

## CEC STAFF'S SUMMARY<sup>1</sup> OF THE MEC'S CONSISTENCY WITH APPLICABLE LAWS, ORDINANCES, REGULATIONS AND STANDARDS (LORS)

	PMPD
	Staff's Position PROJECT CONSISTENT? (YES/NO-WHY)
<b>CITY OF SAN JOSE 2020 GENERAL PLAN</b>	
Land Use /Transportation Diagram - Campus Industrial Designation (Allowed land uses are industrial research and development, administration, marketing, assembly, and manufacturing.)	<b>NO</b> (Power plants not allowed by Campus Industrial designation (Ex. 7, p. 199). City Council voted 11-0 to deny Applicant's General Plan change proposal. Requires an override by the CEC.)
<u>Economic Development Major Strategy</u> This strategy is designed to maximize the economic potential of the City's land resources while providing employment opportunities for San Jose's residents.	YES (MEC supportive of this strategy because the project would provide property tax revenue to the City (Ex. 7, p. 200).
<u>Growth Management Major Strategy</u> The purpose of this strategy is to find the balance between the need to house new population and the need to balance the City's budget, while providing acceptable levels of service.	YES (Ex. 7, p. 201)
<u>Greenline/Urban Growth Boundary Major Strategy</u> Establishes that urban development should only occur within the Urban Service Areas of the city where urban development can be safely and reasonably accommodated and where urban services can be provided.	YES (Ex. 7, pp. 201-202)
<u>Sustainable City Major Strategy</u> A Sustainable City is a city designed, constructed, and operated to minimize waste, efficiently use its natural resources, and to manage	YES (Ex. 7, p. 202).

<sup>1</sup> CEC staff worked diligently with the parties (Applicant and City) in an attempt to provide the Committee with a single summary table that would include all parties input on the project's remaining LORS inconsistencies related to land use. The Applicant provided input to Staff, but then decided to file their own version of the summary table in their comments on the PMPD and asked Staff to delete their input from Staff's summary table. Staff received the City's comments with disclaimers stating "not for public discussion" and "not to be docketed." Staff attempted to contact the City to find out if they wanted their comments in Staff's summary table or if they intended on filing them on their own. Staff did not receive a response prior to the deadline for PMPD comments, so the City's comments were also deleted. Staff also worked with County staff to obtain their input on County LORS. Staff received the County's input, but Staff was unable to confirm before the deadline whether their comments should be docketed since the comments were received with a note that they are the opinion of County staff and have not been reviewed by the Board of Supervisors.

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and conserve them of use of present and future generations.	
<u>Residential Land Use Policy #2</u> (Residential neighborhoods should be protected from the encroachment of incompatible activities or land uses that may have a negative impact on the residential living environment.)	YES (MEC will not encroach upon a residential neighborhood and will not have a negative impact on the residential living environment. Ex. 7, pp. 202-203)
<u>Industrial Land Use Policy #1</u> (Industrial development should incorporate measures to minimize negative impacts on nearby land uses.)	YES (NOISE-5 in the PMPD would reduce MEC's noise impacts on the nearest residence to a less than significant level. VIS-9 includes measures to reduce the negative visual impacts of the MEC on nearby land uses, although in Staff's position, not to a less than significant level. However, the policy does not indicate that measures must reduce impacts to a less than significant level, only that they are reduced or lessened (Ex. 7, pp. 203-204).
<u>Urban Design Policy #1</u> City should apply strong architectural and site design controls for the protection of neighborhood character and for proper transition between areas with different types of land uses.	YES (City stated that the project will need to comply with the design guidelines for the Campus Industrial Area Ex. 7, p. 204). VIS-9 in the PMPD requires project to be designed in a manner that helps to integrate it with its surroundings. Condition requires consultation with the City to achieve this.)
<u>Urban Design Policy #2</u> (Private development should include adequate landscape areas, which utilize water efficient plant materials and irrigation systems and include provision for ongoing maintenance.)	YES (with the implementation of conditions of certification in the PMPD; See also Ex. 7, pp. 204-205)
<u>Urban Design Policy #11</u> (Maximum structure height of 95 feet in any area designated for Public/Quasi-Public uses; additional height allowed where substantial height is intrinsic to the function of the structures)	<b>NO</b> (Project would exceed allowable height limits for both Campus Industrial (120 feet) and Public/Quasi-Public (95 feet) uses (Ex. 7, p. 205). City did not grant exception to exceed General Plan height limitations (1/31/01 RT p. 134), therefore project remains inconsistent with this policy. Requires an override by CEC.)
<u>Urban Design Policy #22</u> Design guidelines adopted by the City Council should be followed in the design of development projects.	<b>NO</b> (MEC does not meet all guidelines of the North Coyote Valley Campus Industrial Master Development Plan (Ex. 7, pp. 208-214).
<u>Trails and Pathways Policy #1</u> The City should control land development along designated Trails and Pathways Corridors in order to provide sufficient trail right-of-way and to ensure that new development adjacent to the corridors does not detract from the scenic and aesthetic qualities of the corridor (p. 99)	<b>NO</b> (The Project would provide sufficient trail right-of-way but would detract from the scenic and aesthetic qualities of the planned Fisher Creek trail corridor (Ex. 7, p. 206). The Committee agrees in the Visual Resources section of the PMPD (refer to pages 372 and 374) that the project does not comply with this policy in regard to visual concerns. Thus, a CEC override of this policy is required.
<u>Trails and Pathways Policy #2</u> (When new development occurs adjacent to a designated Trails and Pathways Corridor, the City should encourage the developer to install and maintain the trail. (p. 99)	YES (with Condition of Certification LAND-1 in the PMPD) (See Ex. 7, p. 206)

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<u>Trails and Pathways Policy #7</u> Trails should be built to meet the trail standards established by the Department of Public Works. (p. 100)	YES (with LAND-1) (See Ex. 7, p. 206)
<u>Riparian Corridor Policy #2</u> New public and private development adjacent to riparian corridors should be consistent with the provisions of the Riparian Corridor Policy Study. (p. 103)	<b>NO</b> (Nonconformance with this policy will not result in significant adverse impacts to wildlife (Ex. 7, pp. 206, 214-215). Nonetheless, requires a CEC override since project is not consistent with all provisions of the policy study. See the Riparian Corridor Policy Study discussion for details.)
<u>Riparian Corridor Policy #3</u> New development within the Urban Service Area should be set back from the riparian habitat a distance sufficient to buffer the impacts of adjacent human activities and provide avenues for wildlife dispersal. (p. 103)	YES (The project will meet the required 100-foot setback from the Fisher Creek riparian corridor. Noise impacts on wildlife were found to be less than significant. (Ex. 7, p. 207).
<u>Riparian Corridor Policy #4</u> New development should be designed to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone. (p. 103)	YES (The project will be designed to protect the Fisher Creek riparian area from the encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone. The project's noise level would not cause a significant adverse effect on wildlife (Ex. 7, p. 207).
<b>Title 20 of the San Jose Municipal Code - Zoning Ordinance</b>	
Section 20.20.100 Allowed Uses and Permit Requirements	<b>NO</b> (The site is currently zoned A-Agriculture. A power plant is not listed as a permitted or conditionally allowed use. The A zoning district restricts building and structure heights to 35 feet (Ex. 7, p. 194).
<b>NORTH COYOTE VALLEY CAMPUS INDUSTRIAL AREA MASTER DEVELOPMENT PLAN</b>	
<u>General Goals of Master Development Plan</u> (To provide much-needed, large single user sites where major companies can consolidate their operations and by doing so, ensure the region's long-term economic health. (p.1) Intended to accommodate "high-technology" users.)	<b>NO</b> (Not a "high-technology" use; however, project would be supportive of goals. CEC override needed in regard to allowable land use type.)
<b>Private Improvement Guidelines</b>	
<b>Site Organization</b>	

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<u>Building Height</u> Overall building height shall not exceed the height limitations set forth in Urban Design Policy #11 of the General Plan. (p. 43)	<b>NO</b> (City did not grant an exception to exceed height limitations established by the General Plan (1/31/01 RT p. 134). Requires an override by CEC.)
<u>Orchard Planting</u> Provide an equally spaced orchard-like landscape planting in parking areas. 1 tree for each 4 spaces. (p. 43)	YES (with Condition of Certification LAND-2 in the PMPD)
<b>Site Landscape</b>	
<u>Monterey Highway Edge</u> A 50-foot landscape area will separate properties from the Union Pacific right-of-way. (p.44)	<b>NO</b> (Noncompliance would not result in significant adverse visual impacts to train and Monterey Road travelers. Nonetheless, requires an override by CEC since the project only provides a 32-foot wide setback with about a 5-foot wide landscape strip between the Project site and UPRR right-of-way, not a 50-foot wide landscape easement, a standard of all development in the Coyote Valley Campus Industrial Area.)
<u>Entry Identification</u> Direction signs, if provided to major property entrances should be located not less than 100 feet from the intersection. Identity signs will be located on the entry drive median.  Gatehouses, if provided, must be located at least 50 feet from face of curb. (p.44)	YES (Consistency would be ensured by LAND-4 in the PMPD.)
<b>General Development Plan Standards</b>	
<b>II. Development Standards</b>	
C. Most campuses should be planned at a size of at least 20 acres. (p.58)	YES
D. The maximum height of any structure shall not exceed the limitations set forth in the General Plan. (p.58)	<b>NO</b> (See Urban Design Policy # 11. CEC override required.)
E. The aggregate parcel coverage of all buildings exclusive of covered pedestrian walks and parking structures shall not exceed 30 percent. (p.58)	YES

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F.5. From site boundaries between Campus Industrial uses, but which do not abut public streets, the minimum setbacks shall be 100 feet for all buildings and structures and 15 feet for all uncovered off-street parking areas. (p. 59)	<b>NO</b> (With LAND-3 and LAND-5 in the PMPD the Project would meet the objective of this standard (i.e., a 200-foot separation between buildings on adjacent parcels) (Ex. 7, pp. 211-212). Nonetheless, requires an override by the CEC because the standard requires MEC's structures to be set back from the MEC property line a minimum of 100 feet.)
F.8. From all boundaries that abut the existing Fisher Creek right-of-way, the minimum setbacks shall be 100 feet for all buildings and structures and 50 feet for all uncovered off-street parking areas.(p.59)	YES (All buildings, structures, and parking areas would be set back a minimum of 100 feet from Fisher Creek right-of-way (Ex. 7, p. 212).)
F.9. All setback areas shall be landscaped. (p. 59)	YES (All setback areas would be landscaped (Ex. 7, p. 212).)
F.10. A 50-foot landscape easement is required between the Union Pacific right-of-way and the campus development (p.59)	<b>NO</b> (Noncompliance would not result in significant adverse visual impacts to train and Monterey Road travelers. Nonetheless, requires an override by CEC since the project only provides a 32-foot wide setback with about a 5-foot wide landscape strip between the Project site and UPRR right-of-way. (Ex. 7, p. 210). LAND-3 in the PMPD will not resolve this inconsistency, only prevent a lesser setback than proposed.
G. A minimum of 25 percent of the total surface area of each parcel shall be landscaped. At his discretion, the Planning Director may allow the inclusion of natural open space in the project's landscape are when s/he finds that such inclusion will:  Preserve significant natural amenities such as trees and terrain features.  Enhance the overall level of project quality.  The Director's discretion shall be exercised through the PD Permit process.	YES (About 19% of the MEC site would be covered by ornamental landscaping. With the inclusion of the improvements to the Fisher Creek riparian area, about 44.5% of the site would be landscaped (Ex. 7, p. 212).)
I. Off-street parking shall be provided at a ratio of one space per 350 square feet of gross floor area (p.60)	N/A
K. All truck loading and unloading areas are to be separated from automobile parking areas and from all pedestrian and bicycle circulation elements. (p.60)	N/A
<b><u>III. Environmental Performance Standards</u></b>	
No primary or secondary use shall be so conducted as to cause the harmful discharge of any waste material into the atmosphere. (p. 60)	YES (Staff determined that the MEC would not cause "harmful" discharge of air pollutants into the atmosphere (Ex. 7, p. 213).)
No use or activity shall be conducted or permitted which constitutes a menace to persons or property or which is dangerous, obnoxious, or	PMPD Condition NOISE-5 would reduce noise impacts on nearby sensitive receptors to a less than significant level.

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offensive by reason of air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes.	Operation of MEC would not create odors, smoke, dust, vibration, radiation, or fumes that are dangerous, obnoxious, or offensive (Ex. 7, p. 213).
<b>RIPARIAN CORRIDOR DEVELOPMENT GUIDELINES</b>	
<b>1. Site Design</b>	
<u>Guideline 1A: Orientation</u> Site activities should be oriented to draw activity away from the riparian corridor, for example, entrances, loading and delivery areas, noise generating activities and equipment, and activities requiring night lighting should be oriented toward non-riparian property edges. (p.30)	<b>NO</b> (Noise generating equipment would be located along riparian edges of the property. However, noncompliance would not result in a significant adverse noise impacts to wildlife, and relocation of the cooling tower could increase visual impacts (Ex. 7, p. 214). Nonetheless, the CEC should make an override finding since project is not technically consistent with this guideline.)
<u>Guideline 1B: Incompatible Land Uses</u> Incompatible operations and activities are discouraged within and adjacent to riparian setback areas to protect the health of existing vegetation and wildlife, reduce adverse cumulative impacts to water quality, and protect the quality of recreation uses in the corridor. Incompatible land uses include the following: land uses which typically generate littering and/or dumping; off-road vehicle use; removal of native vegetation; and those uses that create noxious odors, or use, store, or create toxic materials (including fertilizers, herbicides and pesticides), or generate high volumes of vehicular traffic (p. 30).	YES (The project would use and store aqueous ammonia, which is toxic and could have an adverse effect on wildlife in the event of an accidental release. However, the ammonia unloading and storage area would not be located within or adjacent to the 100-foot riparian setback area. In addition, the storage area would include secondary containment (Ex. 7, p. 215).
<u>Guideline 1C: Setback Areas</u> All buildings, other structures, impervious surfaces, outdoor activity areas, and ornamental landscaped areas should be separated a minimum of 100 feet from the edge of the riparian corridor (or top of bank, whichever is greater). (p. 31)	YES
<b>2. Building and Fixtures Design</b>	

	<p align="center"><b>PMPD</b></p> <p align="center"><b>Staff's Position</b></p> <p align="center"><b>PROJECT CONSISTENT?</b></p> <p align="center"><b>(YES/NO-WHY)</b></p>
<p><u>Guideline 2F: Noise</u> (Noise producing stationary equipment should be located as far as necessary from riparian corridors to preclude exceeding the ambient noise level in the corridors.)</p>	<p><b>NO</b> (Noise levels from operation of the Project would exceed the ambient nighttime noise level in the adjacent riparian area, which staff estimated to be similar to that at nearest residence (39dBA). However, noncompliance would not result in a significant adverse impact to wildlife (Ex. 7, p. 215). Finding #14 in the Biological Resources section of the PMPD recognizes this inconsistency. NOISE-5 in the PMPD requires the Project to comply with "applicable" noise standards at the MEC property line. If this includes Riparian Corridor Policy Study Guideline 2F, the Project would comply. If not, the CEC should make an override finding since the project would exceed the ambient noise level in the riparian corridor.)</p>
<p align="center"><b>SANTA CLARA COUNTY GENERAL PLAN</b></p>	
<p><u>Policy C-GD 14</u> Future urban development in Coyote Valley should be planned to realize the potential it holds for improving the City of San Jose's existing jobs-housing imbalance and for the benefit to the county as a whole</p>	<p>YES</p>
<p><u>Policy C-GD 17</u> Planning for Coyote Valley's future development should provide for the permanent preservation of hillsides in open space</p>	<p>YES (116 acres of Tulare Hill will be preserved in open space. (Ex. 7, p. 216).)</p>
<p><u>Policy C-GD 18</u> Anticipated impacts on the South County cities [e.g., Morgan Hill and Gilroy] and other jurisdictions from development in Coyote Valley should be adequately mitigated to less than significant levels.</p>	<p>YES (See Ex. 7, pp. 216-217)</p>
<p><u>Policy R-LU 11</u> Allowable land uses in areas designated "Agriculture" shall be limited to: a) agriculture and ancillary uses; b) uses necessary to directly support local agriculture; and c) other uses compatible with agriculture which clearly enhance the long-term viability of local agriculture and agricultural lands.</p>	<p>YES (Power plant site is designated in the County's General Plan as Urban Service Area, so policy not applicable to site. The short interconnection with the existing transmission tower will not conflict with grazing activities on Tulare Hill, which applicant proposes to continue (Ex. 7, p. 217).)</p>
<p><u>Policy R-LU 74</u> In locating major gas distribution facilities, the primary environmental considerations shall be to minimize aesthetic impacts and to avoid developed residential and/or public recreation areas. Major electric transmission lines should be located and designed in accordance with the following principles:  Route selection should avoid ridgelines and follow the natural flow and rhythm of landforms as much as possible.  Routes should not cross scenic roads at points where lines will be</p>	<p><b>NO</b> (With LAND-8 in the PMPD, Project construction would not cause significant adverse land use conflicts with park activities (Ex. 7, p. 217). However, CEC override necessary because Project is still inconsistent with the policy since the pipeline does not <i>avoid</i> a public recreation area, but would be sited within one.)</p>

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<p>visible for long distances.</p> <p>Minimum height structures should be used to reduce visual impacts where the additional structures which results are not objectionable.</p> <p>Vegetation should be used for screening where it will not interfere with a facility's operation.</p> <p>Design, appearance and paint selection should reduce visual impact (p. Q13)</p>	
<p><u>Policy R-LU 75</u></p> <p>Electric substations and gas control metering stations shall be located, designed and landscaped to fit as inconspicuously and harmoniously as possible into the area in which they are required. Locations along scenic roads and heavily traveled highways should be avoided (p.Q14).</p>	<p><b>NO</b> (With proposed mitigation, no significant adverse visual impact. Nonetheless, requires an override by CEC because the metering station would be located <i>along</i> heavily traveled U.S. Highway 101 Ex. 7, pp. 217-18.)</p>