

<b>DOCKETED</b>	
<b>Docket Number:</b>	20-SPPE-01
<b>Project Title:</b>	Great Oaks South Backup Generating Facility Small Power Plant Exemption
<b>TN #:</b>	239784
<b>Document Title:</b>	Staff Supplemental Information in Response to Committee Questions, List of Witnesses, and Updated Exhibit List
<b>Description:</b>	N/A
<b>Filer:</b>	Lisa Worrall
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**M e m o r a n d u m**

**To:** Commissioner Karen Douglas, Presiding Member  
Chair David Hochschild, Associate Member

**Date:** September 17, 2021

**From:** California Energy Commission  
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**Subject: STAFF'S SUPPLEMENTAL INFORMATION IN RESPONSE TO COMMITTEE QUESTIONS, LIST OF WITNESSES, AND UPDATED EXHIBIT LIST**

On September 15, 2021, the Committee managing this proceeding issued a second order requesting supplemental information.<sup>1</sup> This order directed the parties to respond either in writing by September 17, 2021 or in verbal testimony at the evidentiary hearing in lieu of or in addition to written responses.<sup>2</sup> Though the four questions contained in the order appear to be directed to statements made by the applicant, staff offers its responses here to the extent they might help the Committee understand staff's perspective on the matters. Because one of the questions sought more information about a document relied on by staff for its analysis, staff also here requests leave to identify this document, along with two others associated with it, as exhibits it proposes to sponsor into the record. Lastly, the order directed parties to provide a list of any additional witnesses who would provide further responses to the request for supplemental information. Staff does not expect to provide additional responses at the evidentiary hearing but includes a list of its intended witnesses here in the event the Committee has additional follow-up questions.

### **Staff's Supplemental Information in Response to Committee Questions**

#### **Committee Question:**

1) The Committee Request for Information, request two, asked the parties whether the Project's construction-related noise would be consistent with the City of San Jose's General Plan Policy EC-1.7. Applicant responded in part that "the noisy portion of each phase of construction would be less than 12 months. . .[and] the majority of the noise and the loudest activities would take place during grading, which would be done for the whole site as part of the first phase and will be completed in less than 12 months." Please direct the

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1 Orders Denying Motion to Strike, Granting Applicant Leave to File Exhibits, Denying Written Cross-Examination, and Requesting Information (TN 239723).

2 TN 239723, p. 7.

Committee's attention to evidence in the record or provide evidence (documentary or witness testimony) supporting the timing of any noisy portion of the Project's construction.

**Staff Response:**

The following information was extracted from SPPE section 4.15, page 171 (TN 232466).

The noisy construction work would occur during a total of approximately 34 months. This construction period consists of approximately 32 months for trenching, building exterior, and paving; and two months for site prep, excavation, and grading. Site preparation, excavation, and grading for the entire site would occur once, before the construction of the first building. Trenching, building exterior and interior, and paving would occur three times, once for each phase of construction (less than 12 months per phase).

The less noisy period would be approximately 17 months (for building interior, construction equipment and material delivery, electrical work, concrete leveling, fencing, etc.). There would be approximately a total of 30 months when no construction would occur. This would be between the phases of each building construction.

This accounts for the entire construction of the project (approximately 81 months).

**Committee Question:**

2) The Committee Request for Information, request three, asked the parties to evaluate the Project's contribution to the magnitude of change in ambient noise and identify any applicable threshold of significance, or why it is not necessary to provide this information. Staff responded in part that "As discussed in Section 4.13 Noise on pages 4.13-2 and 4.13-6, for operation, staff used the city allowable limits to evaluate the potential for impacts. Operational noise would be below the city's noise limits (FEIR, p. 4.13-8)." Applicant responded in part:

The ambient conditions for the residences all exceeded the city's daytime residential noise level limit of 55 dBA Leq and was almost entirely related to nearby traffic. The project contribution was well below the ambient noise levels. Therefore, the City's daytime residential noise level limit was more restrictive than identifying a threshold that measured the increase over ambient. Additionally, as discussed in the FEIR the modeled noise was from simultaneous operation of the generators when SV1 will only run one generator at a time for maintenance and testing and never at night. The FEIR compared the project's modeled noise at sensitive receptors to the measured ambient levels and found them to be below the ambient levels as well (see FEIR 4.13-8).

Please direct the Committee's attention to evidence in the record or provide evidence (documentary or witness testimony) supporting the assertions that "project contribution was well below the ambient noise levels" and "the City's daytime residential noise level limit was more restrictive than identifying a threshold that measured the increase over ambient."

**Staff Response:**

The table below lists the measured ambient noise levels in the area; Table 4.15-2 of the SPPE application (TN 232466). LT-1 represents nearby residential receptors. The average daytime ambient noise level at this location over the three days that measurements were conducted is 63 dBA Leq.

<b>Table 4.15-2: Summary of Long-Term Measurement Data</b>				
Location	Date	Hourly-Average Noise Level, $L_{eq}$		DNL
		Daytime	Nighttime	
LT-1: ~100 feet Northeast of Santa Teresa Boulevard Centerline	Tuesday, 1/26/2016	60 – 65	55 – 59	65
	Wednesday, 1/27/2016	60 – 67	50 – 62	
	Thursday, 1/28/2016	62 – 65	51 – 62	
LT-2: ~60 feet Southeast of San Ignacio Avenue Centerline	Tuesday, 10/30/2018	56 – 66	53 – 54	65 to 67
	Wednesday, 10/31/2018	55 – 65	50 – 64	
	Thursday, 11/1/2018	58 – 66	51 – 65	
	Friday, 11/2/2018	61 – 64	51 – 64	

The project's noise level at LT-1 would reach a maximum of 47 dBA Leq for simultaneous testing and operation based on Exhibit 24, page 6, Table 2, first column. 47 dBA is less than the average daytime ambient level of 63 dBA at these locations.

As shown below, the city's daytime threshold for residential receptors according to the municipal code Table 20.135 is 55 dBA Leq. The project's contribution of 47 dBA is less than 55 dBA and therefore meets the city's threshold.

As shown above, the average ambient daytime level is 63 dBA. Because the city's threshold of 55 dBA is well below this ambient level, it is more restrictive than a threshold that measures the increase over ambient.

Table 20-135 Noise Standards	
	Maximum Noise Level in Decibels at Property Line
Industrial use adjacent to a property used or zoned for residential purposes	55
Industrial use adjacent to a property used or zoned for commercial purposes	60
Industrial use adjacent to a property used or zoned for industrial or use other than commercial or residential purposes	70

**Committee Question:**

3) The Committee Request for Information, request nine, asked about the appropriateness of the EIR's noise survey data as the environmental setting (baseline) for noise, in light of the time between the date of the 2016 noise measurements and the date the CEC began preparing the EIR. The Applicant responded in part that the COVID-19 pandemic significantly altered traffic patterns so "noise data in 2020 would have not yielded any meaningful background data because it would have produced sound levels with unsustainably low traffic levels caused by the Covid-19 quarantines." Please direct the Committee's attention to evidence in the record or provide evidence (documentary or witness testimony) to support these statements.

**Committee Question:**

3) The Committee Request for Information, request nine, asked about the appropriateness of the EIR's noise survey data as the environmental setting (baseline) for noise, in light of the time between the date of the 2016 noise measurements and the date the CEC began preparing the EIR. The Applicant responded in part that the COVID-19 pandemic significantly altered traffic patterns so "noise data in 2020 would have not yielded any meaningful background data because it would have produced sound levels with unsustainably low traffic levels caused by the Covid-19 quarantines." Please direct the Committee's attention to evidence in the record or provide evidence (documentary or witness testimony) to support these statements.

**Staff Response:**

The applicant would be best to answer this question, because the statement was made by the applicant. However, the ambient noise measurements from 2016 are representative

of the current environmental conditions. If in fact the ambient levels were lower during the COVID-19 quarantines, it would have represented a temporary situation and does not reflect the current, and likely the future, noise regime in the area.

**Committee Question:**

4) The Committee Request for Information, request 10, asked the parties how the revised MM GHG-1 mitigates the potentially significant environmental impact of greenhouse gas emissions to less than significant levels. Applicant responded that "the City of San Jose 2030 GHG [Greenhouse Gas] Reduction Strategy (GHG RS) . . . is a qualified greenhouse gas reduction plan pursuant to Title 14 CCR [CEQA Guidelines], Section 15183.5 (b)." Applicant's response concludes: Since the City will be implementing the Mitigation Measure as an Alternative Measure to comply with its properly adopted 2030 GHG RS, the CEC can rely on both of these facts and can determine that the GOSBGF and GOSDC will not have a significant cumulative impact pursuant to Title 14, CCR 15183.5. Please direct the Committee's attention to evidence in the record or provide evidence (documentary or witness testimony) that the City of San Jose's GHG RS satisfies each of the elements of CEQA Guidelines, section 15183.5, subdivisions (b)(1)(A) through (F), which is necessary for it to be deemed a qualified greenhouse gas reduction plan.

**Staff Response:**

The City of San Jose has determined that its 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) "serve[s] as a Qualified Climate Action Plan for purposes of tiering and streamlining under the California Environmental Quality Act (CEQA)."<sup>3</sup> Staff has testified that the GHGRS is a "qualified climate action plan in compliance with CEQA." (FEIR, p. 4.8-16.) (TN 239063) No evidence has been presented challenging this conclusion, nor is staff aware of a requirement that an agency proposing to rely on a qualified GHGRS document in its own proceeding re-evaluate whether that adopted document in fact meets the requirements of California Code of Regulations, title 14, section 15183.5, absent any evidence to the contrary. Section 15183.5 states that in order to rely on a GHGRS for later projects, the environmental document "must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project." (Cal. Code Regs., tit. 14, §15183.5(b)(2).)

The FEIR evaluates the project's compliance with the GHGRS. (FEIR, pp. 4.8-16 through 4.8-24.) The FEIR also notes that these measures will be enforceable by the city when the

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<sup>3</sup> City of San Jose webpage on the 2030 Greenhouse Gas Strategy and Addendum, <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/2030-ghgrs-addendum> (last visited Sep. 16, 2021). See also, City of San Jose 2030 GHGRS, p. 9 ("[The 2030 GHGRS] is also developed in conformance with CEQA Guidelines Section 15183.5 to support tiering and streamlining of environmental review for future development projects.").

project undergoes development review. (FEIR, p. 4.8-16.) Nonetheless, the FEIR proposes incorporating as a mitigation measure one of the most important mechanisms established by the city to reduce GHG impacts here, which is participation in San Jose Clean Energy at the Total Green level, or an equivalent program. (FEIR, p. 4.8-24.) Thus, the FEIR meets all the requirements of section 15183.5 for reliance on a GHGRS to conclude the project's impacts from greenhouse gas emissions is less than significant.

In response to the Committee's request, however, staff has reviewed the 2030 GHGRS and confirms that it contains all of the plan elements identified in section 15183.5(b)(1). In the document itself the city explains how each criterion is met. (2030 GHGRS pp. 24-27.) And though the 2030 GHGRS is included as a reference in the FEIR, and thus should already be considered part of the administrative record in this proceeding, staff also proposes to sponsor it here as an exhibit, along with the Initial Study/Addendum adopted (TN 239753) by the city, and an email from the city confirming that the 2030 GHGRS was officially adopted on November 17, 2020 (TN 239780), to ensure a robust hearing record on the matter.

### **List of Witnesses**

In his prehearing conference statement, Intervenor Sarvey identified two main areas he wished to cross-examine staff on: Emergency Operations/GHG-1/Cumulative Impacts and Alternatives. Staff proposes to have the following witnesses available to address these areas. To help situate the issues for the record, staff requests that the witnesses be allowed to provide a short summary of staff's response to Intervenor Sarvey's testimony prior to commencement of cross-examination in each of the subject areas identified below.

#### Emergency Operations/GHG-1/Cumulative Impacts

Tao Jiang, Wenjun Qian, and Joseph Hughes

#### Alternatives

Steve Kerr, Kenneth Salyphone, Shahab Koshmashrab, and Brett Fooks

Additionally, if the Committee has any follow-up questions based on the supplemental information provided in this document, staff will have the following witnesses available.

#### Noise

Kenneth Salyphone and Shahab Koshmashrab

#### Greenhouse Gas Emissions

Tao Jiang and Joseph Hughes

### Updated Exhibit List

<b>Proposed Exhibit Number</b>	<b>Document TN</b>	<b>Title of the Document as shown in the docket</b>	<b>Subject area</b>
200	239063	Great Oaks South Backup Generating Facility Final Environmental Impact Report	All
201	239258	Staff's Opening Testimony	All
202	239361	Addendum to Final Environmental Impact Report for the Great Oaks South Backup Generating Facility	GHG, Air Quality, Biological Resources, Cultural Resources, Geology and Soils (Paleontology), Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation.
203	239476	City of San Jose – Acceptance of MMRP and Mitigation Compliance	GHG, Air Quality, Biological Resources, Cultural Resources, Geology and Soils (Paleontology), Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation.
204	239582	CEC Staff Response to Order Requesting Supplemental Information in Response to Committee Questions	Air Quality, Mandatory Findings of Significance, Noise, GHG, Biological Resources, Transportation.
205	239587	CEC Staff Response to Intervenor Sarvey's Reply Testimony	Air Quality, GHG, Alternatives
206	239592	Additional Staff Declarations and Resumes	Various
207	239752	City of San Jose 2030 Greenhouse Gas Reduction Strategy, August 2020	GHG
208	239753	San Jose Greenhouse Gas Reduction Strategy 2030 Update Initial Study/Addendum, August 2020	GHG
209	239780	ROC with David Keyon, City of San Jose and Tao Jiang, CEC	GHG
210	TBD	Staff's Supplemental Information in Response to Committee Questions, List of Witnesses, and Updated Exhibit List	Noise, GHG

**DECLARATION OF  
Kenneth Salyphone**

I, Kenneth Salyphone, declare as follows:

1. I am employed by the California Energy Commission as a Mechanical Engineer in the Siting, Transmission and Environmental Protection Division.
2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
3. I am sponsoring the **Noise** testimony contained in Staff's Supplemental Information in Response to Committee Questions, List of Witnesses, and Updated Exhibit List for the **Great Oaks South Backup Generating Facility**.
4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issues addressed therein.
5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 17, 2021 Signed: /s/ Kenneth Salyphone

At: Sacramento, California

**DECLARATION OF  
Tao Jiang**

I, Tao Jiang, declare as follows:

1. I am employed by the California Energy Commission as an Air Resources Engineer.
2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
3. I am sponsoring the **GHG testimony contained in Staff's Supplemental Information in Response to Committee Questions, List of Witnesses, and Updated Exhibit List** for the Great Oaks South Backup Generating Facility.
4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issues addressed therein.
5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 09/17/2021

Signed: \_\_\_\_\_

*Tao Jiang*

At: Sacramento, California