Notice of Preparation of a Draft Environmental Impact Report

In accordance with California Code of Regulations, title 14, section 15082, the California Energy Commission (CEC) staff has prepared this Notice of Preparation (NOP) to inform the Office of Planning and Research (OPR) and each responsible and trustee agency that an Environmental Impact Report (EIR) will be prepared for the San José Data Center Campus (SJDC 04 or project) (22-SPPE-02) proposed in the city of San José. SJDC 04 would include two data center buildings; emergency backup generating facilities; recycled water storage, fire water storage, pipelines, and support buildings; building cooling equipment; an on-site substation and switchyard; potentially two distribution transmission lines; and ancillary support facilities. Together these constitute the "project" under the California Environmental Quality Act (CEQA). The CEC is requesting your agency's comments regarding the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the EIR. Your agency will need to use the EIR prepared by CEC when considering your permit or other approval for the proposed project.

Small Power Plant Exemption (SPPE) Process

The CEC has the exclusive authority to certify all thermal power plants (50 megawatt [MW] and greater) and related facilities proposed for construction in California. Applicants proposing to construct thermal power plants between 50 and 100 MW may obtain an exemption from the CEC's jurisdiction and proceed with local permitting rather than requiring CEC certification. The CEC can grant an exemption if it finds that the proposed facility would not create a substantial adverse impact on the environment or energy resources (Pub. Resources Code, § 25541). Public Resources Code section 25519(c) designates the CEC as lead agency, in accordance with CEQA, for all facilities seeking an exemption. The CEC will not be approving the construction of SJDC 04, only determining whether the project can be exempted from the CEC's jurisdiction.

The CEC staff has begun its review of the application and will prepare an EIR for public review. At the conclusion of the evaluation and opportunity for public review and comment regarding the project, a decision will be made by the CEC at a noticed business meeting on whether the application meets the requirements of Public Resources Code, section 25541. Should the exemption to the CEC's jurisdiction be granted, the applicant would then need to secure the appropriate entitlements and permits from the relevant local, regional, state, and federal agencies to construct and operate the proposed project. The CEC's

regulations setting forth the SPPE process are primarily located in California Code of Regulations, title 20, sections 1936 and 1940-1942.

Response to Notice of Preparation

Pursuant to the NOP rule in CEQA Guidelines (Cal. Code Regs., tit. 14, § 15082(b)), each responsible and trustee agency and the OPR shall provide the CEC with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR. At a minimum, the response shall identify:

- the significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the OPR will need to have explored in the draft EIR; and
- whether the agency will be a responsible agency or trustee agency for the project.

This response is due to the CEC within 30 days of receipt of the NOP. Staff requests your comments **by March 10, 2023**. If a responsible or trustee agency, or the OPR fails by the end of the 30-day period to provide CEC with either a response to the notice or a well-justified request for additional time, CEC staff will presume that none of those entities have a response to make.

You may submit comments electronically. To use CEC's electronic commenting feature, go to CEC's webpage for this proceeding, cited above, click on the "Submit eComment" link, and follow the instructions in the online form. Be sure to include the project name in your comments. Once filed, you will receive an email with a link to them and the comments will be part of the proceeding's public record.

Project Webpage, Subscription, and Contact Information

CEC maintains a website for this project at: https://www.energy.ca.gov/powerplant/backup-generating-system/san-jose-data-center-04. The SPPE application and related project documents are viewable by clicking the "Docket Log (22-SPPE-02)" link located near the upper right corner of the project webpage. The direct link to the project docket log is: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-SPPE-02

To receive electronic notices of all project-related activities and documents related to the exemption evaluation, go to CEC's subscription page https://www.energy.ca.gov/subscriptions under "Power Plants Licensing and

Projects" and check the "San José Data Center 04" box under "Projects Under Review".

If you have any questions or need additional information on how to participate in CEC's review of the proposed project, please contact Lisa Worrall, Project Manager, by email to lisa.worrall@energy.ca.gov.

Project Location and Description

The project site encompasses approximately 22.29 acres on two properties located at the northwest corner of the intersection of Orchard Parkway and Component Drive in the city of San José. Most of the project site is located on assessor's parcel number (APN) 101-02-020 and a portion of the switching station (to be owned and operated by Pacific Gas and Electric Company [PG&E]) would be located on APN 101-02-019. The two parcels would be combined through a lot line adjustment/merger. Both project parcels are currently undeveloped with sparse grasses and a few trees along the western and northern boundaries. The project site is generally bound to the north by an existing two-story facility with office and manufacturing uses, to the south by an existing five-story office facility to the east by Orchard Parkway and undeveloped property, and to the west by the Guadalupe Trail and Guadalupe River.

The project site has a General Plan land use designation of CIC-Combined Industrial/Commercial and IP-Industrial Parkland is zoned CIC Combined Industrial/Commercial. Parcels near the project site consist primarily of commercial and industrial land uses to the north, east, and south. Land uses to the west include the Bayshore Highway, approximately 500 feet west of the project site and the Norman Y. Mineta San José International Airport, approximately 750 feet to the west of the closest property line. The nearest residential area and the closest school are each approximately 0.8 mile to the north of the project site.

The project's generating facility would include Tier 4 compliant diesel-fired generators to provide up to 97.8 MW to the data center in the event of a loss of electric service from PG&E. Specifically proposed are 32 3-MW primary emergency generators; 2 0.5-MW administrative emergency generators; and 2 0.8-MW storage tank area emergency generators. The sole purpose of the backup generating facilities is to provide electrical power to support the data center campus operations in the event of loss of electrical service from the local electric utility provider, PG&E.

The project would install within existing public right-of-way off-site utility infrastructure and potential intersection improvements to serve the project. The

project includes the creation of a Class I bike path along the project's southern property line. The project would improve both the southwest and southeast corners of the Trimble Road and Orchard Parkway intersection, removing the existing pedestrian refuge (pork-chop) islands at the southwest and southeast corners. This removal would require a modification of the existing traffic signal to relocate the existing poles from the pedestrian refuge islands.

Probable Environmental Effects

The EIR will analyze the reasonably foreseeable direct, indirect, and cumulative effects of the proposed SJDC 04 in the topic areas specified in Appendix G of the CEQA Guidelines, plus environmental justice (EJ).

Based on its analysis to date and prior experience evaluating other data centers in industrial settings, staff has identified that the SJDC 04 would likely have no or less-than-significant impacts in the environmental topic areas of aesthetics, agriculture and forestry resources, energy and energy resources, mineral resources, population and housing, public services, recreation, utilities and service systems, and wildfire.

The CEC staff is still conducting information gathering activities, including any information provided by other agencies in response to this notice that can inform the CEC's environmental review. The following environmental topic areas could have potentially significant impacts that could be reduced to less than significant with mitigation, as feasible. It is anticipated that the following topics will be analyzed further in the EIR.

Air Quality

The proposed project would be located in the San Francisco Bay Area Air Basin (SFBAAB) under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The SFBAAB is in non-attainment for ozone and particulate matter (PM) federal and state ambient air quality standards. The backup diesel generators proposed for the project could result in potentially significant impacts due to ozone precursors (oxides of nitrogen [NOx] and reactive organic gases). These impacts could be fully offset through the permitting process with the BAAQMD.

The project's construction emission from construction activities (fugitive dust) and heavy-duty construction equipment and vehicles (diesel PM) could have a potentially significant impact from a cumulatively considerable net increase of a criteria pollutant(s) for which the SFBAAB is in non-attainment under an

applicable federal or state ambient air quality standard. This impact could be mitigated with BAAQMD best management practices.

Project operations may have a potentially significant impact on sensitive receptors due to exposure of substantial pollutant concentrations of criteria pollutants and toxic air contaminants. Mitigation would be identified to reduce potentially significant impacts, if needed.

Biological Resources

The EIR will discuss the project's potential incremental effects to federally and state listed species, rare plants, and wetland habitat that may experience adverse direct and/or indirect significant impacts. Cumulatively considerable significant impacts from habitat modification (such as increases in non-native weed invasions) through nitrogen deposition from point source emissions (backup generators) on sensitive habitat may also occur; staff is currently exploring these issues. Nitrogen deposition from non-point sources (vehicle traffic) will require mitigation pursuant to the Santa Clara Valley Habitat Plan (SCVHP). Adverse impacts may likely be reduced to less than significant levels with the incorporation of mitigation. CEC staff is working with regulatory agencies (Santa Clara Valley Habitat Agency [SCVHA], California Department of Fish and Wildlife, and United States Fish and Wildlife Service) to analyze the project, evaluate proposed mitigation, and, if necessary, collaborate to develop additional mitigation that would mitigate impacts to less than significant.

Potentially significant indirect impacts from noise and lighting during project construction and operation, and direct impacts from stormwater runoff to the Guadalupe River riparian corridor during construction and operation could occur; however, with the incorporation of protective mitigation measures, impacts could be reduced to less than significant. Potentially significant impacts to southwestern [=western] pond turtle may occur if this species disperses upland from the Guadalupe River into the project site and/or nests within the project site. Mitigation measures including use of appropriate avoidance strategies as necessary could reduce impacts.

Potentially significant impacts through the possible removal of ordinance-sized native or non-native trees, may occur; however, impacts could be reduced less that significant with the implementation of protection measures including tree protection zones, maintenance methodology, and replanting, per local ordinance. Potentially significant impacts could occur to nesting birds and raptors (including yellow warbler, San Francisco common yellowthroat, loggerhead shrike, tricolored blackbird, white-tailed kite and golden eagle) due to construction

activities. Impacts could be reduced to less than significant with mitigation measures requiring pre-construction surveys and employment of appropriate avoidance management techniques.

Potentially significant cumulative impacts from construction activities could affect onsite, burrowing owl. The project has previously provided land compensation prior to the inception of the Habitat Plan as mitigation for this species (TN 245946, page 122). However, mitigation through the payment of the burrowing owl fee per SCVHA Voluntary Fee Payments Policy along with the passive relocation strategies for onsite burrowing owl could reduce the project's cumulative impacts (TN 245946, page 124).

Cultural and Tribal Cultural Resources

Based on preliminary information, the proposed project might impact cultural resources. The literature review prepared by the applicant indicates that there is a moderate to high sensitivity for deeply buried Pre-Contact archaeological resources and that the project could affect unknown Pre-Contact cultural resources or human remains (PaleoWest 2022). Based on a review of information provided in the literature review, CEC staff has requested additional data to assess the potential impacts on cultural resources: historic built environment and historic archaeological and tribal cultural resources.

Ground disturbance proposed as part of the project could encounter and damage buried resources that meet CEQA's criteria for historical, unique archaeological, or tribal cultural resources. The resulting impacts would likely be significant under CEQA. The applicant has proposed various mitigation measures to reduce the severity of any such impacts. At this time, there is not enough information to conclude whether the project would result in significant impacts to cultural or tribal cultural resources and whether they could be mitigated to a less-than-significant level.

Geology and Soils (Paleontology)

The project site is in the Santa Clara Valley, an area known to have scientifically significant but widespread or intermittent fossil discoveries. Surficial sediment at the project site is generally not considered sensitive for paleontological resources, because biological remains younger than 10,000 years are not usually considered fossils. However, Pleistocene age (2.6 million to 11,700 years before present) sediments may also be present at or near the surface. Although unlikely, paleontological resources could be encountered during construction requiring earth moving, such as grading, trenching for utilities, excavation for

foundations, and installation of support structures where native soil would be disturbed. If paleontological resources are discovered, construction could have potentially significant direct or indirect impacts due to the destruction of a unique paleontological resource. These impacts could be reduced to less than significant levels with the incorporation of proposed mitigation. CEC staff is crafting a mitigation measure that could reduce impacts to less than significant.

Greenhouse Gas Emissions

The project could result in potentially significant greenhouse gas (GHG) emissions from three categories of activities: direct emissions from construction, direct emissions from the testing and maintenance of the backup diesel generators, and emissions from the data center's miscellaneous operations, both direct and indirect. CEC staff expects that the potentially significant temporary direct emissions from construction could be mitigated through the use of best management practices and that the potentially significant direct emissions from testing and maintenance would be below relevant significance thresholds through the use of renewable diesel, as feasible. Additionally, the potentially significant indirect GHG emissions associated with the data center's electricity use would be reduced with the project's participation in the San José Clean Energy (SJCE) at the Total Green level (i.e., 100 free carbon-free electricity) or similar program that accomplishes the same goals as 100 percent carbon-free electricity.

Hazards and Hazardous Materials

The project site is currently an undeveloped lot and is in an area with properties of varying current business and industrial uses. The site is bounded on the north by an industrial park, by the Guadalupe River on the southwest, vacant land and an office building on the southeast, and Orchard Parkway and vacant land to the northeast. The project site is approximately 0.2 mile southwest of the San José Norman Y. Mineta International Airport and is located within the Airport Influence Area where it may be affected by noise, height limits, and aviation safety considerations.

Based on the Phase I Environmental Site Assessment (ESA) conducted for the project site in December 2020 (included in project application), the site has a history of agricultural use from at least the 1930s until about 1982. The ESA identified several potential environmental conditions related to the site's former agricultural use and the history of hazardous materials use and spills at adjacent industrial sites. A Phase II ESA conducted in February 2021 (included in project application) indicated that no soil contamination from adjacent sites was present

on the site; elevated levels of metals were detected in groundwater samples that were above California maximum contaminant limits for groundwater or the risk-based groundwater environmental screening levels. No soil or groundwater testing was conducted for areas of offsite infrastructure and the presence of unknown soil or groundwater contamination has not been ruled out for these areas. Construction activities for offsite project infrastructure could encounter unknown contaminated soil or groundwater, and construction of onsite project components could encounter contaminated groundwater.

The project would use hazardous materials during project construction and operation. Spills or leaks of hazardous materials that will be used and stored at the project site during project construction, such as fuels for construction equipment and vehicles, and small amounts of lubricants and solvents could occur due to project construction activities. During operation, a large quantity of diesel fuel, totaling approximately 423,500 gallons for all the generators, would be stored in underground fuel tanks and in integrated fuel tanks. Urea or diesel exhaust fluid, used as part of the diesel engine combustion process, would be stored in two 55-gallon drums located within the outdoor generator enclosures and within each the interior generator rooms. Spills or leaks of diesel fuel or diesel exhaust fluid could occur during refueling or due to damage to the tanks.

The project construction or operation could result in potentially significant environmental impacts due to encountering contaminated soil or groundwater during construction, spills from diesel fuel or diesel exhaust fluid during operation, or aviation safety or noise hazards. Staff will review the applicant proposed measures (PDF HAZ-1.1 and PDF HAZ-1) to determine whether they are sufficient to reduce potentially significant impacts to less than significant. Staff may craft mitigation measures if the applicant's measures are not sufficient.

Noise

The noise levels associated with construction could be potentially significant but could be mitigated via the implementation of a construction noise plan. The temporary intermittent noise impacts associated with the yearly testing of the gensets, as well as the likelihood for increased noise levels resulting from project operation could be potentially significant. If potentially significant impacts on sensitive receptors are identified, the CEC staff would draft mitigation, including noise attenuation and other measures to reduce impacts.

Transportation

The EIR will discuss the project's potentially significant impacts from vehicle miles traveled (VMT). The project-generated VMT per employee (15.48) is greater than the City of San José's threshold of 14.37 VMT per employee for industrial uses. These potentially significant VMT impacts may be reduced with compliance and application of existing regulatory requirements and applicant proposed mitigation measure TRN-1. The project could have a potentially significant impact from permanent project structures and thermal plumes generated by the project's roof-top chillers and emergency generators affecting nearby aviation operations at the Norman Y. Mineta San José International Airport. The project site is located within the airport's "Airport Influence Area" and is located in an area with a Federal Aviation Regulations, Part 77 maximum structure height of 212 feet above mean sea level. The project applicant is preparing a thermal plume analysis and will provide staff with the report when it has been completed. Lastly, the project applicant must prepare and submit Federal Aviation Administration (FAA), Form 7460-1 for project structures exceeding the 100:1 imaginary surface of approximately 10 feet. The FAA will conduct an aeronautical study and issue a Determination of No Hazard, Determination of No Hazard with Conditions, or a Determination of Hazard. Staff's analysis of the project permanent structures and thermal plume impacts will heavily rely on this forthcoming information. Staff will evaluate possible mitigation options if the project has a significant impact to aviation from permanent structures and thermal plumes.

Alternatives

The EIR will consider a reasonable range of potentially feasible alternatives to the project. In addition to a no project alternative, the EIR will likely consider fuel cell technology, battery storage, alternative fuels (renewable diesel and biodiesel), and natural gas internal combustion engines.

Environmental Justice

The CEC staff has determined the presence of an environmental justice population within the vicinity of the project site using currently available 2020 Census and California Department of Education data. The CEC staff will analyze whether the project would result in any potentially significant disproportionate impacts to the environmental justice population.

Responsible Agencies

Responsible agencies for this project are the Bay Area Air Quality Management District and the City of San José. The project will require the following approvals and permits if exempted:

- Bay Air Quality Management District – authority to construct and permit to operate
- City of San José – Lot line adjustment/merger, Special Use Permit, and encroachment permit

Trustee Agencies

Trustee agencies for this project are the California Department of Fish and Wildlife and the Santa Clara Valley Habitat Agency.

Scoping Meeting(s)

The CEC staff has determined that the project is not a project of statewide, regional, or areawide significance pursuant to the California Code of Regulations, title 14, section 15206, and, thus, does not intend to hold a scoping meeting. Please note, however, that pursuant to the provisions of the California Code of Regulations, title 14, section 15082(c), a responsible agency, a trustee agency, OPR, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information that the responsible agency or trustee agency may require. Requests for such a meeting should be directed to the CEC staff Project Manager, Lisa Worrall, at the email listed above.

Attachments (from the SPPE application):

Regional Map (Figure 2.0-1)
Aerial Photograph and Surrounding Land Uses (Figure 2.0-3)
Site Plan (Figure 3.3-10)
Proposed Recycled Water Line Extension (Figure 3.3-10)
Proposed Bike Path (Figure 3.3-11)

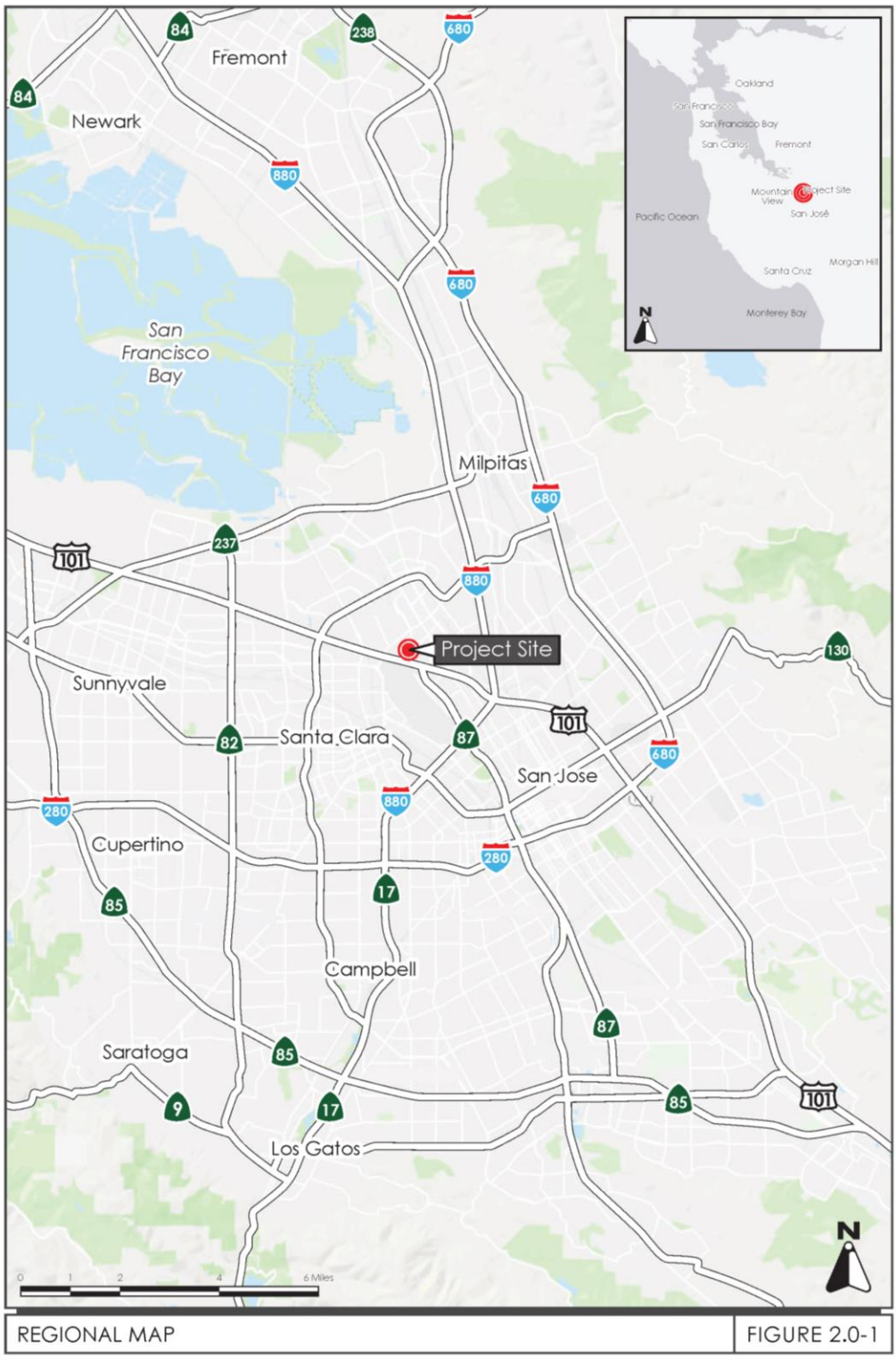

Figure 2.01 Regional Map

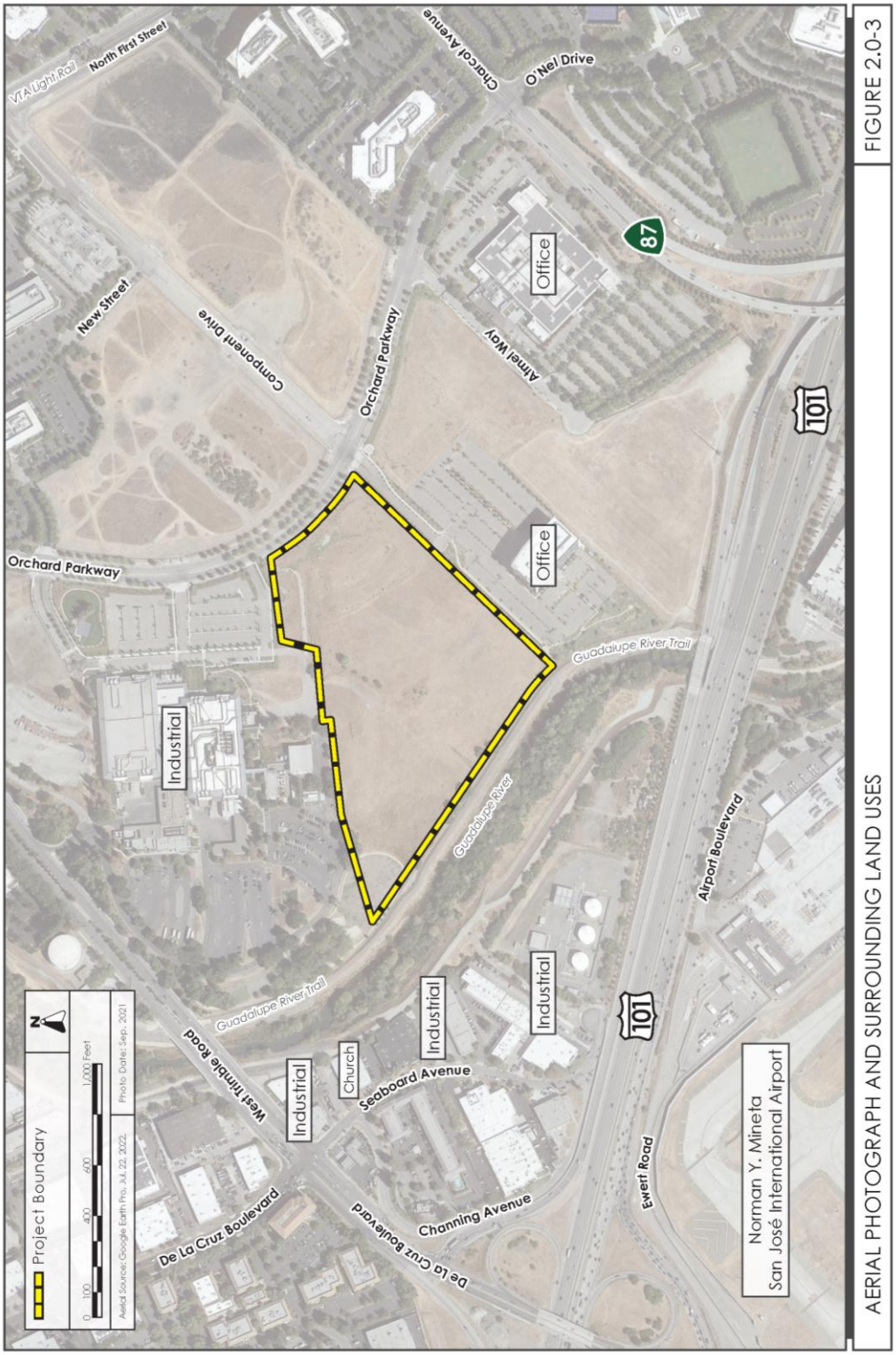

Figure 2.0-3 Aerial Photograph and Surrounding Land Uses

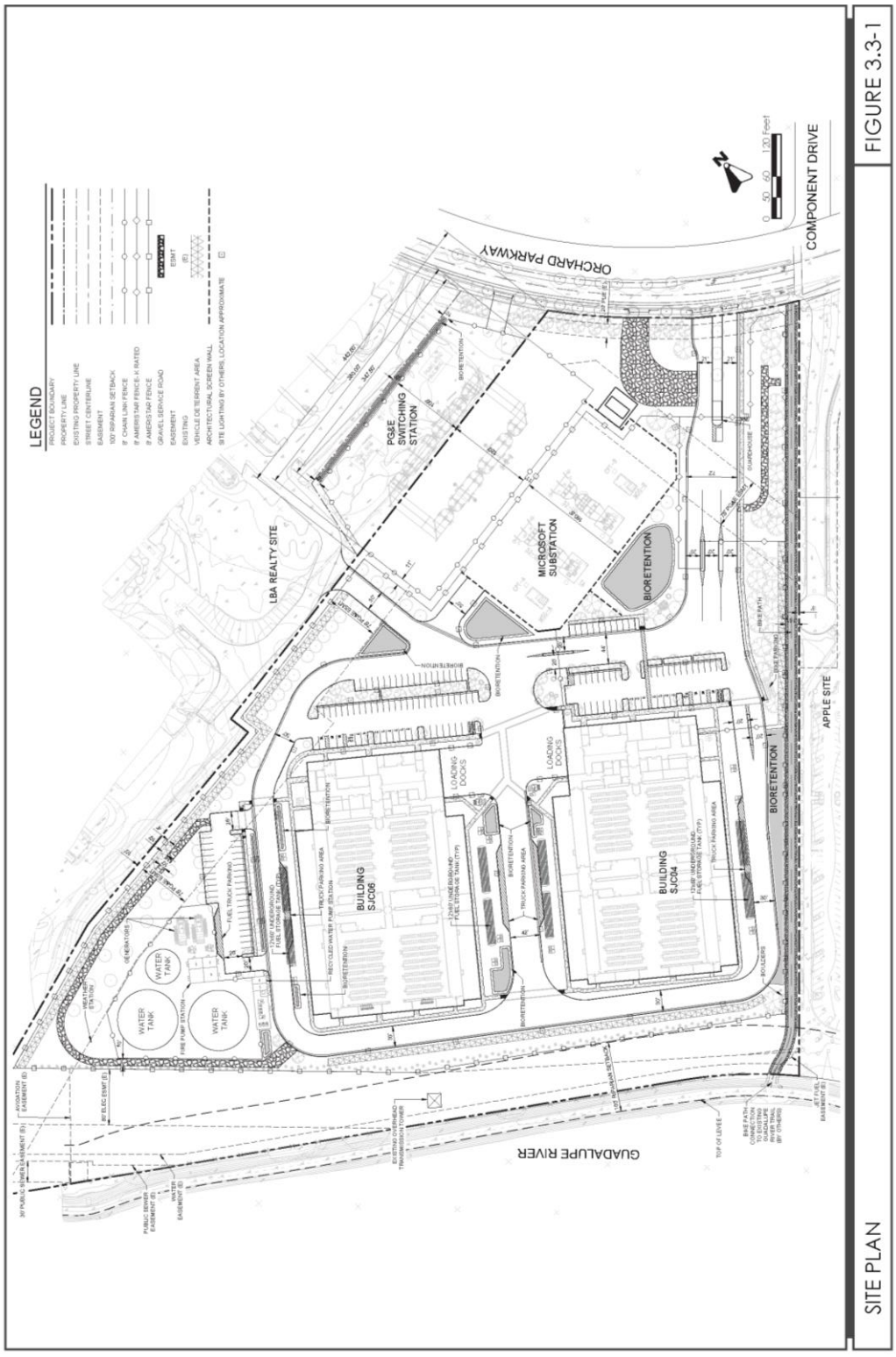

Figure 3.3-10 Site Plan

Figure 3.3-10 Proposed Recycled Water Line Extension

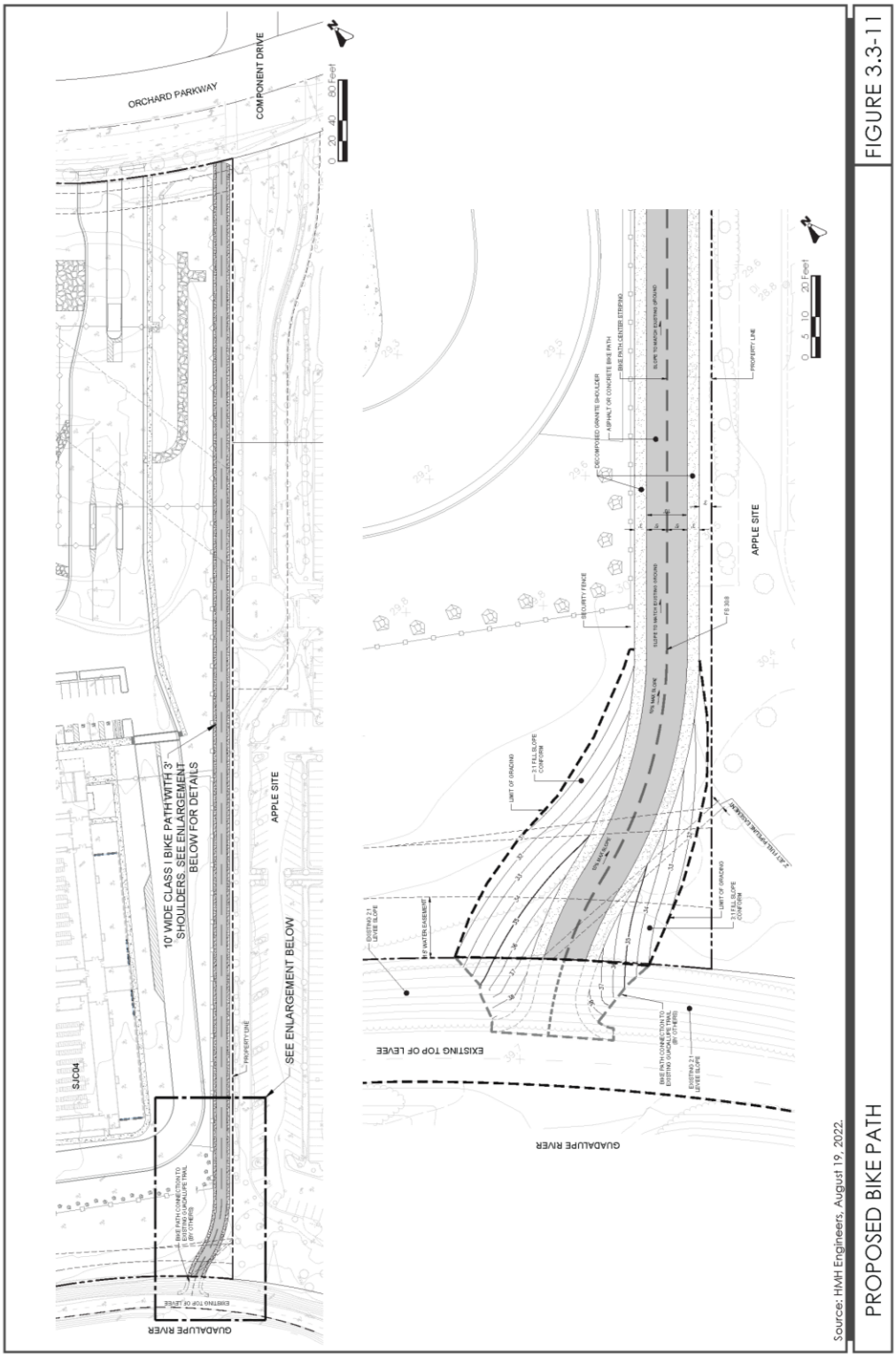

Figure 3.3-11 Proposed Bike Path