

<b>DOCKETED</b>	
<b>Docket Number:</b>	22-SPPE-02
<b>Project Title:</b>	San Jose Data Center 04
<b>TN #:</b>	257951
<b>Document Title:</b>	Data Requests Set 4 for San José Data Center 04 (22-SPPE-02)
<b>Description:</b>	Data Requests Set 4 for San José Data Center 04 (22-SPPE-02)
<b>Filer:</b>	Renee Longman
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	7/23/2024 11:07:22 AM
<b>Docketed Date:</b>	7/23/2024



**CALIFORNIA  
ENERGY COMMISSION**



July 23, 2024

Microsoft Corporation  
C/O Scott A. Galati  
1720 Park Place Drive  
Carmichael, California 95608

### **Data Requests Set 4 for San José Data Center 04 (22-SPPE-02)**

Dear Scott Galati:

Pursuant to California Code of Regulations, title 14, section 15084(b) and title 20, section 1941, the California Energy Commission (CEC) staff is asking for the information specified in the enclosed Data Requests Set 4, which is necessary for the staff analysis of the revised San José Data Center project (SJDC 04 or project) (22-SPPE-02). SJDC 04 would include components constructed both on APN 101-02-020 and within the offsite infrastructure areas. Together, these constitute the "project" under the California Environmental Quality Act (CEQA).

This Data Requests Set 4 seeks further information relative to biological resources, cultural and tribal cultural resources, and hazards and hazardous materials based on the contents of the application and supplemental filings submitted to date. While CEC staff has made a concerted effort to identify all outstanding data needs, additional data requests may be needed after receipt of the information requested or as necessary for a complete analysis of the project.

To assist staff in timely completing its environmental review and to meet the requirements of CEQA (see Cal. Code Regs., tit. 14, §§ 15108, 15109), staff is requesting responses to the data requests within 30 days. If you are unable to provide the information requested or need to revise the timeline, please send written notice to me within 10 days of receipt of this letter. If you have any questions, please email me at [renee.longman@energy.ca.gov](mailto:renee.longman@energy.ca.gov).

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/S/

Renee Longman  
Project Manager

Enclosure: Data Requests Set 4

# SAN JOSÉ DATA CENTER 04 SPPE DATA REQUESTS SET 4

## **BIOLOGICAL RESOURCES**

**Author:** Carol Watson

### **BACKGROUND: Temporary versus Permanent Impacts**

Microsoft SJC04 Updated PGE Reconductoring Bio Report – Part I of III (TN 255408-1) states that total estimated disturbance from reconductoring would be approximately 40 acres (p. 2). As described in Section 1.2.2, “snub poles” (page 5) are temporary wood poles used to facilitate pulling operations. Snub poles typically extend approximately 30-50 feet aboveground and approximately 5-7 feet below ground. Snub poles will be removed upon completion of each wire pull. Guard structures are another temporary wooden structure. Section 1.2.1 says guard structures “will disturb approximately 100 square feet” (p. 5). Staff needs to understand temporary and permanent impacts from reconductoring, and how estimates of those impacts were calculated.

### **DATA REQUESTS**

89. Please describe if the estimate of 40 acres of disturbance includes temporary and permanent impacts, including snub poles, staging areas, and new tubular steel poles (Section 1.2.9 of TN 255408-1).
90. If Geographic Information Systems (GIS) data is available, please provide the following datasets in a format compatible with ArcGIS Desktop software (preferably geodatabase or shapefile format) of the reconductoring alignment, mapped vegetation, and any special status species or habitat sightings.
91. GIS electronic file formats: shapefile (.shp), geodatabase (.gdb), or ArcGIS Online Feature Service link. GIS files are to include a projection file (.prj) or note associated coordinate system and projection information.
92. Electronic file(s) may be provided to staff by ftp site, DVD, portable flash drive, or other method that allows the complete and secure transfer of the file to staff.

### **BACKGROUND: Mapping and Vegetation**

In Microsoft SJC04 Updated PGE Reconductoring Bio Report – Part I of III (TN 255408-1), some areas were noted as inaccessible to surveys (page 15). Some inaccessible areas may or may not provide habitat for special status plants and/or animals, in particular, California seablite (*Suaeda californica*), a federally endangered and state-ranked plant species. However, there is a determination that this plant is not present (p. 28). Furthermore, Figure 3 lacks identifying details. While labeled solely as “Figure 3” (following page 15 and representing multiple figures), in other portions of the document there are references to a Figure “3e” and “3f” (TN 255408-1, Section 3).

### **DATA REQUESTS**

93. Please provide a map(s) of areas inaccessible to surveys and mark California seablite potential habitat.

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94. Please provide an overarching Figure 3 with individual map book pages depicted and labeled. Label each corresponding Figure 3 with the controlling map book page.
95. Please label in Figure 3: Chicago Marsh; Ponds A18; A19; A22; A23; South Coyote Slough, and the Warm Springs Marshes, among any other notable features.
96. Please label the Santa Clara Valley Habitat Agency (SCVHA) burrowing owl preserve.

### **BACKGROUND: References**

The applicant provides citations to numerous reference documents, which staff needs to review to determine permit compliance.

### **DATA REQUEST**

97. Please provide a .pdf of:

- PG&E Bay Area Operations & Maintenance Habitat Conservation Plan (Bay Area HCP) (ICF 2017),
- Section 404 RGP 40 (USACE 2018)
- Waste Discharge Requirements/401 Water Quality Certification (SWRCB 2023)
- USFWS's Biological Opinion (BO) for RGP 40 (USFWS 2021)
- NMFS's BO for RGP 40 (NMFS 2023)
- Nesting Bird Management Plan (PG&E et al. 2015)
- PG&E Avian Protection Plan (PG&E 2017)
- USFWS Intra-Service Biological Opinion on the Issuance of a Section 10(a)(1)(B) Incidental Take Permit to the Pacific Gas and Electric Company for the Pacific Gas and Electric Company Bay Area Operations & Maintenance Habitat Conservation Plan (USFWS 2017)
- USFWS Final Programmatic Formal Consultation for the Pacific Gas and Electric Company's (PG&E) Bay Area Operation and Maintenance (O&M) Program in Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma Counties, California (USFWS 2021)
- California Department of Fish and Wildlife (CDFW)'s Pacific Gas and Electric Company Bay Area Operations & Maintenance Incidental Take Permit Environmental Impact Report Volume 2. Final EIR (CDFW 2022)
- CDFW's 2022 PG&E Bay Area Incidental Take Permit (ITP #2081-2015-031-03)
- Warm Springs Seasonal Wetland Unit 2019 Annual Report (Kakouros and Loredo 2020)
- Loredo 2020, Loredo 2021, and Loredo 2023 (as reported in Section 2.1, TN 255408-1)
- Any supporting CEQA or NEPA documentation such as an EIR or EIS for any of the preceding requested documents.

## **SAN JOSÉ DATA CENTER 04 SPPE DATA REQUESTS SET 4**

### **BACKGROUND: Snowy Plover Critical Habitat**

According to Microsoft SJC04 Updated PGE Reconductoring Bio Report – Part I of III (TN 255408-1) section 4.2.4, salt panne habitat in Ponds A22 and A23 provide breeding, roosting, and foraging habitat for western snowy plovers, which are resident within these areas year-round, and a portion of both ponds that include the survey area are designated as snowy plover critical habitat by the USFWS (p. 47).

### **DATA REQUEST**

98. Based on staff's understanding of the applicant's materials, a permit may be held for the snowy plover. Please describe 1.) is there a federal nexus, and 2.) the process and/or permitting that would need to be undertaken before project-related work or placement of infrastructure within or spanning USFWS-designated critical habitat may take place.

### **BACKGROUND: Santa Clara Valley Habitat Agency**

According to SCVHA, page 54, TN 255408, the survey area also passes through a SCVHA burrowing owl preserve adjacent to the San José-Santa Clara Regional Wastewater Facility. Portions of this area are mapped as burrowing owl and tricolored blackbird survey areas.

### **DATA REQUESTS**

99. It does not appear that any coordination took place with the SCVHA to discuss potential impacts to the SCVHA burrowing owl preserve. Please undertake this coordination, also discuss any feasible mitigation avenues not already encapsulated in existing permits or agreements.

100. Please provide the results of SCVHA coordination in the form of meeting notes or as otherwise appropriate.

### **BACKGROUND: State-Listed Species**

Based on staff's understanding of the reconductoring application (TN 255408-1, page 33), CDFW's 2022 PG&E Bay Area Incidental Take Permit (ITP) is considered to cover PG&E's operations and maintenance and "establishes a comprehensive approach to avoid, minimize, and fully mitigate impacts on covered species and habitat". There are three covered species, California tiger salamander, Alameda whipsnake, and California freshwater shrimp within this ITP (as understood, staff has not yet had an opportunity to review the document; refer to Data Request 97, above). However, in Microsoft SJC04 Updated PGE Reconductoring Bio Report – Part I of III (TN 255408-1), it states "[w]ith implementation of avoidance and minimization measures (AMMs) and [best management practices] BMPs, take (as defined by [California Endangered Species Act] CESA) of other state-listed species, including the longfin smelt, California Ridgway's rail, California black rail, California least tern, Swainson's hawk, bank swallow, bald eagle, tricolored blackbird, and salt marsh harvest mouse, is not expected to occur, and take of the Crotch's bumble bee is highly unlikely" (p.33).

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### **DATA REQUEST**

101. Please describe further how the above state-listed species would be both impacted by reconductoring of the transmission line and mitigated by concurrent application of CDFW's 2022 ITP, which does not appear to cover the majority of the special-status species which may be found on or adjacent the project site.

### **CULTURAL AND TRIBAL CULTURAL RESOURCES**

**Authors:** Lauren DeOliveira, Roger Hatheway

#### **BACKGROUND: Defining Project Area Boundaries**

The revised 2024 Chronicle Cultural Resources Assessment Report (CRAR) does not adequately address Set 2 Data Request 58 (CEC 2023b). The revised 2024 CRAR (Sinsky et al. 2024) defines the Project Area as "The recycled waterline portion of the Project Area includes the waterline route and a surrounding one-parcel buffer, per CEC request." This is not what was requested by CEC staff in the previous Data Request 58.

As noted in Set 2 Data Request 58, the CEC staff request was for a larger area than a one-parcel buffer, depending on conditions encountered during the survey and factoring-in a visual impact area. (TN 249643) The proposed project consists, in part, of constructing two large four-story buildings with screening above to conceal mechanical and electrical equipment for a total height of approximately 136 feet (DayZenLLC 2024, p. 7). The current Project Area (Sinsky et al. 2024, Figure1-3, p. 12), does not take into account a visual line-of-sight. By way of example, in the southeast corner of the Project Area, a building located at 2509 Orchard Parkway is not included in the Project Area, despite the fact that proposed new construction will be clearly visible from this multi-story building. **Note:** This building is also included in a subsequent data request regarding properties less than 50 years old.

### **DATA REQUEST**

102. Please revise the Project Area to include both a one-building-parcel-band and a reasonable visual impact area surrounding the proposed project construction, per CEC staff request in Data Request Set 2 Request 58, extending farther out than the existing Chronicle 2024 CRAR "one-parcel buffer." Please also refer back to Set 2 Data Request 58 for additional information and detail.

#### **BACKGROUND: Figure Needed**

The Chronicle 2024 CRAR (Sinsky et al. 2024) does not have a single figure depicting all project components in relation to one another and the Project Area boundaries employed during the cultural resources assessment. Without this figure, it is difficult to assess whether survey coverage has adequately covered all project components.

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### **DATA REQUEST**

103. Please prepare a single figure depicting all project components in relation to each other in a manner similar to the above noted figure. Please title the figure, Proposed San Jose 04 Data Center and Related Facilities and include the figure in the revised CRAR.

### **BACKGROUND: Properties Less than 50 Years Old**

The Set 2 Data Request 61 (CEC 2023b [TN 249643]) was not adequately addressed. Properties (buildings and structures) less than 50 years old were not specifically identified by name, address, or parcel in a list or table in the CRAR. Rather, a one sentence statement was included saying that “Buildings that do not meet the age threshold and are not of exceptional importance will not be evaluated in this report” (Sinsky et al. 2024, p. 14). This blanket statement is made in referring to CEQA whereby “Resources that are 44 years or younger will not be considered for eligibility unless they can meet National Register of Historic Places (NRHP) Criteria Consideration G, which states that buildings that do not meet the age limit must be of exceptional importance” (Sinsky et al. 2024, p. 14). Without an appropriate list, CEC staff is unable to determine exactly what built environment features less than 50 years old were determined to not qualify as exceptionally significant.

### **DATA REQUESTS**

104. Please provide the requested list or table identifying properties less than 50 years old by name, address, and/or parcel, along with a statement that a qualified architectural historian (Secretary of the Interior’s standards for professional architectural historians) has made the determination that these built environment features do not qualify as being of exceptional importance. Please refer to Set 2 Data Request 61 for additional information and details.
105. Please prepare this list after a new Project Area boundary has been defined in accordance with the previously requested one-building-parcel-band Project Area concept that also incorporates a direct line-of-sight or a reasonable visual impact area from the project site. By way of example, one building less than 50 years old directly across from the project site is 2509 Orchard Parkway. This building should be included in the Project Area and, if appropriate, in the requested list or table identifying properties less than 50 years old rejected as not having exceptional importance.

### **BACKGROUND: Historic Period Built Environment Features Not Surveyed or Evaluated**

Staff has determined that Set 2 Data Request 60 was not adequately addressed. Data Request 60 identified several historic period buildings and structures within the current CRAR Project Area as needing assessment, but they are not discussed in the revised CRAR (Sinsky et al. 2024, Table 4-7). It is unclear whether the applicant considered these built environment features as cultural resources.

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### **DATA REQUEST**

106. With respect to the built-environment features listed below, please:

(1) Provide a clear statement that all buildings within a one-building/parcel-band of the project site were surveyed and evaluated, and a description of how and by whom they were surveyed.

(2) Describe how Chronicle determined dates of construction for all built-environment features within the Project Area and a one-building/parcel-band of the project site.

(3) Provide a table of all built-environment features examined. The table shall identify addresses, assessor parcel numbers, estimated dates of construction with a 45 +/- year old stylistic determination if an exact date is unknown, and a California Register of Historical Resources eligibility determination. Other data may be listed based on Chronical Heritage's knowledge of the properties and Chronical Heritage's preferences.

Built-environment features include:

- PG&E's Newark-Trimble 115 kV power line as noted in the project description (DayZenLLC 2024).
  - This power line is the "Transmission Line on the Project Site" referenced in previous Data Requests Set 2 (CEC 2023b, Table 1).
- Various other PG&E electrical facilities, including power lines, are referenced in the revised project description, and cultural resources in the vicinity of these power lines were recorded on DPR 523 forms and evaluated, but the powerlines themselves and any other associated electrical were not recorded or evaluated.
- Guadalupe River Channel: The existing Guadalupe Bike Trail is on top of a 45+ year old levee/dike. The Southern Bike Trail Extension of the proposed project connects to the Guadalupe Bike Trail.
- Various potentially historic or 45+ year old features are depicted in the application, including a sanitary sewer vent, public sidewalk, curbs, and gutters (DayZenLLC 2022d, 2022g). Although these features may be less than 50 years old, there is no indication in the CRAR (Sinsky et al. 2024) that these features were surveyed or evaluated as requested.
- Several industrial buildings across the river from the southwest corner of the project site appear, from staff examination of historic aerials, to have been built between 1968 and 1974.
- Roads and streets that appear to be greater than 45 years in age within the current project site and Project Area.

### **BACKGROUND: Regulatory Context Guidelines Needed**

New DPR 523 Forms were prepared by Chronicle for cultural resources in both Santa Clara County and Alameda County and the resources evaluated in the CRAR for CEQA



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only, excluding local significance criteria. Evaluations per local criteria will need to be added for all identified resources.

### **DATA REQUEST**

107. Please evaluate all cultural resources identified during the survey according to any relevant significance criteria published by the City of San José, County of Santa Clara, City of Hayward, or County of Alameda as appropriate.

### **BACKGROUND: Update Record Search Data**

The Chronicle 2024 CRAR (Sinsky et al. 2024) does not include a one-mile record search boundary around the northern microwave tower. This information is required per CEC Appendix B regulations.

### **DATA REQUESTS**

108. Please conduct a new records search with a one-mile radius or buffer surrounding the proposed location of the northern microwave tower and provide the results of this records search (as specified in Cal. Code Regs., tit. 20, Appendix B(g)(2)(B), see also Cal. Code Regs., tit. 20, § 1704(c).)

109. Also, provide all site records and reports for previous record searches conducted including the Northwest Information Center letters dated 7/14/2022, 2/14/2023, and 8/18/2023 (Chronicle 2024: Attachment A) and the PaleoWest letter dated August 2, 2022 (PaleoWest 2022).

**Note:** Select site records and reports were previously requested in Data Requests Set 2, Data Request 63, page 12 (CEC 2023 [TN 249643]).

### **BACKGROUND: Impacts of Northern Microwave Tower**

The location of the proposed northern microwave tower is within or directly adjacent to the San Jose-Santa Clara Regional Wastewater Facility Streamline Moderne Industrial Historic District (P-43-003879).

There is no discussion of this district in the CRAR, or an evaluation of the effects that the installation of the tower may have on this district which, according to the P-43-003879 site record, "appears to meet the criteria for listing in the National Register of Historic Places (NRHP) under Criterion A and C at the local level" (ESA 2016, p. 1).

### **DATA REQUEST**

110. Please update the built environment survey to inspect the location of the microwave tower to be located within the Zanker Road Substation at the City of San Jose/Santa Clara Regional Water Treatment Facility and evaluate the effects this tower may have on a potential NRHP eligible historic district.

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### **REFERENCES**

- CEC 2023b – California Energy Commission (CEC). (TN 249643). Data Requests Set 2, dated April 13, 2023. Available online at:  
<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-SPPE-02>
- DayZenLLC 2020b – DayZenLLC (DayZenLLC). (TN 245978) San Jose Data Center 04 - SPPE Application - Appendix F, Part I. Available online at:  
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=245978&DocumentContentId=80189>
- DayZenLLC 2023f – DayZenLLC. (TN 250708). Microsoft Responses to CEC Data Request Set 2 – SJ04, dated June 22, 2023. Available online at:  
<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-SPPE-02>
- DayZenLLC 2024 – DayZenLLC (DayZenLLC). (TN 266061) San Jose Data Center 04 - SJ04 Revised Project Description and App J and K – Final (rev3). Available online at:  
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=245978&DocumentContentId=80189>
- ESA 2016 – DPR 523 Site Record P-43-003879, RWF Capital Improvement Program, Cultural Resources Study, May 2016. Prepared by Brad Brewster. ESA, 550 Kearny Street, Suite 800, San Francisco, CA 94108, May 6, 2016.
- PaleoWest 2022 – PaleoWest, LLC, Confidential Letter Regarding Results of the Literature Review for the Trimble Road Data Center Project, City of San José, County of Santa Clara, California. Prepared for David J. Powers and Associates, Inc., Oakland, CA. Prepared by PaleoWest, LLC, Walnut Creek, CA. August 2, 2022
- Sinsky et al. 2024 – Katherine Sinsky, Hannah Goldman, Carlos Van Onna, Ashley Garrett, and Carrie Chasteen (Sinsky et al.). *Cultural Resource Assessment Report for the San José 04 Data Center (SJ04) Project, City of San José, Santa Clara County, California*. Confidential report prepared for David J. Powers and Associates, Inc., San José, CA. Prepared by Chronicle Heritage, Walnut Creek, CA. April 4, 2024.

### **HAZARDS AND HAZARDOUS MATERIALS**

**Authors:** Aurie Patterson

#### **BACKGROUND: Fuel Vapor Monitoring for Interior Fuel Supply System**

The applicant responses to Set 2 Data Requests 67 and 68 (TN249643), related to fuel safety measures, indicate that the fueling system shall include a “grounding system to prevent ignition of vapors which could lead to tank rupture” (p. 18). Neither the application, nor any of the other data responses, include any discussion of fuel vapors or their potential ignition. Since

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the generators are within the buildings, there is a potential that fuel vapors could leak and accumulate within areas of the building that could present a fire or explosion hazard.

**DATA REQUESTS**

111. Please provide information on any fuel vapor monitoring systems that would be provided in areas where fuel is stored or where vapors could accumulate.
112. Please provide procedures/measures that would be taken in the event of fuel vapor accumulation to prevent any adverse impacts.

**BACKGROUND: Location of Proposed PG&E Power Line to be Reconductored**

Section 3.5.1 (Existing Newark-Trimble 115 kV Power Line) of the Revised Project Description (TN255061) notes that the transmission line and co-located transmission lines are shown in Figures 3.3-16 and 3.3-17. However, these figures were not included in the original Application and are not included in the Microsoft SJ04 Revised Project Description Figures file (TN255411). The location of this portion of the transmission line that is being reconducted is critical to assess the hazards and hazardous materials at these sites due to possible ground disturbance or tower modifications.

**DATA REQUESTS**

113. Please provide copies of Figures 3.3-16 and 3.3-17.
114. Please provide a figure and narrative identifying locations of towers/poles along the reconducted transmission line section.

**BACKGROUND: Heights of Transmission Towers/Poles at and in the Vicinity of the Proposed Project Site**

The proposed project site is in the vicinity of the Norman Y. Mineta San José International Airport and is in an airport safety zone. The construction of project facilities including the use of large construction equipment over 40 feet in height above grade require submittal to the FAA for review.

**DATA REQUESTS**

115. Please provide the heights of new or modified transmission poles/towers at and near the project site and identify any that would exceed the airport runway safety slope height.
116. Please provide heights of construction equipment that will be used to erect project facilities, including the buildings and transmission towers/poles at and near the project site, that could exceed the airport runway safety slope height.