

DOCKETED

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**CALIFORNIA
ENERGY COMMISSION**



May 2, 2025

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

Data Requests Set 6 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 6, which is necessary for the staff analysis of the revised San José Data Center 04 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 6 seeks further information relative to Biological Resources 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 John.Heiser@energy.ca.gov.

/S/

John Heiser
Project Manager

Enclosure: Data Requests Set 6

**SAN JOSÉ DATA CENTER 04 SPPE
DATA REQUESTS SET 6**

BIOLOGICAL RESOURCES

BACKGROUND

Staff is reviewing applicant's materials and evaluating the final disposition of burrowing owl mitigation requirements as outlined in Appendix C (TN 245946 and TN 245947) between Agilent Technologies, Inc. and the then California Department of Fish and Game (CDFG). Staff is working with the California Department of Fish and Wildlife (CDFW) to determine the applicability of the mitigation agreement to future efforts at the site as it relates to the current legal status of the burrowing owl and potential presence on site.

DATA REQUEST

1. If available, please provide the record of purchase of mitigation credits from the mitigation bank, or "credit sale purchase" for burrowing owl credits.

BACKGROUND

The original application for the proposed project addressed potential impacts on burrowing owl (*Athene cunicularia hypugaea*), as a species of special concern, as designated by the CDFW. As of October 25, 2024, burrowing owl is a candidate species under the California Endangered Species Act (CESA). Under California law, "take" of candidate species is prohibited unless authorized by an incidental take permit. The applicant's proposed mitigation does not include any discussion of applying for take authorization for this species.

Although surveys performed in 2022 reported negative results, these results are now considered outdated since there has been a substantial lapse in time since the surveys were conducted. In addition, the surveys were limited to a single-day reconnaissance effort and did not follow survey recommendations provided in the CDFW Staff Report on Burrowing Owl Mitigation (CDFG 2012). According to that guidance, protocol-level surveys must include multiple visits during the breeding season and cover appropriate times of day and weather conditions to adequately assess occupancy. This information is essential to developing appropriate avoidance, minimization, and compensatory mitigation measures.

During a meeting on April 3, 2025, CDFW staff relayed that a burrowing owl had recently been detected on the adjacent property to the northeast. In addition, there are multiple occurrences in CDFW's California Natural Diversity Database indicating the species has occupied the site in the past. As a result, the potential for burrowing owl presence on the project site remains a concern.

The activities described by the proposed project could result in incidental take of the burrowing owl. These activities include facility construction, vehicle and heavy equipment operations, and activities generating noise, vibration, and dust. Incidental take may occur due to collisions with vehicles or heavy equipment, burial or destruction of burrows and refugia, or crushing of individuals or eggs.

SAN JOSÉ DATA CENTER 04 SPPE DATA REQUESTS SET 6

Staff requires additional information on the location and status of burrowing owl within the site to assess potential for impacts under CEQA. Staff needs clarification on whether project activities may directly or indirectly impact owl habitat. If full avoidance of the species cannot be achieved, coordination with CDFW to obtain a CESA incidental take permit may be necessary.

DATA REQUESTS

1. Please perform surveys of the proposed data center campus (excluding the reconductoring portion of the project) consistent with the recommendations in the CDFW Staff Report on Burrowing Owl Mitigation. Please coordinate survey efforts with the appropriate local CDFW staff.
2. Please submit a complete survey report, including detailed results with the locations and status of burrowing owl populations within the site. Please provide mapping of active and historical burrows, documentation of observed individuals, and a description of proposed mitigation measures. Please submit corresponding GIS shapefiles.
3. Provide additional information regarding the potential direct impacts to burrowing owl from construction of the proposed facilities.
4. Please clarify whether any proposed project activities may result in indirect impacts to burrowing owl habitat within or adjacent to the site, including satellite burrows.

References

CDFG – California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. Available at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>
Associates, Inc., San José, CA. Technical Report No: 23-111. Prepared by
PaleoWest, LLC dba Chronicle Heritage, Walnut Creek, CA. August 30, 2024.