages	Air Quality, Greenhouse Gas
67	242341	SJC02 MSR #25 SJC02 Monthly Status Report #25 2 pages	
68	242468	Applicant Motion to Adjust Scheduling Order Applicant Motion for Adjustment to Scheduling Order 5 pages	
69	242539	SJC02 Opening Testimony SJC02 Opening Testimony 75 pages	All
70	243035	Santa Clara Valley Habitat Agency 2021 Burrowing Owl Breeding Season Survey Report 2021 Burrowing Owl 2021 Survey Report	Biology

RESPONSE TO COMMITTEE QUESTIONS

Air Quality Committee Question 1a.

On page 4.3-33 of the FEIR, CEC Staff discuss the anticipated cumulative contributions from particulate matter. The FEIR states that both the modeled 24-hour and annual PM10 concentrations would exceed the applicable significant impact levels (SILs). The FEIR then predicts PM10 concentration at the fenceline and states that the 24-hour PM10 concentration would be below the SILs, and that the annual PM10 emissions at the nearest residential receptors would be “much lower than the maximum shown.” Similarly, for PM2.5, the FEIR states that the maximum modeled 24-hour PM2.5 concentration “would decrease rapidly with distance from the fence line,” while annual PM2.5 would be less than applicable significance thresholds.

- i. What are the estimated annual PM10 concentrations at the nearest residential receptor? Does it fall below the applicable significance thresholds?*

Response: As stated on Page 4.3-13 of the FEIR, the nearest residential receptor is approximately 0.3 mile south of the project site. During construction, the estimated annual PM10 concentration at the nearest residential receptor is 0.155 $\mu\text{g}/\text{m}^3$, which is less than the SIL of 1 $\mu\text{g}/\text{m}^3$. During operation, the estimated annual PM10 concentration at the nearest residential receptor is 0.016 $\mu\text{g}/\text{m}^3$, which is less than the SIL of 1 $\mu\text{g}/\text{m}^3$.

- ii. What are the estimated 24-hour PM2.5 concentrations at the nearest residential receptor? Does it fall below the applicable significance thresholds?*

Response: During construction, the estimated 24-hour PM2.5 concentration at the nearest residential receptor is 0.297 $\mu\text{g}/\text{m}^3$, which is less than the SIL of 1.2 $\mu\text{g}/\text{m}^3$. During operation, the estimated 24-hour PM2.5 concentration at the nearest residential receptor is 0.827 $\mu\text{g}/\text{m}^3$, which is also less than the SIL of 1.2 $\mu\text{g}/\text{m}^3$.

Air Quality Committee Question 1b.

On page 4.3-34 of the FEIR, as part of its air quality impact analysis (AQIA) for criteria pollutants, the FEIR estimates the emissions from the natural gas-fired generators when operating “load shedding and demand response under various load scenarios,” in addition to routine maintenance and testing. This operation is due to the project’s anticipated participation in PG&E’s Base Interruptible Program (BIP). (Page 3-17.) BIP is triggered “when the California Independent System Operator issues a curtailment notice.” (Page 3-17.) Page 3-17 of the FEIR describes the scenarios in which the generators are anticipated to operate for participation in BIP and for maintenance. In contrast, the FEIR states that use of the natural gas-fired generators and diesel-fired administrative generators for emergency operations is typically not evaluated during facility permitting

and air districts do not conduct such an assessment. (Page 4.3-46.) The FEIR states that modeling air quality impacts from emergency operations “would require a host of unvalidated, unverifiable, and speculative assumptions” that “would not provide meaningful information by which to determine project impacts.” (Page 4.3-46.) As a result, the FEIR assesses air quality impacts from participation in BIP, which occurs under emergency reliability conditions, but not for other types of emergency operations.

Please explain whether the air quality impact analysis modeling assumptions and scenarios used to assess emissions, including BIP participation, are or are not appropriate for assessing emissions from emergency operations.

Response: The FEIR’s use of modeling assumptions and scenarios related to use of the natural gas back-up generators as a result of BIP participation are appropriate for assessing emissions given the available data regarding historical participation in PG&E’s BIP, which is a program geared toward summer-peak and winter-peak energy demands. As shown in the Applicant’s response to Data Request 84, between the period of 2009 and 2021, there were 31 BIP events, with a total of 95 BIP hours across the same period. The same data shows a maximum of 28 hours in a single year. BIP program guidelines provide it will not exceed 180 hours per year. Thus, for modeling purposes, both historical data and maximum annual BIP hours are available to evaluate estimated emissions. The modeling of BIP participation requires the BAAQMD permit to specifically authorize the amount and conditions the generators could run in a “non-emergency” voluntary mode. Therefore, Microsoft evaluated a specific amount of limited operation for foreseeable BIP operations. It is important to note that in an event where the facility is called upon to operate pursuant to the BIP, the vast majority of such events would not result in actual curtailment of the facility if the facility had not participated in the BIP.

The same modeling assumptions and scenarios are not, however, directly transferrable to the assessment of impacts associated with operation of the standby generators due to true emergencies occurring due to unforeseen and unpredictable events, equipment failures, or accidents. CEQA requires the evaluation of “reasonably foreseeable” impacts. (CEQA Guidelines, § 15064(d)(3).) “If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.” (CEQA Guidelines, § 15145.) The current legal framework for operating the generators during an emergency requires an actual curtailment of electricity to the site that is beyond Microsoft’s control. Such events are exceedingly rare, extremely uncertain to predict, and are evaluated at the level they can be without significant speculation in the FEIR Appendix B. As provided in the Applicant’s response to Data Request 61, Table DR61, the 115 kV lines for the Los Esteros Substation shows that since 2007, there were five outages with a total outage duration of 18 hours and 20 minutes. Yet, since 2010, the duration of outages has been *less than 3 minutes*. The FEIR’s statement that “assessing the air quality impacts of

emergency operations would require a host of unvalidated, unverifiable, and speculative assumptions about when and under what circumstances such a hypothetical emergency would occur,” is factually supported and complies with CEQA’s requirements. (FEIR, p. 4.3-36.)

The FEIR’s evaluation of emissions impacts from the backup generators assumed 509 hours per year for both generator testing and participation in the BIP program. Given the historical data provided above, this analysis constitutes a sizeable over-estimation of potential emissions impacts given that testing would require 9 hours per year, the maximum number of annual hours of load shedding requested over the past 12 years was 28 hours, and the duration of emergency outages since 2010 was *less* than three minutes. (FEIR, 4.3-47.)

In addition, the FEIR’s evaluation of emergency operations of the backup generators is completely consistent with previous SPPE decisions which have determined that the speculation necessary to model potential air quality emissions for emergency operations would lead to unreliable and unpredictable quantification. For these reasons, BIP operations and emergency operations warrant different methods for evaluating potential emissions impacts. The FEIR successfully accomplishes the distinction between both types of operations.

Biological Resources Committee Question 2a

- a. *On page 4.4-2 of the FEIR, Staff states that Applicant performed habitat surveys of the project area. On page 4.4-10, Staff describes surveys for special status plant species. On page 4.4-12, Staff states that while the California Department of Fish & Wildlife recommended a habitat survey for salt marsh harvest mouse, “a habitat survey was not performed.” Regarding other biological resource surveys, in the FEIR Response to Comments, page 7-73, Staff acknowledges that surveys completed in 2016 are not considered “recent” survey efforts.*
 - i. *Please provide the dates for the biological resource surveys and studies of the project area and associated linear features, including surveys for wildlife such as burrowing owl, golden eagle, and salt-marsh harvest mouse, and surveys for ordinance-sized trees. Please explain whether those surveys are still current and valid given the amount of time that has elapsed between when those surveys were performed, when the project filed an application, and when Staff published a Notice of Preparation for the project.*

Response: Biological resource surveys were performed for the project site and offsite features using best practices. Additional surveys were conducted on the project site by the Applicant, consistent with applicable habitat conservation plans and the proposed San José Data Center Monitoring Mitigation Program (Transaction Number 242492), and by local resource agencies. These surveys are timely and applicable to the biological resources potentially present in the project vicinity, and Commission Staff used these surveys as the basis of the FEIR's biological resources findings.

The following is a summary of the biological resource surveys performed on the project site.

Live Oak Associates Surveys (from technical biological report) - Field surveys of the study area were conducted on June 20, 2016 by LOA ecologists Katrina Krakow and Nathan Hale, on October 18, 2016 by Ms. Krakow, Sarah Piramoon, and Pam Peterson. Mr. Hale conducted a brief site visit to map habitat features associated with Coyote Creek on October 26, 2016, and Ms. Krakow conducted a site visit to assess a new utility alignment on March 36, 2017. A protocol-level burrowing owl survey was conducted by LOA on the dates listed above (June 20 and October 18, 2016).

Applicant Biological Resource Surveys June 11, 2019

Biologists from Jacobs Engineering conducted reconnaissance surveys of all relevant non-developed areas in the biological survey area (BSA) that were publicly accessible, as explained in the following section. No protocol-level surveys, focused surveys, or aquatic resources delineation surveys were conducted. The study area is shown on Figure 3.4-1 of the Small Power Plant Exemption Application and is defined as the on-site areas and associated off-site extensions of utilities and roadways that would be disturbed in order to implement the project, plus a 150-foot buffer of these areas. A 150-foot buffer of the on-site areas and associated off-site extensions of utilities and roadways was included to ensure that biological surveys accounted for biological resources immediately adjacent to the project site. General biological reconnaissance surveys entailed walking and meandering transects in publicly accessible non-developed portions of the biological resources survey area (as defined previously), and surveying areas that appeared to support special-status fauna and flora as identified in desktop-level reviews.

The portion of the utility extensions west of the Pacific Gas and Electric Company's Los Esteros Substation were fenced and not accessible. This area was visually surveyed from the fence boundary.

The following tasks were conducted by the Applicant during the reconnaissance-level surveys:

- a. Plant communities and habitat types were identified in the BSA and evaluated for special-status plant suitability.
- b. Baseline data were collected for wildlife special-status species. Habitat for various special-status species was observed and recorded. Uplands and aquatic features in the BSA were evaluated to determine habitat suitability and potential jurisdictional status.

Santa Clara Habitat Agency 2021 Burrowing Owl Breeding Season Survey Report, December 2021

Multiple surveys were performed during the 2021 breeding season (March 15 to July 15) by the Santa Clara Valley Habitat Agency consistent with the Santa Clara Valley Habitat Plan (SCVHP). (See Transaction number 243035.) These surveys cover the SJC02 project area (as shown in Figure 2 on page 10 of 36). Burrowing owls were not detected in our project area.

Jacobs Burrowing Owl Habitat Assessment Survey January 14, 2022

This survey was the nonbreeding season “habitat survey” consistent with the SCVHP. A Jacobs biologist surveyed the entire site using a walking transect. On areas with suitable habitat the biologist surveyed so that the centerline of the transects was no more than fifty feet apart. While conducting the walking transects the biologist also frequently stopped and surveyed the site for burrowing owls using binoculars and a spotting scope. The biologist inspected, photo documented, and logged the locations of burrows that were encountered on a GIS application.

This survey only covered the SJC02 site, not the associated off-site extensions of utilities and roadways.

- ii. If no habitat or biological resources survey was performed, please explain what information was used to establish a baseline for these biological resources against which to evaluate potential environmental impacts.*

Response: Biological resource surveys have been performed and are the basis for the biological resources impacts assessed in the FEIR.

Biological Resources Committee Question 2b

- b. On page 4.4-11, the FEIR states “This Draft EIR includes the Technical Biological Report (Live Oak Consultants, Appendix D), and Tree Inventory (HM Engineers, Appendix E).” Appendix D of the DEIR/FEIR is the Nitrogen*

Deposition Modeling, and Appendix E of the DEIR/FEIR is the Mailing List. Please identify the location of the Technical Biological Report and the Tree Inventory; if the items are not currently in the docket, please either file them with the docket or explain why they should not be filed.

Response: The Technical Biological Report (Live Oak Consultants), and Tree Inventory (HM Engineers) are filed as TN# 242961-2 and 242961-3, respectively . In addition, a tree inventory prepared by the Applicant for use by the City of San José as TN# 242961-1.