

DOCKETED

Docket Number:	20-SPPE-01
Project Title:	Great Oaks South Backup Generating Facility Small Power Plant Exemption
TN #:	235163
Document Title:	Mimi Patterson email to Patrick Kelly
Description:	Mimi Patterson email communication with City of San Jose re GOS Billboard, public outreach and EIR
Filer:	Rosemary Avalos
Organization:	California Energy Commission
Submitter Role:	Public Advisor
Submission Date:	10/8/2020 1:30:35 PM
Docketed Date:	10/8/2020

From: [Mimi Patterson](#)
To: [Kelly, Patrick \(PBCE\)](#)
Cc: [Avalos, Rosemary@Energy](#); [Hughey, Rosalynn](#); [Rood, Timothy](#); [Manford, Robert](#); [Wang, Angela](#); [Nick Renna](#); [Bill Dunmyer](#); [Patricia sheehan](#); [Janelle Casanave](#); [kandlferguson@yahoo.com](#); [Pat Mundt](#); [Lisa Campbell](#); [Shannon Kaloczy](#); [Louise Renna](#)
Subject: Re: Equinix Great Oaks Data Centers
Date: Friday, October 2, 2020 10:07:02 AM

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Patrick,

I understand the hierarchy within your organization. Angela is Planner III and you are Planner IV under Development Review, Sylvia Do is your Division Manager, Robert Manford is the Deputy Director and Rosalynn Hughey is the current Director. You do not need to explain to me how this works.

What I am disturbed about is that you continue to ask us to bury the past decisions and to focus on the present and future outcomes. Unfortunately, your former Director and department's past decisions adversely affect our present and future decisions. So ignoring the past is not only imprudent but irresponsible. **Our health, homes and community are at stake.** Not yours, Angela's, Scott Galati's or any of the Equinix executives, **OURS.**

Again, as inquired in my previous emails, due to Equinix's request for additional 15 generators, the huge time lapse and magnitude of the design change, why is the City of San Jose Planning and Development Department allowing this process as an amendment and not a completely new application process?

Mimi

On Fri, Oct 2, 2020 at 9:27 AM Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov> wrote:

Mimi – I am Angela's supervisor, she and I can respond to your questions. I am responding now to your broader questions, and Angela can respond to your more specific project related questions, as the project manager. I think we're trying to help you as best we can. I don't believe anyone in the past was attempting to keep the neighborhood in the dark on this project, and in any case, our most productive line of discussion will be about the present set of facts, moving forward.

Patrick Kelly AICP

Supervising Planner, Development Review

408-535-7858 / Patrick.Kelly@sanjoseca.gov

From: Mimi Patterson [mailto:patterson.mimi@gmail.com]
Sent: Friday, October 2, 2020 9:16 AM
To: Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov>
Cc: Wang, Angela <Angela.Wang@sanjoseca.gov>; Manford, Robert <Robert.Manford@sanjoseca.gov>; Avalos, Rosemary@Energy <rosemary.avalos@energy.ca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Rood, Timothy <timothy.rood@sanjoseca.gov>; Patricia sheehan <pattitude51@yahoo.com>; Nick Renna <nick_rena@sbcglobal.net>; Janelle Casanave <casanave23@aol.com>; Lisa Campbell <lcampbell@choicecommunications.com>; Pat Mundt <pmundt49@gmail.com>; kandlferguson@yahoo.com; Louise Renna <louiserenna@yahoo.com>; kathy.bloom <kathy.Bloom@sbcglobal.net>; Bill Dunmyer <billDunmyer@comcast.net>; Shannon Kaloczy <shannonb@xilinx.com>
Subject: Re: Equinox Great Oaks Data Centers

[External Email]

Good morning Patrick,

Thank you for your email. Once again, I feel that I am being bounced from one planner to another within your department. My purpose of including the video clip was to demonstrate that mistakes were made. It was not meant to single you out as the whistleblower.

I appreciate you taking the time to address my concerns and questions. But you have to keep something in mind, Harry Freitas' abrupt and irresponsible decision affects my family, my neighbors and my community. We were purposely kept in the dark in 2015 when this process started, and throughout 2016-17 when the application was submitted, reviewed and approved. Now that my neighbors and I are aware of this situation because we noticed a small 2' x 3' sign on the proposed site and not for any other reason, we are trying to fight something that was heedlessly approved in 2016-2017. This is not only unacceptable, it is distressing and upsetting to my family, my neighbors and my community. This is our health and these are our homes.

You and I know that if the tables were turned, you and/or anyone in your department, Scott Galati, any Equinix executives would not allow these three massive data centers and a small power plant to be built in their backyard. If Scott Galati and/or any of the Equinix executives are so confident and comfortable with the potential hazards of these data centers and small power plant, I would be happy to swap homes with them.

I look forward to your responses and information as soon as possible.

Best,

Mimi Patterson

On Fri, Oct 2, 2020 at 8:26 AM Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov> wrote:

Hello Mimi –

I think you have some good questions below, and I will take some additional time to answer them for you. I don't know that all of my answers will be satisfactory to you, but I hope we will be able to focus on the project review at the present time, and the process ahead, in a way that will be most productive. I hope to be able to respond by early next week.

Patrick Kelly AICP

Supervising Planner, Development Review

408-535-7858 / Patrick.Kelly@sanjoseca.gov

From: Mimi Patterson [mailto:patterson.mimi@gmail.com]

Sent: Thursday, October 1, 2020 8:34 PM

To: Wang, Angela <Angela.Wang@sanjoseca.gov>

Cc: Keyon, David <david.keyon@sanjoseca.gov>; Petersen, Adam <Adam.Petersen@sanjoseca.gov>; Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov>; Manford, Robert <Robert.Manford@sanjoseca.gov>;

Avalos, Rosemary@Energy <rosemary.avalos@energy.ca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Nick Renna <nick_renna@sbcglobal.net>; Patricia sheehan <pattitude51@yahoo.com>; Bill Dunmyer <billDunmyer@comcast.net>; Janelle Casanave <casanave23@aol.com>; kandlferguson@yahoo.com; Lisa Campbell <lcampbell@choicecommunications.com>; pmundt49@gmail.com; kathy.bloom@sbcglobal.net; Rood, Timothy <timothy.rood@sanjoseca.gov>; Shannon Kaloczy <shannonb@xilinx.com>

Subject: Re: Equinox Great Oaks Data Centers

[External Email]

Hi Angela,

Thank you for your response. I understand you were not the original PM on SP15-031, so you may not know the complete answer to my question #1 and in my previous email. But this is an important question as my neighbors and I are questioning the ethics and due diligence in approval of permit SP15-031. In the City of San Jose **Planning Guide #105 - Special & Conditional Use Permits**, on **page 2 of 2** (I have attached this document for everyone's convenience), it clearly states:

The proposed use must be allowed for the site under the Zoning Code and General Plan. The Proposal must demonstrate that the use will not:

- **Impair the character and integrity of the neighborhood;**
- **Impair the utility or value of adjacent property or the general welfare of the neighborhood;**
- **Be detrimental to the public peace, health, safety, morals or welfare.**

As you can see, all of these items were violated and clearly failed our neighborhood. In addition, Patrick Kelly within your department, recently stated on a recorded zoom call that in 2016-2017, your department had a "bare bones staff" and "errors were made". So how is that the City of San Jose Planning and Development Department able to review and approve Equinix's in three (3) weeks, but yet your department could not send public notices to the neighbors within 1,000 ft radius as specifically stated by Patrick Kelly? I have attached the video for your convenience.

For your convenience, I have itemized my questions:

1) Harry Freitas was the Director of Planning, Building and Code Enforcement at that time. Why was Director Freitas allowed to grant entitlement for such an impactful project after only a **three-week review process which was internal only with no community outreach**? Let me emphasize this project was for three large data centers totaling 579,000 square feet on an 18.56 gross acre site. Mr. Freitas' abrupt and rash approval process lacked due diligence and fiduciary responsibility to any neighborhood and to any community. I would like an explanation on how this was allowed to happen without hesitation or question.

2) You mentioned that a Special Use Permit (SUP) has a higher level Planning application than a Site Development Permit. Can you send me the **exact** City of San Jose Planning and Development ordinance that states this specifically?

3) I also notice that "data centers" do not fall into any of the zoning codes. Can you also send me the specific ordinance/language for data centers and small power plant zoning codes near a neighborhood?

4) You mentioned in your previous email that public outreach for SP15-031 states that "the original PM requested the applicant to post the sign in October, 2015 in her first (1st) review letter". There was **NO** sign posted of any size. Again, I have lived in this neighborhood for twenty-three (23) years, and I drive on San Ignacio Ave, Via Del Oro, Great Oaks Blvd and Santa Teresa Blvd on a daily basis. In addition, many of my neighbors have resided here for 30 and 40 plus years. So clearly the applicant failed to post any signs on the proposed site to avoid any public outreach.


5) I am very familiar with Equinix and the data center industry. Equinix is the world's data center and colocation provider. As the world's digital infrastructure leader, I question Equinix's original intentions of having just twenty-one (21) generators vs. thirty-six (36) generators in their amended application. I understand the tactic of piecemealing development projects to sidestep stricter requirements. For the record, piecemealing is illegal.

6) I am surprised the Environmental Planning process and arborists are allowing the removal of the heritage oak trees. For the record, there is more than one heritage oak tree on the proposed site. Have you or anyone in your department ever visited this location?

So while I appreciate you taking the time to address some of my questions and providing valuable information, I still find it difficult to believe that the City of San Jose Planning and Development Department would approve such a permit without more thorough due diligence and compliance. I am still shocked and appalled that the City of San Jose Planning and Development Department is not requiring the applicant to complete an entirely new application due to the time lapse and the magnitude of design change. I look forward to hearing from you as soon as possible.

Best,

Mimi

 [IMG_0589.MOV](#)

On Thu, Oct 1, 2020 at 5:07 PM Wang, Angela <Angela.Wang@sanjoseca.gov> wrote:

Hi Mimi,

I am the Project Manager for [SPA15-031-01](#). I can be the main contact for this project. For SP15-031, I was not the PM and I may not know all the answers. But I will try my best.

For your question on why there is no meeting minutes for the 1/25/2017 Director's Hearing, we don't prepare details of meeting minutes for any Directors hearing meetings. The synopses only state the action. As I mentioned before, the audio-recordings are available on line.

A Special Use Permit (SUP) is required for data center use within Industrial Zoning Districts per Zoning Code [Section 20.50.100](#). SUP is a higher level Planning application than Site Development Permit.

For public outreach for SP15-031, I checked the comment letters in our file system and it showed that the PM requested the applicant to post the sign in October, 2015 in her 1st review letter.

Regarding the tree removal permitted under SP15-031, the environmental document for SP15-031 (Initial study, see attached) includes this. Please check the Biological

Resources Section from Page 49-57 of the attachment. The heritage tree located at the corner of Via Del Oro and Great Oaks Blvd will be preserved.

SPA15-031-01 is a new Planning application. This is why it is subject to the environmental review and development review again. It's just that the scope of work is to amend SP15-031.

Thanks,

Angela

From: Mimi Patterson <patterson.mimi@gmail.com>
Sent: Wednesday, September 30, 2020 8:33 PM
To: Wang, Angela <Angela.Wang@sanjoseca.gov>
Cc: Keyon, David <david.keyon@sanjoseca.gov>; Petersen, Adam <Adam.Petersen@sanjoseca.gov>; Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov>; Manford, Robert <Robert.Manford@sanjoseca.gov>; Avalos, Rosemary@Energy <rosemary.avalos@energy.ca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Nick Renna <nick_renna@sbcglobal.net>; Patricia sheehan <pattitude51@yahoo.com>; Bill Dunmyer <billDunmyer@comcast.net>; Janelle Casanave <casanave23@aol.com>; kandlferguson@yahoo.com; Lisa Campbell <lcampbell@choicecommunications.com>; pmundt49@gmail.com; kathy.bloom@sbcglobal.net; Rood, Timothy <timothy.rood@sanjoseca.gov>; Shannon Kaloczy <shannonb@xilinx.com>
Subject: Re: Equinox Great Oaks Data Centers

[External Email]

Good evening Angela,

Thank you for your email and response to my inquiries. I appreciate you taking the time out of your busy schedule to address my inquiries, but I wanted to clarify who is the primary contact person for this project? It seems that since I emailed Tim Rood, Robert Manford and Rosalynn Hughey, I have been bounced from them to David Keyon and now to you. I am inquiring so that my emails will not continue to be tossed from person to another person within your department. I would like to maintain consistent answers and factual responses without redundancy, so if you can let me

know who the best person to continue communication with, that would be great.

I reviewed the special use permit you emailed me, and the January 25, 2017 Director's Hearings Agenda and Meetings. I have a couple of questions:

1) Why is there no information within the minutes from the January 25, 2017 Director's hearing? It merely states "approved" for all items. Typical minutes include details of the people involved and attended, and the specific items on the agenda.

2) Based on the size and scope of the Project, entitlement should have been through a **Site Development Permit and not a Special Use Permit? Can you explain in detail why this happened?**

3) Harry Freitas was the Director of Planning, Building and Code Enforcement at that time. Why was Director Freitas allowed to grant entitlement for such an impactful project after only a **three-week review process which was internal only with no community outreach?** Let me emphasize this project was for three large data centers totaling 579,000 square feet on an 18.56 gross acre site. Mr. Freitas' abrupt and rash approval process lacked due diligence and fiduciary responsibility to any neighborhood and to any community. I would like an explanation on how this was allowed to happen without hesitation or question.

4) Can you explain why the City of San Jose Planning and Development Environment Reviewers permitted the removal of thirteen (13) on-site trees (nine (9) ordinance-size and four (4) non-ordinance size) heritage oak trees? It seems like the MND did not provide enough information and reason for these heritage oak trees to be removed.

5) You mentioned that due to the additional 15 generators, Equinix is now amending their special use permit application. Due to the time lapsed and magnitude of the design change, why is the City of San Jose Planning and Development Department allowing this as an amendment and not a new application process?

Again, thank you for your time and I look forward to hearing from you as soon as possible.

Best,

Mimi Patterson

On Wed, Sep 30, 2020 at 9:51 AM Wang, Angela <Angela.Wang@sanjoseca.gov> wrote:

Hello Mimi,

Thank you for the information. I am requested to respond to your questions regarding public outreach.

SP15-031, approved in 2017:

SP15-031 is a Special Use Permit to allow the construction of three data center buildings on a 18-6-gross acre site. SP15-031 was heard and approved at the 1/25/2017 Director's Hearing. The meeting notice was mailed out on 1/6/2017. The noticing radius was 500 feet from the project site. I think this is why a lot of your neighbors didn't receive the notice. There is no meeting minutes for Director's Hearings. But you can check the archived audio-recordings. It's available on-line: https://sanjose.granicus.com/ViewPublisher.php?view_id=54

SPA15-031-01, currently under review:

SPA15-031-01 is a Special Use Permit Amendment application to amend the approved SP15-031 to allow more generators, reduce the project footprint and total square footage of the buildings (reduced about +/- 32,000 sf) and the associated design changes. The scope is not to propose a new development with three data center buildings but to amend this approved project. This is why we categorized it as a "Standard Development Proposal", not a "Large Development Proposal" and instructed the applicant to post a 2' x 3' sign. But since the project has received high public interest, we will apply the "Significant Community Interest Proposal" public outreach regulations. We will request the applicant to post 4'x6' signs on each street frontage ASAP.

We haven't sent out any notice yet because the community meeting and public hearing are not scheduled yet. By the time when we will have the community meeting and public hearing, we will send out notice to the area within a 1,000-foot radius of the site.

From: Mimi Patterson <patterson.mimi@gmail.com>
Sent: Monday, September 28, 2020 7:52 PM
To: Keyon, David <david.keyon@sanjoseca.gov>
Cc: Petersen, Adam <Adam.Petersen@sanjoseca.gov>; Wang, Angela <Angela.Wang@sanjoseca.gov>; Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov>; Manford, Robert <Robert.Manford@sanjoseca.gov>; Avalos, Rosemary@Energy <rosemary.avalos@energy.ca.gov>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Nick Renna <nick_renna@sbcglobal.net>; Patricia sheehan <pattitude51@yahoo.com>; Bill Dunmyer <billDunmyer@comcast.net>; Janelle Casanave <casanave23@aol.com>; kandlferguson@yahoo.com; Lisa Campbell <lcampbell@choicecommunications.com>; pmundt49@gmail.com
Subject: Re: Equinox Great Oaks Data Centers

[External Email]

Hi David,

Thank you for your prompt response and for taking the time to explain the sequence of events in detail. There are still a couple of important issues with this project that need to be addressed:

1) You mentioned there was a publicly-noticed hearing back in 2017 for Equinix's original permit. I have consulted many of my neighbors and unfortunately, none of us received any type of notices for this public hearing back in 2017. Can you please forward me the minutes for this 2017 public hearing and perhaps the original notice that was supposedly sent to our community? As mentioned in my original email to the City of San Jose, there was a distinct lack of community outreach and had the City of San Jose and the applicant fulfilled their obligation to notify the public and community in 2017, we certainly would be in a very different scenario today. To date, many of my neighbors and I still have not received any type of public notice for this Equinix project.

2) I would also like to reiterate there was never any site signage installed for the original Special-Use Permit Application, and as I mentioned in my first email, the signage recently installed for this Amendment is, at 2 x 3, undersized based on the total square footage for the Project. Based on the City's On-Site Noticing/Posting

Requirements this is considered a Large Development Proposal and as such, signage should be 4 x 6. Additionally, the signage is to be posted on each street frontage, two locations in the case of this Project. There is only one sign on the smaller, less-traveled street. Pictures of that **2' x 3' sign on Via Del Oro are below.**

On-site noticing is a key part of Community Outreach. In the City of San Jose's Council Policy (page 4 of 8), it states the following:

3. On-Site Noticing

Purpose/Intent

On-site Noticing is an additional mode of Early Notification warranted for all Proposals. The on-site notice is intended to provide information to immediate neighbors and members of the public regarding the development application on file for the subject property.

Modes and Timing

The applicant is responsible for installing such on-site notice at the site. Such on-site notice should be accessible to the public and should be sufficient to adequately notify the public of the proposed development at the site and where the public might obtain more information regarding the proposed development. All on-site notices need to meet City specifications, which should be indicated in a separate detailed handout available from the Department of Planning, Building, and Code Enforcement. The applicant is responsible to replace any vandalized or missing sign only once upon request by the City.

On-site Notification should be employed within ten (10) working days of the filing of a development application.

With inadequate and deficient signage, it appears that the applicant may be purposely trying not to notify the public and as such, trying to minimize the negative impact of this project on our community. Based on the City of San Jose' Council Policy and mandates, this may be violating the City of San Jose's mandate for a 4' x 6' sign for projects 100,000 sf and more.





NOTICE OF DEVELOPMENT PROPOSAL

The City of San Jose's Planning, Building and Code Enforcement Department has received an application for a development permit at this property



PROJECT DESCRIPTION: Special Use Permit Amendment to modify the previously approved Special Use Permit, File No. SP19-021 to rename Buildings SV13 & SV14 to SV15 & SV16, change the building footprint and equipment layout (except generating of SV15 & SV16 to match SV13) which was approved under AJ19-1178, increase the total number of generators to 26 (12 for each building), modify the site layout, the number of parking stalls and landscaping, and to allow the removal of one surface-water tree on a 18.58-acre site.

PROJECT ADDRESS: West side of Via Del Oro between Great Oaks Boulevard and San Ignacio Avenue (123, 127 & 131 Great Oaks Boulevard)

PROJECT FILE NO.: SP19-021-01

APPLICANT: Equinix

COUNCIL DISTRICT: 2

For Additional Information:

- View information about public comments at the City of San Jose's Online Permitting web page at <http://100.100.100.100/2019/03/19/> using the project file number SP19-021-01.
- Contact Planning Project Manager, Angela Wang, in the Planning Division at (408) 252-6275 or by e-mail at awang@sjonline.gov.
- Visit the Planning Division Public Information Counter, located at 1500 North First Street, San Jose, CA 95131.
- Public input for this project will be taken at 10:00 AM on the San Ignacio Plaza at 408-762-4774 on the 03/22/19 at SP19-021-01.
- For information on Equinix contact the sales manager, angelawang@sjonline.gov or 408-762-4774 or follow us on twitter @ [SP19-021-01](https://twitter.com/SP19-021-01).





Again, thank you for taking the time to reach out and sending the valuable information. The pictures of the heron on the proposed site are a bonus in consideration of your environmental review. Typically there are two herons, and we suspect they are a mated pair. I look forward to hearing from you soon regarding the above referenced items.

Best,

Mimi Patterson

On Mon, Sep 28, 2020 at 5:04 PM Keyon, David <david.keyon@sanjoseca.gov> wrote:

Dear Mimi Patterson,

The Deputy Director requested that I respond to your e-mail from last Friday regarding the CEQA review for the Equinox Great Oaks Data Center.

The project currently being considered is significantly different from the data centers considered under the original Special Use Permit (SP15-031). The Director of Planning adopted the Initial Study and Mitigated Negative Declaration (MND) and approved the original permit at a publicly-noticed hearing back in 2017. An MND was determined to be an appropriate level of CEQA clearance for the project as the project, with incorporation of the identified mitigation measures, could reduce the identified impacts to a less than significant level based on thresholds established by the Envision San Jose 2040 General Plan and the Bay Area Air Quality Management District.

Since the original approval, the applicant submitted an application for a Special Use Permit Amendment (SPA15-031) to revise their project, including a significant increase in the number of emergency backup generators from 21 to 36. This increase in generator capacity triggered additional review by the California Energy Commission (CEC). The CEC is required to determine if the project qualifies for a Small Powerplant Exemption, and this action must occur before the City can start its review of the Special Use Permit Amendment.

The CEC action is required to comply with CEQA, and because the CEC has the first action needed in the review of the project, they are taking the lead to prepare the environmental studies. At this stage, CEC has indicated that the project will likely require an EIR. All studies prepared for the original 2015 Initial Study/Mitigated Negative Declaration will be updated to reflect the larger project and the changed setting since the original 2017 approval. If the CEC prepared an EIR, there will be a scoping meeting and a 45-day public circulation period. The City will be in a supportive role, but will not be leading this effort as the CEC will be the agency preparing the EIR.

If the CEC certifies the EIR and approves the Small Powerplant Exemption request, then the City will start its review of the project. This review will include a community meeting and a noticed public hearing before the Planning Director.

For questions about community outreach for the project, and to be included on a list of people interested in receiving notification on the project, please contact the Angela Wang, the Planning Project Manager, at Angela.Wang@sanjoseca.gov.

For questions related to the City's support of preparation of the environmental review documents, please contact the Environmental Project Manager at Adam.Petersen@sanjoseca.gov.

Thank you,

David Keyon

Principal Planner, Environmental Review
City of San Jose
(408) 535-7898 david.keyon@sanjoseca.gov

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