

**DOCKETED**

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<b>Project Title:</b>	STACK Trade Zone Park
<b>TN #:</b>	244221
<b>Document Title:</b>	STACK Response to Staff Issue Identification Report and Proposed Schedule
<b>Description:</b>	N/A
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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 **TRADE ZONE  
PARK**

**DOCKET NO: 21-SPPE-2**

**STACK RESPONSE TO STAFF'S  
ISSUE IDENTIFICATION REPORT  
AND PROPOSED SCHEDULE**

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STACK Infrastructure (STACK), in accordance with the Notice of Committee Conference and Related Orders dated July 9, 2022 (TN244081), hereby files its response to Staff's Issue Identification Report and Proposed Schedule (IIR), dated July 20, 2022 (TN244144) for the Trade Zone Park (TZP) Application for Small Power Plant Exemption (SPPE), 21-SPPE-2.

**STAFF IDENTIFIED ISSUES**

STACK agrees with the Staff IIR that the following technical areas do not have any issues to be resolved and should be ready for Staff's preparation of the respective sections of the Draft Environmental Impact Report (DEIR).

- Aesthetics,
- Agriculture/Forestry,
- Geology and Soils,
- Hazards and Hazardous Materials,
- Hydrology and Water Quality,
- Mineral Resources,
- Population and Housing,

- Recreation,
- Wildfire, and
- Alternatives

STACK provides the following summary of outstanding data requested by Staff and minor Project Description modifications by subject area for the Committee's overview.

### **Energy and Energy Resources**

STACK agrees with Staff that the subject of Energy and Energy Resources does not present any issues for the Committee or Commission. STACK is continuing to work with PG&E to answer data requests contained in Staff Data Request Set 1 relating to historical outages relevant the TZP site and to assist in identification of specifics relating to the interconnection facilities. Once this data is provided Staff will have all of the information that it needs to prepare this section of the DEIR.

The Committee should also note that STACK is proposing in its minor revisions to the Project Description section of the SPPE Application (Revised Project Description) a condition committing to use renewable diesel fuel to the extent practicable and as long as it is available in sufficient quantities and will not interfere with the design and operation of the generators.

### **Greenhouse Gas Emissions**

STACK agrees with Staff's conclusions that the technical area of Greenhouse Gas (GHG) Emissions does not present any outstanding issues. STACK is currently responding to Staff Data Request Set 2 and correcting its total indirect GHG emissions calculations to reflect the anticipated electricity consumption of the Advanced Manufacturing Building (AMB).

In addition, STACK is complying with the City of San Jose Greenhouse Gas Reduction Strategy by either purchasing its electricity at the Total Green level from San Jose Clean Energy or an equivalent program that demonstrates renewable energy benefits that achieve the same renewable energy credit or use as San Jose Clean Energy. STACK is proposing a Proposed Design Measure in its Revised Project Description similar to those adopted by the Commission Staff and Commission in recent SPPE Final Decisions.

Lastly, Staff has requested information regarding refrigerant use and management in its recent Data Request Set 2. STACK is currently working to respond and expects to

docket a full response to Data Request 2 by August 10, 2022. STACK believes that the docketing of the full response will provide Staff with all the information it needs to prepare the GHG section of the Draft EIR.

### **Noise**

STACK agrees with Staff that Noise does not present any issues for the Commission. STACK has engaged in further analysis of noise at the site and adopted modifications to the existing sound barrier systems. The sound barrier system for the rooftop chillers has been raised and a new barrier around the eastern end of the generators for Building SVY06 has been proposed. Additionally, to ensure that generator noise from testing is further reduced during business hours, an additional sound wall near the eastern property boundary is proposed. STACK has prepared a revised noise analysis which has been docketed on July 27, 2022 (TN244212). In addition to the revised noise analysis, the Revised Project Description will contain identification of the changes to and new sound attenuation features.

### **Public Services**

STACK also agrees that the technical area of Public Services does not raise any unresolvable issues. STACK will be clarifying in its Responses to Data Request Set 2 that the total water use at the site is significantly lower than the conservative analysis provided in the Public Services section of the SPPE Application. The conservative analysis was based on assumptions contained in a conservative model. Since that time STACK design team has performed a specific analysis of total potable and reclaimed water use and determined that the total water use during operation of the data center buildings would not exceed 3 AFY, none of which will be used for cooling purposes. The AMB is estimated to not exceed 8 AFY of potable water, none of which will be used for cooling purposes. All landscaping of the site will use up to 1 AFY of reclaimed water. This information has been shared with the City of San Jose Planning. Therefore, no Water Supply Assessment is required for the TZP. STACK will formalize this information in its Responses to Staff Data Request Set 2 to be docketed on or before August 10, 2022.

### **Air Quality and Public Health**

STACK has performed a revised Air Quality and Public Health modeling analysis to reflect the Revised Project Description and to address Staff's Data Request Set 1. It was docketed on July 27, 2022 (TN244211). STACK believes that the revised analysis provides all of the information necessary for Staff to prepare its Air Quality section of the Draft EIR.

## **Cultural and Tribal Cultural Resources**

STACK has retained Paleowest to revise its Cultural Resource to address Staff's Data Requests Set 1 as clarified by Staff in a virtual meeting. Staff provided further requests for report modification in Staff Data Request Set 2, which will be incorporated into the report. The report will be docketed on or before August 10, 2022.

## **Land Use**

STACK continues to work with the City of San Jose to refine the development standards to support the City's granting of Planned Development Rezoning. Staff requested clarification of the development standards and updated drawings in its Data Request Set 2. STACK will provide the requested information on or before August 10, 2022.

## **Transportation**

As noted by Staff, STACK has retained Hexagon Consultants Vehicle Miles Traveled (VMT) analysis to support Staff's Draft EIR. A draft of the report has been prepared demonstrating that the project can mitigate its VMT impacts to less than significant levels. STACK is continuing discussions regarding the suite of mitigation measures that are most effective and feasible with the City of San Jose. STACK anticipates providing the final VMT analysis on or before August 10, 2022.

## **SCHEDULE**

STACK requests the following related to the Proposed Schedule.

1. To avoid the delays experienced in previous projects, STACK requests that the Committee require any potential Intervenors to file a Petition to Intervene 10 days before the close of the public comment period for the Draft EIR. Any potential Intervenor would have had 35 days since publication of the Draft EIR to determine whether or not to intervene or to participate as a member of the public.
2. STACK requests that an Intervenor be required to file comments on the DEIR as a prerequisite to being allowed to present further oral and written testimony and that those comments be treated as Intervenor's Opening Testimony for each respective issue. STACK agrees to file its Opening Testimony on the same day.

In this way, Staff can provide responses to such comments and/or Opening Testimony, thereby narrowing and reducing the time and issues requiring adjudication in evidentiary hearings. This does not place any undue burden on Intervenor, as they would have had the same amount of time to review the DEIR and provide comments as any agency or other member of the public. For all other proceedings involving the California Environmental Quality Act (CEQA), this is the primary way for interested persons to participate, and it is only fair to allow Staff an opportunity to consider and respond to comments.

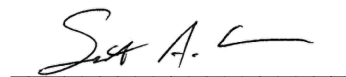
3. The Committee should review Staff's response to the comments and Proposed Final EIR prior to requiring the standard PreHearing Conference and Evidentiary Hearings as a matter of course. Based on its review the Committee could, and should, simply move directly to an evidentiary hearing for the sole purpose of moving exhibits into the record and adopting the Final EIR with any revisions it may deem necessary. The Committee is not required to entertain oral testimony and should only do so to hear evidence that is new, unique to the TZP and required by CEQA. The evidentiary hearings should not be used to prolong the process and raise new issues not already managed in the public comment process for the DEIR.
4. STACK disagrees that Staff will need 60 days after STACK provides responses to Data Request Set 2. The issues have been narrowed, STACK has proposed design measures to ensure the project will not result in significant impacts, and Staff should be able to prepare the majority of the Draft EIR now. To that end STACK requests that Staff be required to publish the Draft EIR within 30 days after full responses to any outstanding data requests are provided.
5. STACK disagrees with Staff's request for 30 days to respond to public comment on the Draft EIR. STACK requests Staff be required to produce Responses to Comments on the DEIR within 15 days of the close of the public comment period. The amount of public comment for the TZP has been light.
6. STACK requests that the monthly status reports begin on August 25, 2022 to provide Staff with sufficient time to review STACK's filings of outstanding data request, all of which are anticipated to be provided on or before August 10, 2022. Therefore, if STACK has in fact provided all the necessary information by August 10, 2022, Staff can simply acknowledge it has everything it needs to prepare the Draft EIR in its August 25, 2022 Status Report without the need for preparation of an additional Status Report.

There are two reasons STACK is requesting the above suggestions. The first is to streamline the record and process to bring the proceeding more in line with a SPPE case where the focus should be on compliance with CEQA and to prevent further movement towards treating the proceedings as those required for an Application For Certification (AFC). The second is that the evidentiary hearing process and Committee proposed decisions have taken significant time and effort to complete, often taking almost as much time as Staff required to evaluate the project and publish its environmental document. A robust record can be created by taking official notice of the information supplied in the prior projects, especially since they have been repeated multiple times in the prior data center SPPE Application proceedings. Focusing the proposed decision on items that have not yet been thoroughly settled and are unique to the TZP would allow the Committee to significantly reduce the time to prepare the Proposed Decision, without the risk of harming the evidentiary record.

STACK will continue to work diligently with Staff to provide all the data necessary to prepare its Draft EIR and appreciates the Committee's consideration of our schedule-related recommendations.

Dated: July 27, 2022

Respectfully Submitted,

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

Scott A. Galati  
Counsel to STACK Infrastructure