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Summary Form for Electronic Document Submittal

Form F

Lead agencies may include 15 hardcopies of this document when submitting electronic copies of Environmental Impact Reports, Negative Declarations, Mitigated Negative Declarations, or Notices of Preparation to the State Clearinghouse (SCH). The SCH also accepts other summaries, such as EIR Executive Summaries prepared pursuant to CEQA Guidelines Section 15123. Please include one copy of the Notice of Completion Form (NOC) with your submission and attach the summary to each electronic copy of the document.

SCH #: 20201020002

Project Title: San Jose Data Center

Lead Agency: California Energy Commission

Contact Name: Lisa Worrall

Email: Lisa.worrall@energy.ca.gov Phone Number: 916-661-8367

Project Location: San Jose Santa Clara County

City *County*

Project Description (Proposed actions, location, and/or consequences).

See Attachment A

Identify the project's significant or potentially significant effects and briefly describe any proposed mitigation measures that would reduce or avoid that effect.

See Attachment A

Revised September 2011

If applicable, describe any of the project's areas of controversy known to the Lead Agency, including issues raised by agencies and the public.

See Attachment A

Provide a list of the responsible or trustee agencies for the project.

Responsible Agencies:
City of San Jose
Bay Area Air Quality Management District

Trustee Agencies:
California Department of Fish and Wildlife
Santa Clara Valley Habitat Agency

Summary Form Attachment A

Project Description (Proposed actions, location, and/or consequences)

The San Jose Data Center (SJDC or project) includes natural gas-fired 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 California Energy Commission (CEC) has the exclusive authority to certify all thermal power plants (50 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 the California Environmental Quality Act (CEQA), for all facilities seeking an SPPE.

Microsoft Corporation (Microsoft or applicant) is seeking an SPPE from the CEC's jurisdiction to proceed with local approval rather than requiring certification by the CEC for the San Jose Data Center (SJDC or project).

The applicant proposes to construct and operate the project, located at 1657 Alviso-Milpitas Road in San Jose, California. The project would consist of two single-story data center buildings. To provide reliable operation of the project in the event of loss of electrical service from the local electric utility provider, Pacific Gas and Electric Company (PG&E), the project includes 224 renewable natural gas (natural gas) generators each rated at 0.45 megawatt (MW) output capacity to provide electrical power to support the data center uses during utility outages, certain onsite electrical equipment interruptions or failure, and for load shedding, demand response and behind-the-meter resource adequacy ancillary services. The maximum electrical load of the project would be 99 MW, although the estimated load is 77 MW, inclusive of information technology (IT) equipment, ancillary electrical/ telecommunications equipment, and other electrical loads (administrative, heat rejection, and safety/ security). In addition, the project includes two Tier 4 diesel-powered generators (designated as administrative generators), with a 1.25 MW standby generator for the northern building and a 0.5 MW standby generator for the southern building. The project also includes an onsite 115 kilovolt (kV) substation located in the northwestern corner of the project site with two 115 kV underground electrical supply lines (approximately 0.2 mile) that would connect to PG&E's Los Esteros Substation, located adjacent to the site. The project would require offsite linears for potable water, reclaimed water, storm water, sanitary sewer, natural gas, and electrical. Natural gas is also proposed for comfort heating of the data center buildings.

Identify the projects significant or potentially significant effects and briefly describe any proposed mitigation measures that would reduce or avoid that effect.

Less Than Significant Impact

Project impacts in the environmental topic areas of aesthetics, energy and energy resources, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population and housing, public services, recreation, utilities and service systems, and environmental justice are less than significant.

Less Than Significant with Mitigation Incorporated

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 **AQ-1**. This measure requires incorporation of the Bay Area Air Quality Management District's (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 (NOx [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 NOx 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-13** entailing development and use of a worker environmental awareness program (WEAP) to actively train on-site personnel in identifying and avoiding special-status species, **BIO-15** for the Congdon's tarplant, **BIO-16** for the San Francisco dusky-footed woodrat and ringtail cat, **BIO-17** for potential impacts to the salt marsh harvest mouse, **BIO-1** through **BIO-5** for nesting migratory birds, burrowing owl, and mitigation for burrowing owl habitat, **BIO-20** for temporary and permanent losses of agricultural lands (Santa Clara Valley Habitat Plan Fee Zone B) which may provide foraging habitat for special-status species, and **BIO-18** for a one-time nitrogen deposition fee payment (nitrogen deposition may adversely affect special status plants, and in turn, the wildlife dependent upon them).

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, with implementation of the following mitigation measures as proposed by staff: **BIO-7**, a storm water pollution prevention plan, **BIO-13**, **BIO-18**, and **BIO-11** which requires adherence to all state, federal, and local laws with respect to riparian habitat.

Without mitigation, the project could 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. Staff proposes **BIO-8**, requiring a biological monitor, **BIO-9**, requiring limited removal of wetland vegetation and/or trees, **BIO-10**, requiring reseeding with locally native or sterile nonnative species, **BIO-13**, and **BIO-14**, requiring an aquatic resources delineation. **BIO-11** would also be protective of wetlands as the measure requires compliance requirements of the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), or CDFW for riparian habitats or areas regulated by these agencies. Should onsite wetlands be impacted, staff has further proposed **BIO-19**, a wetland development fee pursuant to the Santa Clara Valley Habitat Plan.

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, and would comply with local ordinances and policies regarding use of artificial lighting.

With mitigation, the project would not conflict with any local policies or ordinances protecting biological resources. To avoid conflict with City of San Jose (City) policies and its Municipal Code regarding tree removal and protection of the Heritage Trees, staff proposes measure **BIO-12** specifying protection measures to reduce impacts during project construction. Staff also proposes **BIO-1** specifying pre-construction nesting bird surveys, **BIO-2**, **BIO-3** through **BIO-7**, and **BIO-18** through **BIO-20**. These measures would ensure all impacts are reduced to a less than significant level.

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-6**, 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 implement a WEAP. 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 Construction would temporarily increase sedimentation and erosion by exposing soils to wind and runoff until construction is complete and new vegetation is established. The city's National Pollutant Discharge Elimination System Municipal

Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing erosion control measures through the grading and building permit process. In accordance with General Plan policies, implementation of the regulatory programs and policies in place would reduce possible impacts of accelerated erosion during construction to a less than significant level. Continuous operation work would not result in increased erosion or topsoil loss. The probability that construction, operation of the proposed project would have an impact on the risk of loss, injury, or death involving rupture of an earthquake fault during operation is remote. As the project site is relatively flat with no open faces or slopes near the site, there is low potential for landslides. A project-specific geotechnical engineering report, along with the final project design, would be required to address, as needed, any potential issues arising from expansive soils, liquefaction, unstable geologic or soil units that could result from construction of this project. With implementation of applicable design criteria per the California Building Standards Code, as well as the incorporation of the anticipated project-specific mitigation recommendations in the final geotechnical engineering report, seismic hazards would be minimized, to the extent feasible with conformance to the applicable seismic design criteria of the California Building Standards Code located on expansive soil such that it would create substantial direct or indirect risks to life or property, and therefore impacts would be less than significant. 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 be to a less than significant level.

Greenhouse Gas Emissions. The greenhouse gas (GHG) emissions from the facility's stationary sources would have average annual GHG emissions that would exceed the 10,000 $MTCO_2e$/yr BAAQMD significance threshold for GHG emissions from stationary sources. This represents a potentially significant impact that requires mitigation. Staff recommends mitigation measure **GHG-1** to require the SJDC project stationary sources to use renewable fuels to ensure that operation of the generators would not hinder California's efforts to achieve 2030 or 2045 GHG reduction goals and to bring the facility's stationary source emissions below the BAAQMD significance threshold. 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 Jose's GHG Reduction Strategy is a Qualified Climate Action Plan under CEQA. This project would comply with the requirements of that plan with implementation of **GHG-2**, which would require the applicant to participate in San Jose Clean Energy at the Total Green level. Participating at the Total Green level would allow the project to comply with the renewable energy development component of the City's 2030 GHGRS. Therefore, staff proposes **GHG-2** to require the project owner to participate in San Jose Clean Energy at the Total Green level, or negotiate an electricity contract with San Jose Clean Energy that accomplishes the same goals as the Total

Green level, to ensure compliance with the City's 2030 Greenhouse Gas Emissions Reduction Strategy.

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 GHG emissions 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 **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-2**, impacts related to GHG emissions would be reduced to less than significant.

Hazards and Hazardous Materials. During the construction phase of the project, the only hazardous materials used would be paints, cleaners, solvents, gasoline, motor oil, welding gases, and lubricants. When not in use, any hazardous material would be stored in designated construction staging areas in compliance with local, state, and federal requirements. Any impacts resulting from spills or other accidental releases of these materials would be limited to the site due to the small quantities involved and their infrequent use. The transportation of the diesel fuel to the site would take a few tanker truck trips for the initial fill and during operation, one fuel truck delivery would occur every three months. Diesel fuel has a long history of being routinely transported and used as a common motor fuel. The risk to the off-site public or environment through the routine transport, use or disposal of hazardous materials would have a less than significant impact.

Hazardous materials would be stored, handled, and used in accordance with applicable regulations. Personnel would be required to follow instructions on health and safety precautions and procedures to follow in the event of a release of hazardous materials. All equipment and materials storage would be routinely inspected for leaks. Records would be maintained for documenting compliance with the storage and handling of hazardous materials. In addition, there would be engineering controls for the diesel and natural gas hazardous materials such as a double walled tank for the diesel fuel and leak detection and shut off valves for the natural gas that would mitigate the risk of a spill or release. The risk to the off-site public or environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials would have a less than significant impact**.**

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 Soil 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. While the City Municipal Code does not specify a threshold for construction noise level increases to be considered an impact, staff considers an increase of 10 dBA or more during the day to be an impact because it can trigger a community reaction and therefore warrants additional measures to address. Staff found that construction activities could elevate noise levels at businesses nearest the project site by 10 dBA or more. With implementation of staff's proposed **NOI-1** requiring a complaint and redress process be implemented, the project's construction noise impact would be less than significant.

Staff calculated the projected operational noise levels at the nearby commercial building and residences and concluded that the increases in noise levels at those receptors due to project operation would be no more than 3 dBA. Staff also found that the projected noise levels both at the closes businesses and residences would be within the respective noise levels specified by the City Code for those uses, therefore, there would be no significant noise impact due to project operation.

Sources of groundborne vibration associated with project operation would include the backup generators and rooftop equipment. These pieces of equipment would be well-balanced, as they are designed to produce very low vibration levels throughout the life of a project. In most cases, even when there is an imbalance, they could contribute to ground vibration levels only in the vicinity of the equipment and would be dampened within a short distance. Furthermore, the backup generators would be equipped with specifications that ensure sufficient exhaust silencing to reduce vibration. Therefore, vibration impacts due to project operation would be less than significant.

The project site is not in the vicinity of a private airport and it would not place sensitive land uses within an airport noise contour (the site is 13.4 miles from the Norman Y. Mineta San Jose International Airport). Thus, the project would not combine with the airport to expose people to excessive noise levels.

Transportation. Project construction would not significantly obstruct any transit, roadway, bicycle, or pedestrian facilities in the area. Construction activities would occur mostly onsite and not in the public right-of-way, with the exceptions of a Class I Bikeway Trail extension connecting the existing trail Coyote Creek segment to the new Nortech Parkway extension; interconnection to water and transmission lines west of the project site; two independent natural gas pipelines (approximately 75 feet in length) at the southern border of the project; and several roadway improvements along Zanker

Road. In addition, Nortech Parkway extension would be constructed east of Zanker Road to provide direct access to the site. Project construction would not otherwise temporarily or permanently alter any public roadways or intersections. Project operation would occur on-site.

The project would not result in hazards to aircraft from either a geometric design feature, such as structure height, or incompatible uses, including land uses or thermal plumes. The project would not increase any other hazards. Emergency vehicle access would be provided by two driveways, one at the northern boundary of the site and the other at the southern boundary of the site. The project would not physically block any access roads or result in traffic congestion that could significantly compromise timely access to this facility or other facilities located within the project vicinity during construction and operation.

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

If applicable, describe any of the project's areas of controversy known to the Lead Agency, including issues raised by agencies and the public.

The CEC issued a Notice of Preparation on February 1, 2021, seeking input from responsible and trustee agencies and the public regarding the scope and context of environmental areas in the EIR. CEC staff also hosted a public scoping meeting on February 19, 2021, during which environmental areas with potential significant impacts were discussed and comments heard. The comment period began on February 1, 2021 and ended on March 2, 2021. In total, five comment letters were received[1]. Issues of concern reflected in these letters and emails include, but are not limited to, the following:

- Air Quality and Greenhouse Gas Emissions (GHG):
    - Because the project is located in the Alviso neighborhood[2], a high cumulative exposure area identified through CalEPA's CalEnviroScreen mapping tool, the Bay Area Air Quality Management District (BAAQMD) is concerned about the potential for any increase in emissions that could result from the project.
    - Highly recommend the CEC consider requiring the project applicant to use the cleanest available technologies and fuels possible during all phases of the project, including zero-emission sources for energy and backup generation as well as the lowest-Global Warming Potential refrigerants available for the cooling system

- The GHG impact analysis should include an evaluation of the project's consistency with the most recent draft of the AB 32 Scoping Plan by the California Air Resources Board and with the State's 2030, 2045, and 2050 climate goals.
- The EIR should estimate and evaluate the potential health risk to existing and future sensitive populations within and near the project area from toxic air contaminants (TAC) and fine particulate matter (PM2.5) as a result of the project's construction and operation.
- The EIR should include various scenarios of backup power generation operations beyond routine testing and maintenance.
- The EIR should evaluate all feasible measures, both onsite and offsite, to minimize air quality and GHG impacts.
- The EIR should evaluate the Project's consistency with the Air District's 2017 Clean Air Plan (2017 CAP).
- Please provide disclosure of communication between CEC and BAAQMD staff pertaining to the updates to the Air District's CEQA Air Quality Thresholds and Guidelines and the approach for this project.
- Please include cumulative and existing health risks, toxic air contaminants, PM2.5 levels, diesel particulate matter, including the most recent cancer rates, CalEnviroScreen results, and sensitive receptors in Alviso.
- Disclose the DEIR's methodology to address the 2108 Sierra Club v. County of Fresno, 6 Cal.5th 502 (Friant Ranch) for the health effects for criteria pollutants.
- The DEIR must comply with the City of San Jose Municipal Codes, Envision San Jose 2040 General Plan pertaining to air quality and health risks, and the Alviso Master Plan.
- Microsoft committed in January of 2020 to become a carbon negative company by 2030 and by 2050 "remove from the environment all the carbon that Microsoft has emitted directly or through electricity use since the company was founded in 1975"3. The community and decision-makers in the City of San Jose must have full disclosure whether this commitment will follow through in Alviso, as well.

- Alternatives:
  - The EIR should include a robust alternatives analysis, with consistent application of analytical standards and substantiation of claims.
  - Per §15126.6, the DEIR must include project alternatives governed by rule of reason which is rigorous to "foster meaningful public participation and informed decision making" and includes alternative locations to mitigate any potential significant impacts.

- Biological Resources:
  - Existing conditions seem to consist of open land with ruderal grass and herbaceous vegetation. There are known western burrowing owl (*Athene cunicularia*, State Species of Special Concern) occurrences within 0.2 mile of the site, and the site could potentially contain western burrowing owl foraging and/or nesting habitat. Recommended mitigation measures include habitat assessment, burrowing owl surveys, burrowing owl avoidance, and compensatory mitigation. (Specific language for the measures were submitted with the comment, TN 236949).
  - Special-status avian species may be present within the Coyote Creek riparian area include tricolored blackbird (Agelaius tricolor, State Threatened), white-tailed kite (Elanus leucurus, State Fully Protected), and San Francisco common yellowthroat (Geothlypis trichas sinuosa, State Species of Special Concern). Recommended mitigation measures include nesting bird surveys and active nest buffers. (Specific language for the measures were submitted with the comment, TN 236949).
  - A wetland complex contiguous to tidal wetlands is located immediately north of the project site. Salt-marsh harvest mouse (SMHM; Reithrodontomys raviventris, State Endangered and Fully Protected, Federal Endangered) occurrences are located within 0.9 mile of this wetland complex, and these wetlands may also provide habitat for SMHM. If SMHM are present within these wetlands, they could potentially enter the project work area. As a Fully Protected Species (Fish and Game Code section 4700), SMHM may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research. CDFW therefore recommends that the draft EIR include a complete habitat assessment for SMHM within the proposed project area and surrounding wetlands, and include appropriate and effective avoidance measures in the draft EIR if SMHM could be impacted by Project activities.
  - The analysis must disclose short-term, long-term, direct, indirect, and cumulative impacts of habitat loss and listed protected, and endemic species, both locally in Alviso and regionally per the City of San Jose, SCVHCP, State, and Federal regulations. For example, Alviso which is located adjacent to the San Francisco Bay Don Edwards Wildlife Refuge is a biological hotspot and one of the few remaining locations for burrowing owls, golden eagles nesting nearby to this project site which is recorded in the valley for the first time in 128 years, and the congdon tarplant
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locations for burrowing owls, golden eagles nesting nearby to this project site which is recorded in the valley for the first time in 128 years, and the congdon tarplant (§15380, CA Migratory Bird Protection Act, The Bald and Golden Eagle Protection Act, CDFW code 1601-1603, 3503, 3503.5, 3513, 3800).

- General:
  - The DEIR must disclose all documents used for tiering and the nexus with this proposed Project §15150, 15151, 15152, 15153. Some examples include the City of San Jose's DEIR (2017) 237 Industrial Center Project, City of San Jose's General Plan, and the City of San Jose's Alviso Master Plan.
- Land Use
  - The DEIR should address SB 1000, consistency with the General Plan, and the Alviso Master Plan.
- Transportation:
  - Alviso has significant traffic impacts on neighborhood streets from past, current, and future developments. The nearby highways 237 and 880 exacerbate local traffic impacts from passenger vehicles and truck traffic. The community requests both short- and long-term analysis with the most current traffic data from the City of San Jose, Valley Transportation Agency (VTA), Caltrans, and with real time field studies and effective mitigations and monitoring. (§15064, 15064.4)
- Tribal Cultural Resources:
  - Ensure that the CEC complies with Assembly Bill 52 (includes tribal consultation requirements) in its review of the proposed project.

In addition to the comments received during the NOP comment period, several comments were received during the development of the Draft EIR. Comments and concerns include: air quality and a request from the Santa Clara County Department of Parks and Recreation that the construction of the proposed Coyote Creek/Llagas Sub-Regional Trail is included as part of the project. During the applicant's consultation with the City of San Jose, it was determined that the proposed location of the Class 1 bike improvements along Zanker Road to the Nortech Parkway extension was the preferred route.

Staff has reviewed and considered the comments received and address them as appropriate in the applicable section.