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Docket Number:	21-SPPE-02
Project Title:	STACK Trade Zone Park
TN #:	248570
Document Title:	Notice of Availability of a Draft Environmental Impact Report
Description:	N/A
Filer:	Marichka Haws
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	1/27/2023 10:04:15 AM
Docketed Date:	1/27/2023



NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT

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The California Energy Commission (CEC) has prepared a Draft Environmental Impact Report (DEIR) in accordance with the California Environmental Quality Act (CEQA) for the proposed STACK Trade Zone Park (project).

STACK Infrastructure (applicant) is seeking a Small Power Plant Exemption (SPPE) from the CEC's jurisdiction to proceed with local approval rather than requiring certification by the CEC for the project. The DEIR also may be used by the City of San José and Bay Area Air Quality Management District (BAAQMD), as responsible agencies as defined by CEQA, in their respective permitting processes for the project. The DEIR describes the proposed project and evaluates the potential environmental impacts associated with its construction and operation. The DEIR also analyzes one project alternative in addition to a "no project" alternative. Pursuant to CEQA, the DEIR includes sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.

The DEIR was released for public review on January 27, 2023. The DEIR will be available on the CEC project webpage, as listed below in this notice. Comments on the DEIR will be received for a 45-day period, commencing on January 27, 2023, and ending on March 13, 2023.

PROJECT LOCATION AND DESCRIPTION

The project includes diesel generators (to provide emergency backup power) that would constitute a thermal powerplant with a generating capacity in excess of 50 megawatts

(MW). The generating capacity of the backup generators would not exceed 100 MW. The CEC has the exclusive authority to certify all thermal power plants (50 megawatts [MW] and greater) and related facilities proposed for construction in California. The Small Power Plant Exemption (SPPE) process allows applicants with facilities between 50 and 100 MW to obtain an exemption from CEC's jurisdiction and proceed with local permitting rather than requiring CEC certification. CEC can grant an exemption if it finds that proposed facility would not create a substantial adverse impact on the environment or energy resources. Public Resources Code section 25519(c) designates CEC as the lead agency, in accordance with CEQA, for all facilities seeking an SPPE.

The STACK Trade Zone Park would be located on two parcels of land encompassing approximately 9.8 acres at the corner of Trade Zone Boulevard and Ringwood Avenue (2400 Ringwood Avenue and 1849 Fortune Drive) in San José.

The proposed STACK Trade Zone Park would include one, four-story advanced manufacturing building (approximately 136,573 square feet), two, four-story data center buildings (approximately 522,194 square feet), a parking garage, related utility infrastructure, and a backup generating facility with a generation capacity of up to 91 MW. The backup generating facility would consist of thirty-six 3-MW and three 1-MW diesel-fired emergency backup generators (gensets) arranged in two generation yards, each designed to serve one of the two data center buildings (SVYDC 05 and SVYDC 06). One of the 1 MW diesel-fired backup generators would be installed near the southwest corner of the advanced manufacturing building. All the gensets would be dedicated to replacing the electricity needs (with redundancy) of the data center buildings in case of a loss of electrical power from the utility, Pacific Gas and Electric Company. The larger generators are designed to replace the electricity needed to serve the data halls, and all three of the smaller generators would be used to support redundant house critical cooling equipment and other general building and life safety services (house generators).

HAZARDOUS WASTE SITES

The project parcels are not listed on the California Hazardous Waste and Substances Sites List (also known as the Cortese List), published under Government Code section 65962.5.

ANTICIPATED ENVIRONMENTAL EFFECTS

Typical of projects proposing to use large amounts of fossil fuel, the project's potential impacts of concern largely center on the proposed burning of renewable diesel. The project would emit greenhouse gases (GHGs); criteria air pollutants, including nitrogen oxides (NOx) and particulate matter (PM); and non-criteria air pollutants, including ammonia and diesel particulates. These emissions not only have the potential to impact public health, but also, in the case of NOx, have the potential to result in impacts to biological resources. Operation of the engines also may produce noise impacts with the potential to affect nearby workers or businesses. Construction of the project also has the potential to affect the areas of cultural and tribal resources, geology and soils

(paleontological resources), hazards and hazardous materials, noise, and transportation. Staff considered all these potential impacts, as well as others, in its evaluation.

The proposed project would result in no impacts to agricultural and forestry resources, mineral resources, and wildfire. The project would have less than significant impacts on aesthetics, energy and energy resources, hydrology and water quality, land use, population and housing, public services, recreation, and utilities and service systems.

The DEIR evaluates potentially significant impacts requiring mitigation in the following technical areas:

- **Air Quality.** The project would not conflict with or obstruct implementation of the applicable air quality plan. The project would not expose sensitive receptors to substantial pollutant concentrations. The project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Air quality impacts during project construction would be reduced with implementation of mitigation measure **AQ-1**. This measure requires incorporation of the BAAQMD's best management practices to control fugitive dust. This measure also incorporates exhaust control measures to reduce emissions from construction equipment. During operation of the engines, the oxides of nitrogen (NO_x [as an ozone precursor]) emissions of the standby generators would be fully offset through the permitting process with the BAAQMD. With implementation of these measures during construction and NO_x offsets for operations through BAAQMD's permitting requirements, the project would not cause a cumulatively considerable net increase of any criteria pollutant, and impacts would be reduced to a less than significant level.
- **Biological Resources.** The project would not adversely affect any species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS), with mitigation incorporated. Staff proposes **BIO-1** entailing development and use of a worker environmental awareness program (WEAP) to actively train on-site personnel in identifying and avoiding special-status species, specifically burrowing owl as well as nesting migratory birds. **BIO-2** includes measures to prevent and reduce impacts on burrowing owls to less-than-significant levels, including pre-construction surveys, establishing buffer zones during the breeding and non-breeding season, monitoring, discouraging re-colonization, and passive relocation. **BIO-3** includes requirements to conduct tree removal outside the migratory bird nesting period if possible, to conduct nesting bird surveys prior to the initiation of any construction activities during the nesting period, to establish buffers to avoid the disturbance of nesting birds if active nests are detected, and to conduct monitoring of active bird nests. With implementation of **BIO-1**, **BIO-2** and **BIO-3**, impacts to burrowing owl and associated habitat and nesting migratory birds would be reduced to a less than significant level.

BIO-4 creates a detailed reporting structure for bird surveys, avian protection measures by compiling these reports and measures within an Avian Protection Plan. With implementation of **BIO-1** through **BIO-4** impacts to avian species would be reduced to a less than significant level.

Nitrogen deposition may adversely affect special status plants, and in turn, the wildlife dependent upon them. The proposed project contributes to nitrogen deposition through stationary (ie point source) and mobile (i.e. vehicle trips over current conditions as a "non-point" source) emissions. While staff considered both types of emissions, staff analysis showed that only mobile emissions would result in a significant impact. Implementation of **BIO-5**, requiring the applicant to pay a one-time nitrogen deposition fee payment pursuant to the Santa Clara Valley Habitat Plan would reduce the projects impacts from nitrogen deposition to a less than significant level.

The project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local plans, policies, and regulations or by the CDFW or USFWS. The project would not adversely affect state or federally protected wetlands, (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. On-site adherence to discharge requirements for the control of solids and pollutants leaving the construction area, as required in the local National Pollution Discharge Elimination System (NPDES) authorization, as well as a Stormwater Pollution Prevention Plan (SWPPP) written to be consistent with the NPDES would ensure that impacts to natural waterways would be avoided. The applicant did not propose a mitigation measure for this requirement. However, the project applicant is required to comply with the measures of the local NPDES as well as develop and implement a project specific SWPPP. This would ensure impacts to any natural waterways during construction are less than significant.

The project would not interfere with the movement of any native resident or migratory fish or wildlife species or established wildlife corridors or impede the use of native wildlife nursery sites.

The project owner would be required to obtain a tree permit and in compliance with the City of San José (City) Municipal Code regarding tree removal and protection of the Heritage Trees. Furthermore, the project owner would be responsible for the well-being and successful growth of all the trees planted as replacement trees under the tree permit granted by the city in accordance with Municipal Code section 13.32.110, part E. Therefore, impacts to trees would be less than significant.

Impacts arising from a conflict with the Santa Clara Valley Habitat Plan would be reduced to a less than significant level with the implementation of **BIO-2** and **BIO-5**.

- **Cultural and Tribal Cultural Resources.** The project would not impact any known resources that could meet CEQA's criteria for historical resources, unique archaeological resources, or tribal cultural resources. However, previous cultural resources studies in the project area indicate that buried archaeological or ethnographic resources could be encountered during ground disturbing activities at the site. Staff recommends a series of mitigation measures, **CUL-1** through **CUL-3**, to address the discovery of previously unknown buried cultural resources, including human remains. In addition, **CUL-1** proposes to require monitoring by both a qualified archaeological resources specialist and a Native American monitor and implementing a worker environmental awareness program. With implementation of these mitigation measures, potential impacts on cultural and tribal cultural resources would be reduced to a less than significant level.
- **Geology and Soils.** Earth moving during project construction has the potential to disturb paleontological resources. Staff proposes **GEO-1**, to train construction personnel and guide recovery and processing of any significant paleontological finds. Staff concludes that with implementation of **GEO-1**, impacts to unique paleontological resources would be reduced to a less than significant level. All of impacts under the other CEQA criterion related to geology and soils would either have no impact or have a less than significant impact.
- **Greenhouse Gas Emissions.** With the use of renewable diesel for 100 percent of total energy use by the emergency standby generators and ultra-low sulfur diesel as a secondary fuel in the event of supply challenges or disruption in obtaining renewable diesel, the greenhouse gas (GHG) emissions from the facility's stationary sources would not exceed the 10,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) BAAQMD significance threshold for GHG emissions from stationary sources. The fuel-cycle GHG emissions from the emergency backup generators would also be lower than 2,000 MTCO₂e/yr, which has been proposed by the BAAQMD staff as an updated GHG threshold of significance but has not been adopted as of the date of this analysis. Staff proposes mitigation measure GHG-1 to ensure the project owner would use renewable diesel for 100 percent of total energy use by the emergency backup generators, and only use ultra-low sulfur diesel as a secondary fuel in the event of supply challenges or disruption in obtaining renewable diesel. The City of San José Planning, Building and Code Enforcement (PBCE) may grant temporary relief from the 100 percent renewable diesel requirement if the project owner can demonstrate a good faith effort to comply with the requirement and that compliance is not practical. With this measure, the project's GHG emissions from stationary sources would not have a significant direct or indirect impact on the environment.

The City of San José's 2030 GHG Reduction Strategy (GHGRS) is a Qualified Climate Action Plan under CEQA. This project would comply with the requirements of that plan with the proposed design measures and implementation of GHG-2, which would require the project owner to participate in San José Clean Energy at the Total Green level (i.e., 100 percent carbon-free electricity) for electricity accounts associated with the project, or enter into an electricity contract with San José Clean Energy or participate in a clean energy program that achieves the same goals of 100 percent carbon-free electricity as the Total Green level.

Pursuant to California Code of Regulations, title 14, section 15183.5, the CEC may rely on that compliance in its analysis of GHG emissions impacts. Accordingly, staff concludes with implementation of GHG-2, the project's indirect GHG emissions from electricity use would not have a significant direct or indirect impact on the environment. With implementation of the efficiency measures to be incorporated into the project and mitigation measures **GHG-1** and **GHG-2**, GHG emissions related to the project would not conflict with the City's GHG Reduction Strategy or other plans, policies, or regulations adopted for the purpose of reducing the emissions of GHGs. Because the project would be consistent with applicable plans and policies adopted to reduce GHG emissions and would comply with all regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions, the potential for the project to conflict with an applicable plan, policy or regulation for GHG reductions would be less than significant. With implementation of **GHG-1** and **GHG-2**, impacts related to GHG emissions would be reduced to a less than significant level.

- **Hazards and Hazardous Materials.** Ground disturbing activities associated with the removal of underground utilities, and construction of the project would have the potential to encounter the identified contaminated soil. Staff proposes mitigation measures requiring the preparation of a Site Management Plan to establish proper procedures to be taken when contaminated soil is found and how to dispose of the contaminated soil properly (**HAZ-1**) and a Health and Safety Plan to establish provisions for personal protection and procedures if contaminated soil is encountered (**HAZ-2**). Staff concludes that with implementation of **HAZ-1** and **HAZ-2**, impacts to the public or the environment due to contaminated soils, would be reduced to a less than significant level.
- **Noise.** The loudest construction activities could elevate the existing ambient noise levels at the nearest residences by up to 11 dBA and could be perceived as noisy. The loudest construction work could elevate the existing ambient noise levels at the nearby commercial and office buildings by up to about 9 dBA. The implementation of mitigation measure **NOI-1**, requiring a noise complaint and redress process, would ensure construction noise impacts as perceived by the community would be less than significant. **NOI-1** would also include several appropriate measures to

reduce and control construction-related noise, limit construction work to daytime hours and require notifying project site neighbors of the construction schedule.

Since the project is near a residential land use, noise reduction measures, such as mechanical equipment enclosures and parapet walls, would be required (incorporated in the operational noise modeling). Thus, the operational noise levels would comply with the City's noise limits and would not elevate the existing ambient noise levels at the nearest residences.

The project's construction impacts would be reduced to a less than significant level and operational noise impacts would be less than significant.

- **Transportation.** Project-generated vehicle miles traveled (VMT) per employee would exceed the City's industrial threshold of 14.37 VMT per employee. Staff proposes **TRANS-1**, which would require the project owner to implement multi-modal infrastructure improvements and Transportation Demand Management (TDM) measures, to reduce the project VMT to a less than significant level. Staff concludes that with implementation of **TRANS-1** to lower project generated VMT to a level below the city's industrial VMT threshold, impacts to VMT would be reduced to a less than significant level.

The DEIR evaluates the potential for the proposed project to result in growth inducing effects and associated secondary environmental impacts. This DEIR also considers whether the proposed project would result in a cumulatively considerable contribution to existing significant cumulative environmental effects when combined with other past, present, and reasonably foreseeable future projects.

The DEIR concludes that all potential impacts from the project would be less than significant with implementation of identified mitigation measures.

PUBLIC REVIEW PROCESS

The purpose of this Notice, consistent with Sections 15086 and 15087 of the State CEQA Guidelines, is to consult with and request comments from responsible agencies, organizations, and interested parties regarding the environmental analyses presented in the DEIR. The DEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the State CEQA Guidelines, the CEC has scheduled a 45-day public review period for the DEIR, ending on March 13, 2023.

Access to the Draft EIR and other project information/reports will be available electronically through the CEC's project docket website at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-SPPE-02> and at the State Clearinghouse through the CEQANet Database at: <https://ceqanet.opr.ca.gov/>.

This Notice of Availability of a Draft Environmental Impact Report has also been mailed to nearby property owners, responsible and trustee agencies, and the county clerk, and sent to the California State Clearinghouse. Persons who cannot access the materials through the link above are encouraged to email the CEC at: lisa.worrall@energy.ca.gov with a subject line "STACK Trade Zone Park" or (916) 661-8367 to arrange for alternative means of access to project materials.

The preferable method to submit responses is via the CEC's electronic commenting (e-commenting) system. To access this system, go to the CEC's webpage for this proceeding: <https://www.energy.ca.gov/powerplant/tradezonepark> click on the "Submit e-comment" link, and follow the instructions in the online form. Please be sure to include the project name in your comments. Once filed, the comments will become part of the proceeding's public record. Alternatively, comments may be submitted to: lisa.worrall@energy.ca.gov.