

**DOCKETED**

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February 7, 2022

Attn: Lisa Worrall, Project Manager  
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E-Mail: [lisa.worrall@energy.ca.gov](mailto:lisa.worrall@energy.ca.gov)

Subject: **San José Data Center (19-SPPE-04) Draft Environmental Impact Report Comments**

Dear Ms. Worrall:

On behalf of the Microsoft Corporation, the Applicant for the proposed San José Data Center Project (Project), we are providing the enclosed relatively minor comments on the California Energy Commission's Draft Environmental Impact Report (DEIR) issued on December 23, 2021, which are being submitted for the limited purpose of further clarifying and amplifying the analysis in the DEIR.

If you have any questions on this comment letter, please contact me at (916) 769-8919.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Salamy".

Jerry Salamy  
Project Manager

**Enclosure:** Applicant Comments on Draft EIR

## Comments on Draft EIR<sup>1</sup>

### 1. SUMMARY

**Page 1-1, Project Summary, 1<sup>st</sup> paragraph, 4<sup>th</sup> sentence** – The sentence states the project includes 244 natural gas generators. Please correct the sentence to read as follows. This typographic error also occurs on pages 4.14-3, 4.15-1, and 4.20-11.

... the project includes ~~244~~ 224 0.45-MW natural gas generators to provide electrical power to support the data center uses during utility outages, ...

**Page 1-1, Project Summary, 1<sup>st</sup> paragraph, 5<sup>th</sup> sentence** – The sentence states the project's estimated electrical load is 77 megawatts (MW). In the response to Data Request Set 6 (Transaction Number 240082 response #70), the Applicant revised the estimated electrical use to 96 MWs. Please correct the sentence to read as follows. This typographic error also occurs on pages 3-4, 3-5, 3-10, and Appendix A page 1.

The maximum electrical load of the project would be 99 MW, although the estimated load is ~~77~~96 MW, ...

**Page 1-1, Project Summary, 1<sup>st</sup> paragraph, second to last sentence:** Please revise the sentence below to clarify the Project's use of natural gas. The remainder of the Draft EIR correctly states that the project will use natural gas for comfort heating.

~~"No natural gas would be used onsite.~~ Natural gas is also proposed for comfort heating of the data center buildings."

**Page 1-2, Section 1.2, 3<sup>rd</sup> paragraph,** second to last sentence – Add a period to the end of the sentence.

**Page 1-6, Section 1.2, BIO-3:** Please see the requested revisions to Mitigation Measure BIO-3 identified below regarding burrowing owl.

**Page 1-8, Section 1.2, BIO-12:** Please see the requested revisions to Mitigation Measure BIO-12 identified below regarding tree replacement.

**Page 1-11, Section 1.2, BIO-20:** Please see the requested revisions to Mitigation Measure BIO-20 pertaining to the Santa Clara Valley Habitat Plan (SCVHA) Land Cover Fee.

**Page 1-16, Section 1.2, Summary of Environmental Impacts and Mitigation Measures, Greenhouse Gas Emissions, GHG-1:** Mitigation Measure GHG-1 does not include any provision for emergency conditions where the supply of renewable fuels may be restricted or in high demand and also does not reflect the fact that it is not possible for the Applicant to control the actual type of natural gas delivered by PG&E through its exclusive pipeline system to the site. The Applicant will purchase renewable natural gas that will be injected into the PG&E system, but it is impossible to track the renewable natural gas particles to the site. Since Mitigation Measure GHG-1 requires the "use" of renewable natural gas, it is impossible for the Applicant to comply with the measure as currently drafted. Therefore, the Applicant suggests

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<sup>1</sup> Additions are shown in blue underlined text. Deletions are shown in black ~~strike through text~~.

the following change to GHG-1 to reflect that all the Applicant can do is “purchase” the renewable natural gas. The net effect is the same, as the Applicant will “purchase” an amount of renewable natural gas equivalent to the natural gas used as the site.

In addition, to match the Applicant’s commitment but to acknowledge that renewable diesel may not be available in sufficient quantities during an emergency, the Applicant proposes the following modifications regarding the use of renewable diesel.

**GHG-1:** The project owner shall ~~exclusively use~~ purchase renewable natural gas in an amount equivalent to the total energy use of the ~~and renewable diesel in the~~ natural-gas fired ~~and diesel-fired~~ generators, which may require securing renewable fuel from PG&E and other suppliers as feasible. The project owner shall use renewable diesel fuel for the administrative diesel-fired generators to the extent feasible. During an emergency where renewable diesel fuel supplies may be limited, the project owner will document their efforts to secure other vendors of renewable diesel fuel prior to refueling with non-renewable diesel. The project owner shall provide documentation to the Director or Director’s designee with the City of San Jose Planning, Building and Code Enforcement (PBCE) to verify the amount of renewable natural gas purchased, and the amount administrative diesel fuel used by the administrative diesel-fired generators. ~~that renewable fuels are used for 100 percent of total energy use by the generators upon commencing operation of the project.~~

In addition to the modifications to Mitigation Measure GHG-1 above, minor consistent changes should be made to the term “use” of renewable natural gas to reflect “purchase” of renewable natural gas contained in the discussion on pages 4.6-5, 4.8-14, 4.8-15, and 4.8-18.

**Page 1-16, Greenhouse Gas Emissions, GHG-2:** In Mitigation Measure GHG-2, Staff has included a measure to ensure the project would comply with the City of San Jose Greenhouse Reduction Strategy adopted in 2020 (GHGRS). Staff’s mitigation measure differs from the mitigation measure adopted in the Great Oaks South Data Center (GOS). The mitigation measure for GOS was agreed to by the City of San Jose as it acknowledges that compliance with GHGRS can be accomplished with an Alternative Measure. Staff’s proposed Mitigation Measure GHG-2 for the project also acknowledges that the project owner can comply with the GHGRS by use of an Alternative Measure; however, the structure of the mitigation (the use of bullets) creates inconsistency. The following modifications are proposed to ensure that Mitigation Measure GHG-2 allows three independent ways to demonstrate compliance with the GHGRS: 1) participation in the San Jose Clean Energy at the Total Green level; 2) negotiating a electricity contract with SJCE that accomplishes the same goals as the Total Green level; or 3) providing documentation and annual reporting to the Director or Director’s designee with the City of San Jose PBCD that confirms the Alternative Measures achieve the same 100 percent carbon free electricity as the SJCE Total Green level, with verification by a qualified third-party auditor specializing in greenhouse gas emissions.

**GHG-2:**

- The project owner shall participate in the San Jose Clean Energy (SJCE) at the Total Green level (i.e., 100 percent carbon-free electricity) for electricity accounts associated with the project, or shall negotiate an electricity contract

with SJCE [or participate in a clean energy program](#) that accomplishes the same goals as the Total Green level, to ensure compliance with the City's 2030 Greenhouse Gas Emissions Reduction Strategy.

- ~~• The project owner shall provide documentation to the Director or Director's designee with the City of San Jose Planning, Building and Code Enforcement (PBCE) of enrollment and annual reporting of continued participation in the SJCE Total Green level. If not enrolled in SJCE Total Green level, the project owner shall provide documentation and annual reporting to the Director or Director's designee with the City of San Jose PBCD that confirms that alternative measures achieve the same 100 percent carbon free electricity as the SJCE Total Green level, with verification by a qualified third party auditor specializing in greenhouse gas emissions.~~
- During operation, the project owner shall submit annual reports to the Director or Director's designee with the City of San Jose PCBE documenting either continued participation in SJCE at the Total Green level or documentation that alternative measures continue to provide 100% carbon-free electricity, as verified by an independent third-party auditor specializing in greenhouse gas emissions.

In the alternative, the current version of Mitigation Measure GHG-2 can be deleted and replaced with the language provided in Mitigation Measure GHG-1 for GOS, which was approved by the Commission in the FEIR and Final Decision for the GOS project, as reflected below.

[Option 2]

**MM GHG-2:** [The project owner shall participate in the San Jose Clean Energy \(SJCE\) at the Total Green level \(i.e., 100% carbon-free electricity\) for electricity accounts associated with the project, or enter into an electricity contract with SJCE or participate in a clean energy program that accomplishes the same goals of 100% carbon-free electricity as the SJCE Total Green Level.](#)

We request Staff make make corresponding changes to the discussion to acknowledge the City of San Jose allows Alternative Measures for complying with its GHGRS at Page 1-16 and at pages 4.8-25 and 4.8-26.

**Page 1-19, Noise, 4<sup>th</sup> paragraph, 1<sup>st</sup> sentence** – This sentence includes a typographic error indicating the Norman Y. Mineta San Jose International Airport is 13.4 miles away, while other sections indicate the nearest airport is 3.4 miles away. Please confirm this information and correct this typographic error.

### **3. PROJECT DESCRIPTION**

**Page 3-4, Section 3.5 Project Objectives, 4<sup>th</sup> bullet** – Please note the roadway improvements also include a new bike trail; therefore, the Applicant suggests the following addition.

Design the proposed data center such that it can be provided with operational electric power via an electric 115/230-kilovolt (kV) substation, and efficiently

extend, connect to, or otherwise install other utility infrastructure to adequately serve the project, including water, storm drainage, sanitary sewer, electric, natural gas, and telecommunications, as well as new roadway [and bike trail](#) improvements.

**Page 3-7, Section 3.7 Facility Operation** – The Applicant suggests the following changes to this paragraph.

The project is proposing to operate differently from other previous data center projects, [which have used](#) ~~using~~ solely diesel backup generators. [The standby generation system for the project consists of 224 renewable natural gas generators, and two Tier 4 diesel-fired standby generators to support administrative functions only.](#) The [project's natural gas](#) standby generators would be run primarily for testing and maintenance purposes, and otherwise would not operate unless there is an interruption of the electrical supply or pursuant to dispatch for load shedding, demand response, and behind the meter resource adequacy (RA).

**Page 3-11, Section 3.6.1 Electrical Generation Equipment, 1<sup>st</sup> paragraph, 2<sup>nd</sup> and 3<sup>rd</sup> sentence** – The Enchanted Rock engines include two, 3-way catalyst per engine with one catalyst system installed on each bank of the V-12 engine. Applicant suggests the following changes to this paragraph and on page 4.3-18, 5<sup>th</sup> paragraph.

Each engine includes two ~~sets of~~ 3-way catalysts that control air emissions, with one ~~set of~~ catalysts installed on each bank of [6 cylinders in the V-12 engine](#). ~~The catalysts sets are designated in series with a primary and secondary catalyst.~~ Each bank of cylinders also includes its own exhaust stack, with two exhaust stacks per engine.

#### **4. ENVIRONMENTAL SETTING AND ENVIRONMENTAL IMPACTS**

##### **4.3 AIR QUALITY**

**Page 4.3-13, Sensitive Receptors, 1<sup>st</sup> full paragraph** – The Applicant suggests the following clarifications to document that no sensitive receptors exist within 1,000 feet of the project site.

The SPPE application shows the results of a sensitive receptor search conducted within two kilometers and finds that [there are no sensitive receptors within 1,000 feet of the project site.](#) ~~T~~he sensitive receptor locations near the project site, [but outside of the 1,000-foot zone,](#) include primarily schools, preschool through elementary-level; daycares; health centers; and a senior care center.

**Page 4.3-41, Table 4.3-10, Footnotes 1 and 2** – Table 4.3-10 shows that the Acute Non-Cancer Hazard Index for the Point of Maximum Impact (PMI), Maximally Exposed Individual Resident (MEIR), Maximally Exposed Individual Worker (MEIW) are all the same value (0.00498), noting MEIR for the acute hazard index is at the project boundary. Based on this footnote, it appears that staff used the acute non-cancer hazard index occurring at the PMI (at

the property boundary) to assess compliance with the Bay Area Air Quality Management District's California Environmental Quality Act threshold. If this assumption is correct, the Applicant suggests that the CEC revise the footnote to clarify its assessment. In addition, the Applicant suggests the following revisions to the changes to Table 4.3-10, footnotes 1 and 2

**1** Maximally Exposed Individual Resident (MEIR). The MEIR for cancer risk impact and chronic HI is at the residence (on Murphy Ranch Road) located about 0.3 miles southeast of the project boundary. The MEIR for acute HI is at the project boundary [which provides a conservative assessment of the acute HI](#).

**2** Maximally Exposed Individual Worker (MEIW). The MEIW for cancer risk impact and chronic non-cancer HI is at the same location of PMI, at the project boundary. The MEIW for acute HI is also at the project boundary [which provides a conservative assessment of the acute HI](#).

**Page 4.3-45, Cumulative, Table 4.3-11** – The values in the Total - Cumulative Sources row are not correct. The Applicant suggests the following change to the Total – Cumulative Sources totals to ensure accuracy.

**TABLE 4.3-11 CANCER RISKS (PER MILLION) FROM CUMULATIVE SOURCES**

Total - Cumulative Sources	<del>20.155</del> <a href="#">17.79</a>	27.914	<del>17.045</del> <a href="#">14.68</a>	63.59
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**Page 4.3-45, Cumulative, Table 4.3-12** The values in the Total - Cumulative Sources row are not correct. The Applicant suggests the following change to the Total – Cumulative Sources totals to ensure accuracy.

**TABLE 4.3-12 CHRONIC HAZARD INDICES FROM CUMULATIVE SOURCES**

Total - Cumulative Sources	<del>0.02204</del> <a href="#">0.067</a>	0.0856	<del>0.06704</del> <a href="#">0.05261</a>	0.007042
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#### **4.4 BIOLOGICAL RESOURCES**

**p. 4.4-12 last paragraph and p. 4.4-13, 1st and 2nd paragraphs:** The Applicant requests the following clarifications and revisions concerning the discussion of burrowing owl to ensure accuracy.

The project applicant has agreed to pay applicable fees to the City Director or their designee, based on SCVHP fees (Jacobs 2019a). New land acquisitions and maintenance/monitoring are discussed in Chapter 5 of the SCVHP (2012). [No burrowing owls have been located on site based on recent surveys, however, if](#) If a covered activity [occurs in an area that is mapped as](#) “occurs in occupied burrowing owl nesting habitat as defined in Figure 5-11” [of the SCVHP](#), “a burrowing owl fee will be paid by the project applicant. This fee will be in addition to the land cover fee. The burrowing owl fee is charged on the area on which land cover fees are levied.” (page 9-33 SCVHP 2012). These fees must be paid

before or at the time that the grading permit for the project is issued (page 9-42 SCVHP 2012); ~~according to Table 9-6 (SCVHP 2012), the per acre burrowing owl fee was \$50,438, and is currently at \$60,825 per acre (SCVHA 2020) (but the project proponent must pay the most up-to-date fees as reported by the SCV Habitat Agency).~~ The fee for mapped Burrowing owl habitat is considered outside of Land Cover Fee Zones as established by the SCVHP (2012) as mentioned above, and therefore is additional to Land Cover Fee Zone payments for land cover types as described above (the SCVHP (2012) is "habitat-based" and therefore, fee payments are based on conversion of habitat, such as planned for potential burrowing owl habitat). Here, the only portions of the Project that would be located within the SCVHP mapped "occupied habitat" areas are portions of the off-site linear features to the west of Zanker Road. The main project site is not located within a mapped "occupied habitat" area. Temporary impact fees are also assessed for burrowing owls as shown in SCVHA (2020) and SCVHP (2012) and are based on the amount of the burrowing owl fee adjusted for duration of the impact ~~currently \$60,825 per acre.~~ **BIO-3** and **BIO-20** would mitigate permanent and temporary impacts to mapped burrowing owl habitat.

The project site consists of short-term fallowed agriculture, (Figure 3.4-1, Jacobs 2019a), along with much of the offsite linear alignments, and as mapped by the SCVHA GeoBrowser (SCVHA 2021). This type of habitat is considered Fee Zone B, and, per SCVHA (2020), ~~currently costs \$15,043 per acre, subject to~~ and the project applicant shall pay the updated fee calculations as available from the SCVHA at the time of payment. The project applicant (Jacobs 2019a) stated that the project site was mapped as Fee Zone A: Ranchland and Natural Lands, consisting of grassland, oak woodland and chaparral (page 9-24 and Table 9-7a of SCVHP 2012) covering the development area and offsite utility alignments. However, based on staff's assessment and research, including accessing the SCVHA GeoBrowser (2021), the site is mapped as Fee Zone B. Pursuant to the SCVHP, mitigation for temporary and permanent impacts for habitat conversion is provided as BIO-20; implementation of this measure would ensure that impacts to habitat are fully mitigated. This measure also ensures that foraging habitat for wildlife is replaced, protected, and monitored in perpetuity, pursuant to the SCVHP. With incorporation of BIO-3 through BIO-5 and BIO-20, impacts to burrowing owls would be reduced to a less than significant level.

**p. 4.4-27, Section 4.4.3 Mitigation Measures, BIO-3:** Consistent with the revisions made above regarding the discussion of burrowing owl, the Applicant requests the following clarifications to the mitigation measure below.

**BIO-3:** To mitigate impacts to ~~occupied~~ mapped burrowing owl habitat, the project applicant shall pay the applicable Burrowing Owl Fee as specified in the SCVHP for each acre of ~~occupied~~ mapped burrowing owl nesting habitat impacted as a result of the project's off-site linear features west of Zanker Road ~~buildout. Fees shall also be required from the loss of foraging habitat on the habitat offsite (approximately 64.5 acres).~~ Pursuant to the SCVHP (2012), ~~impacts to both temporary and permanent burrowing owl nesting habitat are~~



~~(currently) to be mitigated at a rate of \$60,825 per acre (SCVHA 2020), however,~~  
The project owner must pay the most up-to-date fees as reported by the Santa Clara Valley Habitat Agency. Fees are to be paid to the Director or Director's designee with the City of San Jose Department of Planning, Building and Code enforcement, before or at the time that the grading permit for the project is issued.

**Page 4.4-25, third paragraph:** The Applicant requests the following changes to the discussion of tree removal to reflect that the City of San Jose's tree ordinance provides for the replacement of removed trees. Related edits are proposed to Mitigation Measure BIO-12 further below.

If tree(s) need to be removed, a tree removal permit would be required from the City should any ordinance-sized trees be removed [and this permit process requires the replacement of removed trees](#); this would reduce any adverse impacts to a less than significant level and thus the project would not conflict with local policies or ordinances protecting biological resources. Additionally, a WEAP (**BIO-13**) would ensure no significant impacts to trees would occur. With implementation of **BIO-12** and **BIO-13**, impacts to ordinance-sized trees (including non-natives as specified within City policy) would be reduced to a less than significant level.

**Pages 4.4-29 and 4.4-30, BIO-12:** The DEIR proposes Mitigation Measure **BIO-12** to ensure compliance with the City's Tree Preservation Ordinance. The tree ordinance provides for the replacement of removed trees and therefore Mitigation Measure **BIO-12** has been modified to include replacement of trees to be included in the Tree Protection Plan (TPP) to be submitted to the City of San Jose for approval.

**BIO-12:** Prior to ground disturbance, the project applicant shall ensure that the project site, including linear alignments and the bike path have been surveyed by a certified arborist or biologist and prepare a report. The report, a Tree Protection Plan (TPP), shall be submitted to the Director or Director's designee with the City of San Jose Department of Planning, Building, and Code Enforcement for trees to be preserved [and/or replaced](#). The TPP shall include, but is not limited to, the following:

- Number of trees and location of trees to be protected
- Final landscaping proposal
- Tree Protection Zone (TPZ)
- Size and location of TPZ
- Specific recommendation and suggestions or recommendation for each TPZ if applicable
- Maintenance methodology for tree protection zones during the entire demolition and construction period
- Irrigated schedule
- Pruning schedule for preserved trees, if applicable Herbicides and other products recommended to be used on preserved trees
- [Tree replacement strategy for removed trees.](#)

**Page 4.4-12, 2nd paragraph, 5th sentence:** The primary component of the SCVHP's development fees is what is called a "Land Cover Fee," which mitigates for impacts associated with the loss or degradation of habitat within the Plan Area for covered species and natural communities. The fee is paid according to the land type of the Project Site and is separate from the Burrowing Owl Fee, which is identified under BIO-3. In addition, the SCVHP includes a Temporary Impact Fee, which accounts for the small, localized, temporary impacts on natural land cover types. The Applicant requests the following clarifications to the language found on Page 4.4-12 describing the various fees, as well as associated edits below to BIO-20.

Staff proposes **BIO-3**, [the payment of the SCVHP Burrowing Owl Fee](#), and **BIO-20** to mitigate the temporary and permanent loss of burrowing owl habitat, ~~as required under the SCVHP. Additionally,~~ [and BIO-20](#), ~~includes the requirement for the~~ [payment of the SCVHP Land Cover Fee and Temporary Impact Fee to mitigate for the](#) permanent and temporary loss of agricultural land classified as Fee Zone B, under the SCVHP.

**Page 4.4-32, BIO-20:** The Applicant requests the following revisions to Mitigation Measure BIO-20 to clarify the purpose of the SCVHA's Land Cover Fee and Temporary Impact Fee.

**BIO-20:** The project owner shall pay, before or at the time that the grading permit for the project is issued, [the Santa Clara Valley Habitat Plan \(SCVHA\) Land Cover Fee and Temporary Impact Fee, which mitigate for the direct and indirect loss or degradation of habitat related to permanent and temporary impacts, respectively, on any non-exempt land cover type. The project owner shall pay such fees according to the updated SCVHA fee schedule at the time of payment.](#) ~~temporary and permanent impact fees for loss of habitat onsite and along the project linears and road improvements, as necessary and appropriate for construction and temporary impacts. Currently, Fee Zone B, pursuant to SCVHA (202) is valued at \$15,043 per acre, subject to updated fee calculations as available from the SCVHA.~~

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

**Page 4.5-27, Mitigation Measure CUL-2.** The Applicant suggest including specificity in how the subsurface testing will be performed and suggests the following text.

**CUL-2:** Prior to the issuance of any grading permit, the project will be required to complete subsurface testing to determine the extent of possible resources onsite. Subsurface testing shall be completed by a qualified archaeologist. [Methodologies and procedures for completing the subsurface testing will be developed through completion of a testing plan. The testing plan will identify locations where testing will occur, depth and extent of testing. Testing will not require the use of mechanized equipment \(i.e., geo-probe, backhoe, etc.\), and up to 10 testing locations will be considered. The testing plan will be submitted to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement for approval prior to the completion of any testing.](#) ~~If~~ [Based on the findings of the subsurface testing confirm there are significant cultural resources on-site](#), then, an archaeological resources treatment plan shall be

prepared by a qualified archaeologist and submitted to Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement for approval prior to the issuance of grading permits.

#### **4.8 GREENHOUSE GAS EMISSIONS**

**p. 4.8-26, Section 4.8.3**, Please see the discussion above regarding proposed revisions to Mitigation Measures GHG-1 and GHG-2.

#### **4.9 HAZARDS AND HAZARDOUS MATERIALS**

**Page 4.9-8** –The sentence contains a typographical error. Please revise as follows:

Less Than Significant Impact. The project would consist of 224 renewable natural gas-fired generators, each with a standby capacity of 4.5 0.45 MW and two administrative diesel-fired generators, rated 1.25 MW and 0.5 MW.

#### **4.11 LAND USE AND PLANNING**

**Page 4.11-5, 4<sup>th</sup> full paragraph, 2<sup>nd</sup> sentence** – The sentence indicates rooftop mechanical equipment results in the tallest structure being 31 feet. However, the project does not include rooftop equipment. The adjacent fluid coolers (noted in SPPE Figures 2-3gR and 2-4eR) are the tallest project feature at 31 feet. Please correct the sentence to read as follows. Also please see Section 4.13 (Noise) for references to rooftop mechanical equipment.

The ~~rooftop~~ mechanical equipment would bring the project height of the data center buildings to approximately 31 feet above ground level.

#### **4.17 TRANSPORTATION**

**Page 4.17-17, Mitigation Measure TRA-1** – MM TRA-1 requires several measures that all address the potential impacts during operations of the project; yet the first sentence of the measure requires implementation of all of the measures prior to “the issuance of any City of San Jose Public Works clearances”. This timeline would be appropriate if the measures were mitigating construction impacts. However, as the analysis on page 4.17-11 through 13, all of the measures contained in **TRA-1** are intended to mitigate potential impacts that only will occur *after* the project becomes operational. Therefore, we propose the following modification to the first sentence of Mitigation Measure **TRA-1**:

**TRA-1:** Prior to the issuance of any City of San Jose occupancy permit ~~Public Works clearances~~, the project shall implement the following:....