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INTERVENOR CITY OF OXNARD

EXHIBIT ____

Testimony of Ashley Golden

Re: City of Oxnard Land Use Policies

Qualifications

I am the Development Services Director (Director) of the City of Oxnard and have worked in the City's Development Services Department for nearly 14 years. In my capacity as Director, I am responsible for a variety of supervisory, administrative and technical work in current and long range planning programs, as well as development and implementation of permitting, annexation, land use, zoning, coastal planning, environmental issues and related municipal plans and policies. I am familiar with the City's land use policies as they are set out in the City's General Plan, Local Coastal Plan, and land use ordinances and enactments. I am also familiar with Oxnard's current effort to update its Local Coastal Plan to reflect its land use goals and General Plan.

Statement

The City's 1982 Local Coastal Plan

In 1982, Oxnard was one of the first cities to complete a Coastal Commission certified Local Coastal Plan ("LCP"). At that time, the City's LCP included a "Local Issues" section that briefly describes the Mandalay Generating Station ("MGS") and ("OBGS") which, in 1982, were both owned and operated by Southern California Energy (SCE).¹ Although the LCP recognized the existence of the OBGS and MGS power facilities and included zoning that reflects these facilities, these industrial uses are inconsistent with other policies in the LCP:

- LCP Policy 62 sets forth the City's opposition to building new power plants along the City's coast.²
- LCP Policy 56 prohibits industrial and energy development within the 100-year flood/wave run up area.³

¹ Coastal Land Use Plan, p. III-38.

² *Id.*, p. III-44.

³ *Id.*, p. III-42.

- LCP Policy 52 prohibits industrial and energy-related development in “coastal resource areas, including sensitive habitats, recreational areas and archaeological sites.” This policy also requires new industrial facilities to be designed and screened to minimize aesthetic impacts.⁴

The Puente project is inconsistent with the City’s goal to avoid building additional power plants along the Oxnard coast. When adjusted for sea level rise and the actual topography of the beach and dunes, the new draft FEMA maps also indicate that the project site will be within the 100-year flood zone.⁵

Finally, the project is sited in Coastal-Commission designated coastal wetlands and conflicts with LCP Policy 52, which prohibits the location of such projects in coastal resource areas such as this. The project’s 188-foot tall stack has also not been designed or screened to minimize aesthetic and recreational impacts.

The City’s 2030 General Plan

In 2011 Oxnard adopted its 2030 General Plan, which updated the 2020 General Plan. Oxnard’s 2030 General Plan included a number of policies related to development along the Oxnard coastline. The new Sustainable Community (SC) chapter included Goal SC-2 “Sea Level Rise Awareness and Planning” with four implementing policies. They are:

SC-2.1 Sea-Level Rise and Updating the Local Coastal Program

Include best-available information regarding possible sea-level rise in the next revision of the Local Coastal Program, which should be initiated within one year of adoption of the 2030 General Plan.

SC-2.2 Sea Level Monitoring System

Consider installation of a sea-level monitoring system that detects small changes to coastal sea level and tidal change.

SC-2.3 Sea Level Rise Consideration in Decision-Making

Ensure that all planning, public works, and related decisions take rising sea level into consideration and take steps to reduce risk of damage or loss of life and property.

SC-2.4 Avoidance of Coastal Armoring or Hardening

Wherever feasible, avoid coastal armoring or hardening in new development or in mitigating current and future risk to existing development.⁶

⁴ *Id.*

⁵ *See* Testimony of Dr. Dave Revell.

⁶ Excerpts, 2030 General Plan, Goals & Policies, pp. 2-11 and 2-12.

The City adopted these policies to aid its land use planning in promoting adaptation to sea level rise and climate change and greater resiliency to coastal flooding.

The proposed Project is inconsistent with other policies in the 2030 General Plan.

- **CD-1.11:** Promote improved coastal access and enhanced recreation opportunities with access from all areas of the City.

The Project will prolong recreational impacts associated with having large power plants sited along Oxnard's coast, the City's primary recreational resource.

- **CD-9.5:** Ensure that new public and private investment maintains the unique coastal and agricultural character of the City.

The Project conflicts with the low-density, recreational character of Oxnard's coastline.

- **ER-8.1:** protect the shoreline and views to and along the Pacific Ocean, recognizing their value as natural and recreation resources

As discussed further below, the Project would impair views along the along the beach and of the Pacific Ocean.

- **ER-8.2:** Design new development along primary access routes to the beach so as to maintain and enhance the scenic quality of such routes.⁷

The Project would degrade the scenic quality along Harbor Boulevard by continuing industrial blight in this location long past when the Mandalay Generating Station is scheduled to close.

The City's LCP Update Process.

The 2030 General Plan also calls for updating the City's Local Coastal Program. The Community Development (CD) chapter includes Goal CD-21, "Update the Oxnard Local Coastal Program" with four implementing policies, three of which are directed towards energy production and coastal power plants and demonstrate that the proposed Project is inconsistent with the City's planning goals. The policies are:

CD-21.2 Modify non-Coastal Dependent Energy Uses

When the LCP is being updated, clarify that non Coastal-dependent energy facilities are not allowed in the Energy Coastal zone with exceptions for renewable energy installations such as solar panels and wind turbines under certain conditions and consistent with the Coastal Act.

⁷ Excerpts, 2030 General Plan.

CD-21.3 Future Use of Coastal Power Plants

Initiate an update to the Oxnard LCP that has the intent and effect of eventual decommissioning of the SCE Peaker Plant, Mandalay and Ormond Beach power generation facilities by: 1) land use designation change, 2) amortization, 3) revised development standards, 4) transferable development rights and/or other methods. After adoption and Coastal Commission certification of an updated Local Coastal Plan, initiate and implement policy and regulatory actions, and support actions of other relevant agencies that implement the LCP with regard to the future use of the SCE Peaker Plant, Mandalay and Ormond Beach power plants.

CD-21.4 Coastal Zone Land Use Designation Changes

When the LCP is being updated, change land use designations within the Coastal Zone to those included in the 2030 General Plan Land Use Map (Figure 3-1), if and as amended.⁸

Soon after the 2011 adoption of the 2030 General Plan, and to implement General Plan Goal CD-21, staff applied for LCP Update grant funding for a comprehensive LCP Update consistent with Coastal Commission LCP Update guidelines. The most-recent grant application was awarded in late 2014, local additional funding secured, and consultants retained in 2015. During the same period, the Coastal Commission developed its Sea Level Rise Policy Guidance for LCP's and Coastal Development Permits (SLR Guidance), which was adopted by the Coastal Commission in August 2015.

The SLR Guidance document establishes LCP Update steps which are incorporated into the LCP grant contract between the City and the Coastal Commission.⁹ Oxnard's LCP Update Step 2 is the preparation of sea level rise maps and vulnerability assessments fully consistent with the adopted Coastal Commission's SLR Guidance. Step 3 is "Assess potential risks from sea level rise to coastal resources and development in LCP planning area/segment."¹⁰ This assessment includes a risk assessment of "Critical Infrastructure" as defined in the Coastal Commission's Sea Level Rise Policy Guidance. The Guidance states that for "planning purposes, a jurisdiction should determine criticality based on the relative importance of its various assess for the delivery of vital services..."¹¹ If a facility is found to be at risk, adaptation and mitigation is required. The SLR Guidance lists general adaptation strategies, one of which is, "Update land use designations and zoning ordinances." This strategy discussion further states "For example, areas that are particularly vulnerable to sea level rise impacts can be designated

⁸ Excerpts, 2030 General Plan, Goals & Policies, p. 3-39.

⁹ Standard Grant Agreement between Cal. Coastal Com. and City of Oxnard (June 2015).

¹⁰ Cal. Coastal Com. Sea Level Rise Policy Guidance, p. 82.

¹¹ *Id.*

as hazard zones and specific regulations can be used to limit new development and/or encourage removal of existing development in such zones.”¹²

The City contracted with Dr. David Revell, a coastal geomorphologist with extensive experience in coastal processes and climate change, to evaluate the City’s coastal zone for areas at risk from climate change and sea level rise. A second coastal engineering expert retained by the City for the LCP Update, David Cannon, MCE, P.E., modeled tsunami impacts based on the California Geologic Survey’s recommended “Goleta 2” off shore underwater landslide scenario.

The two reports prepared by Dr. Revell and Mr. Cannon demonstrate that large areas of the Oxnard coast are subject to inundation as a result of one or more coastal hazards combined with future sea level rise.¹³ According to Mr. Cannon’s modeling, the MBGS site faces a current risk of inundation from a tsunami generated by the Goleta 2 Landslide and the amount and extent of potential inundation will increase in the future as sea level increases under sea level rise scenarios. Mr. Cannon recently updated his modeling of tsunami risk to reflect the discovery of a fault off the Ventura coast in 2015.

Based on this documentation, the City concluded that coastal hazards risks and emergency response uncertainty over the long operating life of a new large coastal power plant are unacceptable for regional power plant facilities. As a result, in June 2016, the City adopted an amendment to its 2030 General Plan setting forth the City’s policy that large power plants should not be located in areas subject to environmental hazards that threaten their reliability.¹⁴

Inconsistency with City Planning and Adaptation Efforts

Allowing the Puente facility to be approved as proposed would interfere with the City’s efforts to plan for sea level rise along the coast. The City has invested substantial resources to mapping coastal hazards and projecting threats from sea level rise in the future. In updating its LCP, the City has relied on the approach recommended by the California Coastal Commission’s Sea Level Rise Policy Guidance. For example, the draft LCP requires an assessment of the risks posed by coastal hazards and it emphasizes the siting and designing new development to avoid hazardous areas rather than relying on protective devices. The City also supports efforts to relocate facilities, such as the once through cooling facilities at Mandalay and Ormond beach and the campground at McGrath State Park, to areas less susceptible to flooding and coastal hazards. The draft LCP also indicates the City’s support for efforts to protect the Ormond and Mandalay beach areas as wetlands and coastal dune habitat.

¹² *Id.*, p. 91.

¹³ TN# 204942 and TN# 204943.

¹⁴ TN# 211847.

Based on these land use policies and work done by the City demonstrating that the MGS site is subject to coastal hazards from sea level rise, coastal flooding, and tsunamis, the Puente facility is inconsistent with the City's current and future land use policies. Moreover, approval of the Puente facility will interfere with the City's efforts to plan for sea level rise in the area by constructing infrastructure in areas targeted for managed coastal retreat and, ultimately, natural resource protection.

Additionally, the City's policies regarding the siting of large scale energy facilities in areas subject to environmental hazards are intended, in part, to address the environmental impacts of such siting decisions. Beyond the risk to the facility itself posed by environmental hazards, these policies avoid risk to human life, including workers at the facility.¹⁵ The policies avoid environmental damage that might result from flooding or other disruption of the facility that could result in the spread of contaminated materials or soils. The policies also ensure that the City is able to respond to the threat of sea level rise and other coastal hazards by preventing the construction of facilities that physically interfere with the City's ability to manage development along its shoreline, to plan for sea level rise and other coastal hazards, and protect critical infrastructure from foreseeable hazards.

Inconsistency with the City's General Plan Height Limits

The Final Staff Assessment effectively concludes that the Project is not subject to a height limit in either the City's General Plan or Zoning Ordinance.¹⁶ This conclusion is erroneous and inconsistent with the City's interpretation of its own planning documents. The Project site is subject to the six-story limit contained in the General Plan's Height Overlay District, but the Project as proposed exceeds that limit by roughly 2.5 times.

The Project site is zoned "EC-Coastal Energy Facilities Sub-Zone" in the City's Coastal Zoning Ordinance,¹⁷ but this zoning has no specified height limit. Instead, the EC Zoning states that applicable standards are contained in Section 17-5 "General Requirements."¹⁸ Among other things, the General Requirements state that "An application approved by any reviewing body must be found to be consistent with the objectives, policies, general land uses and programs of the city general plan *and* the coastal land use plan. If there are any conflicts between the provisions or land use

¹⁵ For example, the General Plan Amendments adopted in Resolution 14,925 were adopted to reduce the risk of damage or loss of life and property associated with construction of large power plants in areas subjected to coastal hazards. TN# 211847.

¹⁶ FSA, p. 4.7-10 .

¹⁷ Excerpts, Municipal Code, Section 17-20.

¹⁸ *Id.*, Section 17-20(C)(1).

designations of the coastal land use plan and the general plan, the coastal land use plan shall prevail.”¹⁹ The City interprets a conflict in policies to mean it is not possible to apply both policies, in which case it applies the stricter of the two policies. Since the coastal land use plan is silent as to height limits for the property, the City’s General Plan limits would apply.

The General Plan land use map gives the Project site the coastal zone designation “Public Utility/Energy Facility.”²⁰ The General Plan land use designation table shows that this Public Utility/Energy Facility designation is subject to the Height Overlay District District’s regulations.²¹ As the project exceeds this 6 story height limit, it is not consistent with the City’s General Plan.

Finally, the City’s determination that development on the Project site cannot have unlimited height is also consistent with the Coastal Act. Section 30251 requires new development to be sited and designed to “protect views . . . and be visually compatible with the character of the surrounding area.” Development in the coastal zone without any height limit would conflict with this section of the Coastal Act.

Recreational and Aesthetic Impacts

Throughout the proceeding, numerous public officials and residents have commented on the aesthetic and recreational impacts of the proposed Project.²² Oxnard’s beach is a valued natural resource, as demonstrated by the adjacent locations of McGrath State Beach and Mandalay Beach Park. The existing Mandalay Generating Station has long been a blight on this important recreational resource. With that plant scheduled to close, the proposed Project would extend that recreational impact for at least another two generations of Oxnard residents.

The proposed Project would also have significant aesthetic impacts and conflict with the City’s Coastal Land Use Plan. The proposed stack blocks the expansive view of the Pacific Ocean and the Channel Islands National Park from hillside areas in west Ventura County. Although the Final Staff Assessment does not acknowledge it, Oxnard Coastal Land Use Plan Policy 38 provides that “Height restrictions as defined by the City Zoning Ordinance shall be used to avoid blocking views.”²³ The proposed Project would also conflict with this policy by blocking scenic vistas of the Pacific Ocean.

¹⁹ *Id.*, Section 17-5(M) (emphasis added).

²⁰ 2030 General Plan Map with Land Use Designations.

²¹ Excerpts, 2030 General Plan, Goals & Policies, pp. 3-18 and 3-19.

²² TN #211996, TN# 212448, TN# 212467, TN# 212673, TN# 213558, TN# 213654, TN# 213948, TN# 213949, TN# 214778, TN# 214824, TN# 215247, TN# 215252.

²³ Coastal Land Use Plan, p. III-23.

Demolition of Mandalay Units 1 and 2 and Sand Nourishment

The final staff assessment relies in part on the demolition of Mandalay Units 1 and 2 to find that the impacts of approving the Puente Project would not be significant. The issuance of permits for demolition of Units 1 and 2 is within the jurisdiction of Oxnard. Before such demolition permits may be issued, the City must review any application, the environmental impacts of such action, and make findings to support the permit issuance. Because such permits would be in the coastal zone, they are also subject to appeal to the Coastal Commission, and the demolition proposal must comply with the Coastal Act.

The final staff assessment also recommends dune maintenance in the event it is necessary to protect the dunes that would front the Puente Project. The City must issue permits for any activities that involve the movement of sand that constitutes “development” under the Coastal Act.²⁴ The City must also approve any activities that require sand nourishment in the coastal zone. Before such permits may be issued, the City must review any application, the environmental impacts of such action, and make findings that the project is consistent with the Local Coastal Plan and other City regulations. Because such permits would be in the coastal zone, they are also subject to appeal to the Coastal Commission.

Nuisance Abatement

The City has the ability to require the removal of abandoned structures that constitute a public nuisance. For example, section 7-151 of the City’s Municipal Code defines a nuisance to include abandoned buildings or structures, buildings that are unsightly, or property that is maintained in a way that is “detrimental to the public health, safety, or general welfare or in such manner as to constitute a public nuisance as defined by Cal. Civil Code, Section 3480.”²⁵ The City’s Municipal Code and the City’s Coastal Zoning Ordinance also authorizes the City to order the removal of any nonconforming structure with a reasonable amortization period.²⁶ The once through cooling facilities at Mandalay and Ormond Beach are nonconforming uses under the City’s 2030 General Plan, as amended. In addition, once these facilities go offline, they will become an abandoned use. Therefore, these facilities could be subject to a nuisance abatement action by the City in the future.

Project Alternatives

Throughout this proceeding, the City has encouraged CEC staff to seriously consider alternatives project sites to avoid inconsistencies with the City’s land use

²⁴ Pub. Res. Code Section 30106.

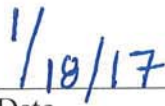
²⁵ Excerpts, Municipal Code, Section 7-151.

²⁶ *Id.*, Sections 16-512, 16-513, 17-50.

regulations and adaptation efforts. Despite this, the FSA rejects numerous inland project sites that would reduce conflicts with the City's land use plans. At the January 10, 2017 staff workshop on the FSA, counsel for staff also stated that they were unable to modify the project to avoid or reduce inconsistency with the City's land use regulations.

At various times in this proceeding, some have suggested that the City should work with NRG to resolve their disagreements surrounding this project. The City has been willing to discuss alternatives that would meet the need identified in the 2012 Long Term Procurement Plan without the construction of a 262 megawatt gas-fired power plant on its beach. The City could consider alternative locations and/or configurations of a gas-fired power plant that complies with its General Plan policies. NRG has informed the City on several occasions that their contract with SCE specified the proposed location and technology and that NRG would not consider alternative projects that differed from the project described in the contract.


Signature


Date