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In the Matter of:
Sequoia Data Center )
_______________________________) Docket No. 19-SPPE-03

COMMITTEE CONFERENCE AND ORDERS ON HEARINGS

WARREN-ALQUIST STATE ENERGY BUILDING
ART ROSENFIELD HEARING ROOM, FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 17, 2019
10:00 A.M.

Reported by:
Gigi Lastra
APPEARANCES

COMMITTEE MEMBERS
Karen Douglas, Lead Commissioner
Patty Monahan, Associate Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Ben De Alba, Advisor to Commissioner Monahan
Jana Romero, Advisor to Commissioner Monahan

HEARING OFFICER
Galen Lemei, Hearing Advisor

CEC STAFF
Lon Payne, Project Manager
Lisa DeCarlo, Staff Counsel
Kristy Chew, Technical Advisor
Jana Romero
Eric Knight

PUBLIC ADVISOR
Rosemary Avalos

APPLICANT
Scott Gallati
Jeff Devine
AGENDA

I. Welcome and Opening Remarks
   Commissioner Douglas

II. Background

III. Overview by Applicant

IV. Application Status Discussion

V. Public Adviser Presentation

VI. Closed Session

Adjourn
COMMISSIONER DOUGLAS: All right. Good morning everybody. This is a Committee Conference regarding the Proposed Small Power Plant Exemption for the Sequoia Backup Generating Facility.

The Energy Commission has assigned a Committee of two Commissioners to conduct these proceedings. I’m Karen Douglas, the Presiding Member of this Committee. Patty Monahan, the Assistant Member of the Committee is to my left.

And I’d like to introduce the people here on the dais today. To my right is Courtney Vaccaro, my Advisor. And to my immediate left, our Hearing Advisor, Galen Lemei. Commissioner Monahan’s Advisors, Ben De Alba, and Ben De Alba is here. Jana Romero is coming. And Kristy Chew, Technical Advisor to the Commissioners on siting matters is also here.

So I’ll ask the parties to introduce themselves now, starting with the Applicant.

MR. GALLATI: Scott Gallati representing
Cl-Santa Clara, which is a Sirus 1 (phonetic) entity on the Sequoia Backup Generating Facility.

MR. DEVINE: Good morning. My name is Jeff Devine. I am the Director of Design and Construction for Sirus 1, Western Region.

COMMISSIONER DOUGLAS: All right. Thank you very much.

And Staff?

MR. PAYNE: Lon Payne, Project Manager. And with me is Lisa DeCarlo from the Legal Counsel’s Office.

COMMISSIONER DOUGLAS: Thank you very much.

And, let’s see here, Public Advisor’s Office, so Public Advisor’s Office is represented.

And let me just ask, let’s see, do we have any public agencies present, federal public agencies, state, local, tribes, in the room? All right.

We’ll go on to WebEx then. And let me just ask, do we have any representatives of public agencies on the WebEx? It does not look like it. All right.
Well, then, I think we have concluded the introductions. I’ll turn over the conduct of the rest of the Committee Conference to Hearing Officer Lemei.

HEARING OFFICER LEMEI: Hello everyone.

I see almost entirely familiar faces in the room and that’s nice. And I am, of course, here in a new role, so I’m doing my very best. And it’s nice to have everyone here.

With respect to parties, I’ll just note real quick that a Petition to Intervene was received from Robert Sarvey. That is pending before the Committee currently. And I don’t believe I see Mr. Sarvey in the room. But if you’re here and I’m missing you, then I apologize, or if you’re on WebEx, welcome.

Okay, background discussion.

Notice of today’s Committee Conference was provided on November 26th of 2019. In the November 26th, 2019 notice and order, the Committee directed Staff to file an Issues Identification Report, Staff Report, and Proposed Schedule, which I will collectively refer to as the Issues Identification Report or the Staff Report for simplicity.
The Committee also directed Applicant to respond to Staff’s report. Staff filed its Issue Identification Report on December 4th and Applicant filed its reply on December 11th, 2019. All these documents are available on the Energy Commission’s website in the electronic docket for this proceeding. The Docket Number for this proceeding is 19-SPPE-03.

The agenda for today’s conference will be as follows, which is a slight modification to the agenda published in the notice.

First, I will provide an overview of what a Small Power Plant Exemption, or SPPE, is and rules applicable to this proceeding. Second, the Applicant will give an overview of the proposed project. Third, Staff will provide an overview of its role and review it will conduct of this application. Fourth, there will be a discussion of the status of the application, issues identified in Staff’s Report, and the Proposed Schedule for the Proceeding. Fifth, a representative of the Public Advisor will discuss opportunities for public participation, followed by public comment. And finally, the Committee may adjourn to closed session to discuss this
proceeding, at the conclusion of which we will adjourn the hearing.

A quick overview of the Small Power Plant Exemption.

The Energy Commission has exclusive authority to consider and ultimately approve or deny applications for the construction and operation of thermal power plants that will generate 50 megawatts or more of electricity. However, the law allows the Energy Commission to grant and exemption from this authority for a project that will generate between 50 and 100 megawatts if the Energy Commission finds that construction and operation of the proposed project will not result in substantial adverse impacts on the environment or energy resources. This process is commonly referred to as a Small Power Plant Exemption or SPPE for short.

As required by the Environmental Quality Act, or CEQA, the Energy Commission evaluates the whole of a project to determine whether the construction or operation of the project will result in a substantial adverse impact on the environment. In considering a Small Power Plant Exemption, the Energy Commission is the CEQA lead.
agency under the Warren-Alquist Act.

If the Energy Commission grants a Small Power Plant Exemption, the responsible local land use authorities and other agencies, such as the local air management district, will assume jurisdiction over the project under their respective permitting processes and conduct any other necessary environmental review as responsible agencies under CEQA.

If the Energy Commission does not grant a Small Power Plant Exemption for a proposed power plant that is otherwise within its jurisdiction, then the project proponent would need to file an Application for Certification with the Energy Commission to obtain a permit. The Small Power Plant Exemption process is expedited compared to the Application for Certification process.

Today’s Committee Conference is the first in a series of Committee events that will extend over the next several months. This Committee will hold evidentiary hearings. Following evidentiary hearings and any briefing offered by the Committee, a Committee Proposed Decision containing recommendations for the full Energy Commission to approve or deny the requested
exemption will be issued.

A quick note on ex parte rules. Pursuant to the Energy Commission’s recommendations, this proceeding will be conducted as an adjudicative proceeding. The Energy Commission’s regulations and state law require that we ensure a fair process for everyone who participates in such proceedings. One of the ways we do this is through the ex parte rule.

The ex parte rule requires that parties in an adjudicative proceeding, as well as any interested persons inside and outside of the Commission, including the general public, are prohibited from communicating with presiding officers outside of a noticed meeting about anything that may be in controversy or dispute. Communications, including voicemail -- communications includes voicemail messages, text messages, emails, letters, telephone calls, in-person discussions, essentially any form of communication, unless all parties have notice and opportunity to participate in the communication.

In this proceeding the Presiding Officers are the Commissioners of the Energy Commission, which includes both Commissioner Douglas and
Commissioner Monahan, as well as the three other members of the Energy Commission, and me, the Hearing Officer. Ex parte communications are also prohibited with individuals assisting the Presiding Officers, which in this proceeding includes anyone serving as an advisor to Commissioners, including everyone you see here on the dais, and any attorneys assisting the Committee and the Commission in this proceeding.

We’ll now move on to a discussion of the project, issues, and schedule.

Applicant, could you please present an overview of the proposed project?

MR. DEVINE: Okay. Good morning again. As you can see from the first slide, this is one of the proposed -- the location of our building is actually on -- in Santa Clara off of De La Cruz Boulevard. This vantage point is taken from the perspective of heading south on De La Cruz Boulevard with the airport being on your left and our building being on the right. It shows the front half of the building -- or, actually, this is about the front quarter of our building which is, essentially, the office structure. We have about 60,000 square foot of office space, and
then other ancillary spaces that support the data center, which is towards the back of the building.

Next slide please.

This is from a different perspective.

This is actually heading north on De La Cruz with the airport being on your right and the building being on your left. The Sirius 1 logo, that part of the structure is actually the freight elevator which extends beyond the top of the building for elevator overrun purposes. And that allows us to get equipment, materials and whatnot to the roof deck, should something fail, a piece of equipment on one of the A/C units, whatnot, so that’s what we’re going to be basically using that for.

The wall -- oh, not yet, just really quickly, the wall that you see down toward the bottom left-hand corner is actually the wall that hides our loading dock and our trash receptacles as required by the City of Santa Clara.

Next slide please. Can you expand the third one please? Yes, sir. Okay.

This kind of gives you a better perspective. The next slide will, as well, it will explain a little bit better. But the
building itself is just slightly over 700,000 square feet under roof. We have four stories, again, of office space, as well as data center. The lion’s share of that 703,000 is data center space. We have a total of 11 data centers within the structure. I forget what the breakdown is. I think it’s four on the fourth floor, four on the third, and three, I believe, on the second floor.

As you can see, this is De La Cruz Boulevard off to the left of the photo. Can you expand that a little bit bigger please? That’s better.

You can see De La Cruz Boulevard off to the bottom left-hand side of that particular photo. And beyond us is a company called One Workplace, that’s the south of us. And just to the north of us, where the parking lot, that’s the existing Enterprise Rent-A-Car space. Let me see here.

As you can see from this photo, and will see from the next one, as well, it shows, this one shows the A/C units that are resting on top of the structure. We’re getting better here, kind of. Well, if the picture in the middle --
there we go -- you’d be able to see the A/C units that are resting on top of the building. Okay.

And next, sir, please. You’re going to have to size it down a little bit.

This is a bird’s eye view of the -- of our property, as well as the building, and all the other items that we have on our property to support the building.

That’s fine right there. Perfect. Thank you very much.

As you can see, I mentioned earlier that the San Jose International Airport was directly adjacent or across from De La Cruz Boulevard. Here, it gives a good representation of that and how -- it shows you how close we are to that property.

The data center again, 702. This shows 702. It’s actually 703,000 square feet. Off to the left-hand side of the building, actually, we’ll do this, we’ll say Plant West for that purposes, we have a new substation which we’re constructing which is -- we’re in relation to or in conjunction with the SVP’s (phonetic) requirements and direction.

We also have the diesel generators which
are located to the south of the building and to the west side of the building. And we have exits, both on the Martin side, which is the south end, and entrance and exits on the De La Cruz side of the property.

That space you see up north, basically in the upper left-hand corner of the property, is going to be vacant. We’re leaving that, basically, undeveloped, so it will be green space.

We, again, this building has seen several different design iterations in it and, basically, to conform to different requirements from different organizations. So we’ve been able to - - we’ve had the luxury of having the time to do that, so we’ve been able to, like I said, change the design to meet the requirements of whoever had that jurisdiction at that time.

So that’s basically the project as of right now.

HEARING OFFICER LEMEI: Thank you.

Staff, could you please discuss your process for reviewing an application for a Small Power Plant Exemption such as this --

MR. PAYNE: Sure.
HEARING OFFICER LEMEI: -- an application
for a Small Power Plant Exemption such as this,
and present on your Issue Identification Report?

MR. PAYNE: Sure thing. We don’t have
any particular presentation slides but I will be
referring to the Issue I.D. Report that we
submitted, specifically the portion where we go
into our schedule issues which is, essentially, a
milestone list of the major things we do from the
time we get an application in through our
notification procedures, coordinating with other
agencies, coordinating with the tribes, and then
going into what, in these projects, tends to be
the part that takes the longest and is the most
complicated, which is sort of data requests and
responses going back and forth. On this
particular project, we’ve had several rounds of
that.

And as you might have seen on the docket
this morning, we had our third -- a response to
our third set of data requests just came in this
morning at 8:00 a.m.

So we’re, essentially, operating on two
different tracks. We’ve got data requests that
are going out for specific technical chapters for
our CEQA document. And those are, essentially, still in the data gathering phase. We have other technical chapters for our CEQA document that have the information they’ve needed and, in many cases, are already drafted and ready to go when we can join them with the others.

So just to give you a basic status check on where we’re at, some of this is impacted by the fact that we’re doing two analyses at once. There’s another project called Walsh. And we also have this project. They came in close to the same time but Walsh came in first, so we’re slightly further ahead on that one.

But on this one in particular, out of the 21 technical chapters we create for a CEQA document which, in general, has been an initial study is the document we produce, we have drafted 9 of those 21 sections. There are maybe a few that we could get in quite quickly and probably would be, had we not been prioritizing work on Walsh based on Walsh coming in first.

We then have several others, probably six, seven, that are impacted by the need to get responses, like the ones we just received this morning, to data request set three. So about
half of the document is already in the can. The rest is we are evaluating the data responses that just came in. Once we have that information and know that it’s complete for analysis purposes, we will then complete drafting our sections. That will then get reviewed, ultimately get wrapped up into an initial study that we will then publish.

So I’m not going to get into the parts of the schedule which you control because -- you know, the hearing dates and prehearing conference. But the parts of it that involve Staff producing our document that you can then work from, that’s the rundown.

There are a couple things that I want to talk about in the context of, you know, we put out a schedule based on the information we had at the time. When we were -- ordered the docket, this particular schedule was part of the Issue I.D. Report, and there was still quite a bit unknown because we were in the process of doing this data request set three and gathering some information we didn’t have.

In the meantime, I’d say a couple of things have happened that I wanted to draw your attention to, the first of which is the Applicant
filed a schedule with actual proposed dates in response to our schedule, in particular mentioning the 15th as a date that they’d like to see the initial study go out. We’ve made some adjustments internally based on that specific date and are trying to figure out whether we can meet it or not. I’ve got that question out to key folks who are preparing the final sections to see whether or not we think we can do it. At this stage, we think we’re weeks apart, not months apart, if that is helpful. And based on the information that came in this morning, we may be, actually, days apart as opposed to weeks apart.

But today, I don’t have a definitive answer for you about whether I can guarantee that I can get this particular document and initial study out on the 15th. However, I do feel pretty confident that, based on what we got in this morning and where the other analysis for the other technical chapters is at, based on best information I have as of 10:20 this morning, I think we can get a joint stipulated schedule to you, like we’re planning to do on Walsh, I think we can get it to you by, I’d say, the 23rd, which
is early next week. And we can let you know
whether we can hit the 15th or whether we would
ask for days or weeks, depending on what the
answers and our review of the answers we just go
say, so I can commit to that this morning.

I have not mentioned this to the
Applicant at this time. But based on our other
conversations have gone, I would imagine that
would probably be pretty helpful, and that we
would be able to agree on that, but I’ll let them
speak to that when I’m finished.

The only other point that I wanted to
draw to your attention is that on the Applicant’s
response to our schedule, they did what we had
hoped they would do which is to recommend that
CEQA comments and opening testimony be the same
day. They mentioned it as the 14th. We don’t
think of it as a particular day, the 14th, we
think of it as at least 30 days after our CEQA
document goes out because that the CEQA
requirement for comments. So that date is really
up to you, when you want to set that particular
date but, you know, we’re fine with that. We
know that will flow from the date that the
initial study gets published.
However, we did want to point out, because we think it’s quite important, we would like the Committee to reserve at least ten working days or at least two weeks for the responses to the CEQA document, which we’re going to include with our reply testimony. So the Applicant’s schedule only gives a week for that and we wanted to make sure that you had seen the portion of our Issue I.D. Report that mentions, specifically, we’d like ten days, ten working days, between opening testimony and reply testimony because that’s when we would be doing both our reply to any opening testimony submitted, but also to CEQA comments which we were going to do together.

That’s the basics. I’d love to get some feedback from Scott on whether he thinks the 23rd stipulated schedule is something that we could produce and we can agree to that right now.

HEARING OFFICER LEMEI: So, if I may real quick, the agenda arbitrarily compartmentalized topics. And I think what we’re going here is sort of transitioning into a discussion of the schedule which, per the agenda, was supposed to happen later, but I think that’s fine and
organic. We also want to talk a little bit about
the issues raised. But let’s go ahead and move
forward with the discussion that we’re having
now. And I’m just noting that we’re departing
from the stated agenda and that’s not a problem
in terms of the order of operations.

MR. GALLATI: Yeah. I think that if we
get a firm commitment that the initial study and
proposed MMD come out on the 23rd, that would be
acceptable to us. We still think we can make --
I would like --

MR. PAYNE: Scott, just for the sake of
clarification, we’re not talking about asking for
additional time on the initial study itself. We
still may be able to hit the 15th. We don’t
know that.

We’re talking about a joint stipulated
schedule on December 23rd where we would identify
a specific date that you and I both think is
reasonable for getting it published. I just
can’t give you an answer of whether that date is
January 15th based on what I know at 10:00 a.m.
with data responses that came in at 8:20 this
morning.

MR. GALLATI: So just I have to address a
couple of things. This is our third round of
data responses. We got them on the 6th of
December. We filed them on the 16th of December.
They included new air quality modeling and we
still got them done. So this is -- I think the
Applicant has been working extremely hard. They
have beat every date in filing what they can.

There was a wrinkle in the project. He
wrinkle in the project had to do with the Airport
Land Use Commission. The Energy Commission staff
contacted the Airport Land Use Commission. The
Airport Land Use Commission and the city decided
that they would voluntarily, not mandatory that
we go to the ALUC, voluntarily seeked their
guidance. So we got on the earliest meeting to
go to the Airport Land Use Commission to discuss
a couple of issues. That was November 20th.

November 20th, the Airport Land Use
Commission voted and found the project consistent
with the Airport Land Use Plan but we had to
change one thing and that was we had to take the
tanks that sit on the ground, and then the
generator sits on top of the tank, and because
ey they have a policy of no above-ground tanks, we
had to put that below grade, so we redesigned a
way to put that below grade.

We worked with the fire department, who would prefer us not to have underground tanks that they can’t inspect the sides of, so we have created a concrete basin and we put the tanks underground, below grade, and they have metal grating over the top that can be removed so someone can go down and check the outside of the tank. So it’s a positive change. And that caused Staff to provide us with that set of data requests.

The Airport Land Use Commission hasn’t produced a letter in writing yet. But Staff can certainly call the Airport Land Use Commissioner -- excuse me, the staff and verify what I just said. They had something go wrong with their minutes in their recording, so they’ve been trying to recreate to write this letter for us. So that’s the only outstanding piece of information from our perspective that is outstanding.

In the data requests that were -- the data responses that were provided, there is -- Staff asked for, how will operate and maintain the concrete basin? We were unable to get that
answer but we’ll be filing that right away.

MR. PAYNE: Just to --

MR. GALLATI: I wanted to make sure the Commission knew, Mr. Devine went out and hired the CEQA consultant that the city would have hired to process this project to prepare our application. And we didn’t prepare the application. The staff of that consultant wrote an initial study with proposed mitigation measures incorporated into the project that they would have written for the city had this Applicant just provided them with a project description. So we think that most of the work was done and most of it should have just been verified by Staff.

We think that some of the questions have gone far afield from CEQA. You hear me say this almost every time. And that’s what we believe is taking a lot of time.

So I think we’re -- I’m uncomfortable about waiting until next week to come up with a joint stipulated schedule because should Staff not agree with an expedited schedule, I don’t get to address the Commission -- the Committee right now. We believe that Staff should be able to get
their analysis done by the 15th. We filed in August. We responded to three sets of data requests. Few of those data requests really changed the analysis. They were mostly more information to describe the project better.

And so we would like the Committee to issue an aggressive schedule. We don’t actually think the 15th is that aggressive. We’re only dealing with one issue left in our -- from our perspective and that is verification that the ALUC has agreed to finding the consistency.

Ironically, the only reason we had to get that consistency determination is because one of the runways where this master plan was prepared had some particular zones designated. That runway has been decommissioned for ten years, they just haven’t updated the master plan. So Mr. Devine has agreed to spend extra money to put these tanks underground and below grade and shortly, probably within the next year, those zones will go away. And he’s doing that because he wants to build this project and he would like to get to construction as soon as possible.

So we ask you for a January 15th date. I’d be happy to work with Staff after that date.
is set to determine whether it should be extended. But at this point, I’m going to lose any opportunity to plead with you to give me a firm date that keeps Staff working towards a goal.

MR. PAYNE: Just a quick reply to that. I would concur that Applicant has done a really terrific job getting answers to us on an expedited timeframe. When we put out requests we’re cognizant of the fact that there is different -- you know, like regulatory dates, you know, 20 to 30 days for objecting and those sorts of things, and Applicant has consistently been able to get them in quicker to us to try to move us along.

I would also say we are very aggressively working to get this particular initial study to completion. And the reason I had mentioned the other project we’re analyzing as part of this is up until, literally, two or three days ago we had assumed we would get that one out because it came in a few weeks earlier. And we have now adjusted our priorities to get this one to leapfrog that one and get this one out first. And we do not think we’re far apart on when we can do it. I
just know that right now, as a P.M., if I
guarantee you the 15th and I can’t do it, it’s
not going to look good.

So I think that I’m very close to it, I
just don’t have the confidence based on not
knowing -- not being able to pull Staff who are
actively reviewing and digesting the submittal we
got at 8:00 in the morning today, how that is
going to impact their ability to deliver their
chapters, and then all of the work I need to do
on the back end of that to get that entire
document through review, get all the appropriate
people brief. I think I’ll have answers to that
by the 23rd and that’s why I’m suggesting that’s
a date that we can definitively that it either is
the 15th, or later, or possibly earlier. I don’t
know the answer because I haven’t been able to
have that conversation with Staff about what they
think about what they just got this morning at
8:00 a.m.

HEARING OFFICER LEMEI: Understood.

So I think that this is a good
opportunity and a good segue to speak about
substantive issues more generally. The Committee
did have just a few things that we wanted to
mention which folds into the discussion of when
the initial study could be published.

So in the Issue Identification Report,
Staff did identify this concern about generator
fuel tanks and consistency with the Comprehensive
Land Use Plan adopted by the Santa Clara Airport
Land Use Commission. A clarifying question: Is
that a creature of municipal government? Is that
a division -- is that part of the City of Santa
Clara?

MR. GALLATI: Yeah. It’s part of the
County of Santa Clara.

HEARING OFFICER LEMEI: County of Santa
Clara.

MR. GALLATI: And so the County of Santa
Clara has an Airport Land Use Commission. What
they do is they adopt a master plan surrounding
properties at the airport that -- and it has
policies so that it does not impact the airport.
And if you are consistent with that plan, then
you can build that particular facility.

Generally, if the zoning is consistent,
then you don’t have to go to the Airport Land Use
Commission for a determination. In this case, we
did, and made those modifications that were the
subject of the last data request.

HEARING OFFICER LEMEI: Understand.

So we note that Applicant did just provide the latest responses to data requests.

There was -- this -- let me step back.

Going back to Staff’s Issue Identification Report, Staff also stated that at this time, understanding that this is now a couple of weeks ago, at this time, Staff is unaware of any other issues in the Sequoia project that require resolution before the Staff’s initial study can be published and hearings conducted. But Staff did note that this particular request was outstanding and that other responses have been received.

The question is, and understanding that you’ve had very limited opportunity to review the requests received or the responses received today, but more generally, do the responses to data requests received to date, including anything you can say about the ones received today, raise significant new issues?

MR. PAYNE: I’m still not aware of anything specifically. There are always issues where it would be nice to have information and
sometimes it’s simply not available from the Applicant, in which case we need to go out and gather it independently. And part of the work I’ve been trying to do to figure out a good schedule for you has been to try to figure out which of our technical areas need to go out and get things on their own which, now that we understand that we need to get this one ahead of Walsh, we have been aggressively working to get the answers on those issues as well.

So that work is, essentially, going on as we speak, along with the analysis of what we got at 8:00 a.m. this morning. And that’s why I’m suggesting the 23rd as a date that I will know those answers and can get you something that at least will pin down the dates on when we could do it.

If it is important to do another Committee conference to signal to the Committee any of those things in advance of the initial study, we could probably do that. But I’m actually quite cognizant of the impact that would have on the schedule itself for us to essentially pre look through those issues rather than do those in the course of issuing the initial study.
and getting comment on it. And I think that
would slow things down rather than provide
additional clarity. And that’s -- my concern at
this point is that I don’t know enough to give
you a good accounting of it. And I think if we
set up a procedural mechanism to do that, we
would slow the schedule down even more
significantly and I don’t think that’s what the
Applicant wants.

HEARING OFFICER LEMEI: When you say
procedural mechanism, you mean --

MR. PAYNE: Additional --

HEARING OFFICER LEMEI: -- another
Committee conference?

MR. PAYNE: -- additional Committee
conference ordering -- ordered -- notice time to
do that. I think that we could get this going
quicker, just by virtue of us figuring the
quickest day we can get our initial study out.

HEARING OFFICER LEMEI: Right.

Scott, did you -- it looked like you
were --

MR. GALLATI: Yeah.

HEARING OFFICER LEMEI: -- leaning
forward.
MR. GALLATI: Yeah. I just wanted to let everybody know, what this data request three was, was we had already submitted a drawing of what this concrete basin looks like and it prompted some questions. The primary questions were: Does it change any of your air quality modeling? And it doesn’t. We kept the stacked tips the same, so we described that.

The second thing that Staff asked was redo the construction modeling because we’ll be excavating some soil. We calculated the amount of soil. We calculated. It’s de minimus but we redid the modeling anyway. It didn’t change any of the results.

So there isn’t a lot here for Staff to work through. And I don’t want that to be used as a reason that Staff can’t continue. When they do read the answers, and they should have known that they were going to get answers similar to that because we’re talking about a large site that was being graded, and we did the air quality modeling for it, now we’ve got some additional trenching, so it was pretty minor. How this would have been handled at the city would have been a simple condition that said, hey, you have
to underground this in accordance with the building code --

HEARING OFFICER LEMEI: Um-hmm.

MR. GALLATI: -- and that’s all that would have been done. It would have been -- it would have not have been done, additional construction emissions’ calculations or modeling. That’s been done.

And so the only thing that we were unable to provide is the letter from the ALUC saying we’re consistent. And, again, I urge Staff to pick up the phone and call Mark Connolly, who is the planner. He was at the meeting, he’s the one preparing the letter, and he can certainly verify what I’ve said. We certainly will have it in time, I believe, for any proceeding.

HEARING OFFICER LEMEI: Is that letter required?

MR. GALLATI: Probably get two different answers as we sit here. My answer is, is it not required.

HEARING OFFICER LEMEI: Thank you. Thank you for that. So that was what we wanted to talk about, flowing out of the Issue Identification Report specifically.
We had just -- the Committee had just a handful of other issues that we wanted to mention from our review of, of course, the Staff’s Report on Applicant’s response, also the application itself and the voluminous appendices which we’ve read.

So regarding land use generally with the issue with conformance with the ALUC being a subset, but there being any number of other land use requirements that are referenced in the application, just the point that if an exception is needed from a city or a county requirement for any project feature, the Committee does need to or would like to understand the process through which -- and we hope the environmental documents, the testimony, reflects the process through which the city or the county grants such an exception, the criteria applied, and the extent to which that conformance or nonconformance or exception tracks with environmental concerns, gives rise to a potential environmental issue if it appears that that rule or requirement is in place to ward against environmental -- potential environmental impacts, how those potential impacts are being addressed. I just want to make sure that that’s
reflected for each of those land use issues that are raised.

With respect to air quality and health assessment, the application states that,

"A complete HRA, Health Risk Assessment, was conducted to evaluate the potential health risks associated with airborne emissions from routine operations of the facility, SBGF,"

that’s the end of the quotation.

The application also states that, quote,

"BAAQMD’s new policy regarding calculating emissions from the backup generators clarifies that emissions during emergency operations are not required to be included when evaluating compliance with Regulation 2, Rule 5."

That’s in Appendix F, as well as in Table 18, but then Table 18 appears to include accumulative health risk assessment.

We hope that the environmental documents and testimony in this proceeding clarify these issues, reflect whether the extent to which emissions associated with emergency operations are or are not included in the analysis and, if so, the number of hours that are assumed for
analysis of emergency operations.

And then with respect to the underlying requirements, if the requirements of the Bay Area Air Quality Management District or any other applicable laws, ordinances, rules or standards that relate to environmental quality and potential environmental impacts associated with air quality or health risk assessment, how those pertain to emissions from emergency operations for TACs and criteria pollutants?

I’ll just acknowledge that the underlying -- the guidance from the Bay Area Air Quality Management District is -- there’s a lot there, so some clarification on that point and how it applies to the facility from the parties would be appreciated.

MR. GALLATI: Can I ask some questions along those lines? I want to make sure we’re clear.

HEARING OFFICER LEMEI: You may ask questions. I don’t know if I’ll have answers.

MR. GALLATI: Okay. I want to try to make a clear record. In Walsh, similar questions were asked. I wasn’t smart enough to ask questions. And as we read the transcript, Staff
believes one thing was meant and I believe another thing was meant. So I’d like to try to get some clarity on that.

The policy that you’re talking about for the 100 hours is for purposes of calculating offsets. And is there another policy that you’re referring to or is that the one that you want clarification about whether or not it leads to other modeling efforts and how emergencies should be treated for CEQA purposes? Is that the policy you’re referring to?

HEARING OFFICER LEMEI: Well, the application references a particular -- it’s not clear if it’s actually part of the Bay Area -- of BAAQMD’s regulations or how it relates on its face to regulations. It appeared to me like this was pertaining to the calculation for the purpose of various thresholds of applicable thresholds but that was the specific document that I was referring to that the application referred to. However, the question is much more general. The question is: What are the applicable rule sets? What are the applicable rules that apply to the analysis of air quality impacts and, specifically, impacts from emergency
There is this one specific document that speaks to calculation for the purposes of emergency operations but that builds upon a much broader framework with references in it as well. And that’s the frame of reference from BAAQMD.

The Committee would -- expects the testimony submitted in the proceeding to fully clarify how these laws or how these requirements are being complied with.

MR. GALLATI: Yeah. Thank you. That’s helpful. We referred to that guidance document. As you know, it came out recently. We referred to that guidance document. We’ll certainly file this in testimony. But I think the short answer is the purpose of that guidance document does not affect any of the CEQA significance thresholds. And, in fact, the Bay Area doesn’t require any modeling associated with emergency operations. They do not do that type of analysis for emergency generators.

The purpose of that was to determine if you took 100 hours of operation and added it to your maintenance and testing if, your potential to emit went above a certain threshold you could not access their small priority bank. We’re
already agreeing not to access the small priority bank for offsets. We’ll purchase our own offsets. That was purpose number one for that policy.

The second purpose for that policy was if you trigger over 100 tons, you would have to go to a more complex federal permitting process, called the Title 5 process, and that’s the only purpose of that policy. So it doesn’t have any bearing at all on CEQA, and we’ll provide that in testimony. That’s what we’re quoting that for is we’re aware of that policy because it came out before we filed. We did the calculations to show you that we don’t -- we aren’t going to the small bank and we don’t need Title 5 permit. That’s why we did those calculations.

HEARING OFFICER LEMEI: Okay. Thank you for that. And, of course, we hope that this is addressed in testimony.

And on that same point, we also expect Staff and Applicant to be clear and explicit when discussing air emissions about -- or terms that have specific meaning, such as routine and emergency, and ensure that that meeting is the same as if those terms have -- routine operations
and emergency operations are used, and BAAQMD’s regulations or environmental guidance documents, that we’re using those terms consistently and to be clear how we’re using those terms, again, in the testimony that’s submitted in the proceeding.

Moving on to the broader issue of cumulative impacts, we are, of course, aware that the Energy Commission has approved or is considering approval of Small Power Plant Exemption for a number of data centers with backup general in relatively close proximity. And we, of course, need to consider whether those facilities contribute to a cumulatively considerable impact. The Committee will be expecting discussion and evidence on and testimony on the potential for the Sequoia Backup Generating Facility to operate at the same time as other facilities with backup generation, including but not limited to those permitted by the Energy Commission and if simultaneous operation is foreseeable or likely, whether this contributes to any potential cumulative impact, including on air quality and public health. Of course, that’s only a facet of the cumulative impacts assessment but it’s an important aspect.
that we are cognizant of.

MR. PAYNE: Can I ask a clarifying question there?

HEARING OFFICER LEMEI: Um-hmm.

MR. PAYNE: You mentioned Energy Commission permitted facilities.

HEARING OFFICER LEMEI: Oh.

MR. PAYNE: Did you mean to talk about Energy Commission exempted facilities --

HEARING OFFICER LEMEI: I absolutely --

MR. PAYNE: -- in the context of data centers?

HEARING OFFICER LEMEI: -- misspoke.

Thank you for that clarification. Energy Commission exempted facilities, that is what I meant to say. Thank you.

MR. GALLATI: And again, trying to get clarity? Because that type of question, I think, prevented us from knowing what to do because the question raises unbelievably complex modeling requirements that we’re not sure how we can even do that.

What we did and what we propose is that the Energy Commission not attempt to go down and model simultaneous running of maintenance
activities at nearby facilities and that, in fact, rely on the CEQA threshold and guidance that the Bay Area Air Quality Management District does. They are the expert in air quality in this region. They have set an emission threshold. If you are below that emission threshold you do not contribute cumulatively and you offset. That is how the District approaches that analysis, as opposed to trying to determine whether Facility 1 will conduct routine operations during the hour of 9:00 to 10:00 and when Facility 2 is doing routine and maintenance operations, or during an emergency, whether Facility 1 is out and Facility 2 is operating or not operating or they still have power. It is unbelievably difficult.

And it is also difficult to get the parameters for each one of these facilities to be able to put into a model that makes any sense. So you can model it but what comes out isn’t going to make sense.

So what we urge the Committee to do is exactly what the City of Santa Clara would do and the City of San Jose does, they rely on the Bay Area Air Quality Management District’s cumulative thresholds to determine whether there are
cumulative impacts.

I believe that if we attempted to do what the Committee seems to be asking, it will take months for us to even come to an agreement with Staff how to do it, let alone then have to do it and then submit that information. So I don’t believe the Committee intends to do that. But I’m telling you that we’ve been struggling with Walsh with a similar comment since the status conference on Walsh with no clear direction on how we can do it.

So I would note, that’s exactly what Staff did in Laurelwood. They looked at the cumulative thresholds for purposes of determining whether there was a cumulative impact. That’s exactly what was done in the Vantage McLaren project. And it is not only legal and defensible, it is how the Bay Area Air Quality Management District, which is the air quality expert, would look at this if they were doing the CEQA analysis.

We would do our best to try to do that analysis. I’m just telling you, I don’t think we can.

HEARING OFFICER LEMEI: Commissioner
Monahan would like to ask a question.

COMMISSIONER MONAHAN: Scott, do you know how consistent the Bay Area management, like across all the air quality districts, and I’m particularly interested in the South Coast, do you know how much alignment there is between the air districts and their treatment of this issue?

MR. GALLATI: I don’t know the treatment of the issue for emergency backup generating. I do know the treatment of the issue for a source that were to require Title 5. I know that what the air -- what the South Coast would do and what the Bay Area Air Quality Management District for a large source like that would do. And, basically, they would conduct their own modeling for facilities that they had issued a permit. They wouldn’t try to capture existing facilities. That’s captured in the background. What they would do is for any permit that they issued they would do a cumulative modeling for those permits. In those cases the modeling makes more sense because you have facilities that are operating for a much larger amount of time, so you can predict when those facilities would operate together.
But, for example, after the Walsh status conference, we submitted a Freedom of Information -- we had to submit a Freedom of Information Act request to get information about facilities that the Bay Area was permitting and they just would not provide the data to us and said they could not provide the data to us to even try to attempt to do this modeling.

COMMISSIONER MONAHAN: Can I just ask that Staff explore this issue? Just because my presumption is that the South Coast will be sort of the most stringent, and they have dealt with this question of cumulative impacts a fair amount, and a lot of environmental justice concerns around facilities being aggregated. So it might just help us, just as a framing, to see how much alignment there is with the Bay Area Air Quality Management District’s treatment of, especially, the emergency operations aspect.

HEARING OFFICER LEMEI: I wanted to give Staff an opportunity to add anything.

But I also just wanted to clarify that the question is that these -- it’s a high-level question -- that these issues be addressed and that there’s clarity on how the analysis is
conducted and what requirements apply and how those requirements are met. If it comes to pass that there’s a lack of consensus or agreement about how that methodology should be undertaken, which at this moment I don’t -- it’s not clear to me that there is a lack of consensus between Staff and Applicant about how to approach the analysis, there are mechanisms for resolving that. You can submit questions to us. If necessary, we could schedule another status conference. Hopefully that wouldn’t be necessary. But the question is a high-level question, that there be clarity on these points.

And did Staff have anything to add?

MR. PAYNE: I don’t but I can look back behind me, if any of our folks would like to weigh in on this particular question?

Seeing none, we do not have any additional comments.

HEARING OFFICER LEMEI: Great. Well, we’ve -- in that case, we’ve gotten to the point where we get to discuss the schedule of the proceeding for the first time, which is -- what I think is appropriate now, then, is -- well, let me see. There’s -- let me just look over my
notes and how to adjust, based on the discussion that we’ve had.

So let me just take a moment and confer with the Presiding Officer.

(Colloquy between Hearing Officer Lemei and Commissioner Douglas)

(Pause)

HEARING OFFICER LEMEI: Okay. At this time, I think we would ask the Public Advisor to Say a few words and give the public an opportunity to comment.

MS. AVALOS: Good afternoon. My name is Rosemary Avalos and I work for the Public Advisor’s Office. And I’m here representing Public Advisor Naomi Gallero (phonetic). I’m going to give a brief overview of the function of the Public Advisor’s Office.

The Public Advisor’s Office is a bridge between the Energy Commission and the public. We encourage and facilitate public participation in meetings, hearings, workshops, and rulemakings to ensure the public’s voice is heard.

We conduct outreach that includes and educates stakeholders through traditional means, such as emails, phone calls, and assisting with
public comment. We work on advancing energy equity. The Public Advisor’s Office collaborates with and supports the Disadvantaged Communities Advisory Group. The Disadvantaged Advisory Group was established to advise the Energy Commission and the California Public Utilities Commission on clean energy and pollution reduction programs in disadvantaged communities.

We help stakeholders navigate processes and make proceedings accessible, for example, language assistance, ADA accommodations, and we recommend to the Energy Commission the best ways to engage all Californians. The Public Advisor’s model is no one is left out or left behind.

Thank you.

HEARING OFFICER LEMEI: Thank you.

So at this time, we'd like to take any public comment from members of the public that are present in the room. I’m not sure that I see any members of the public in the room.

Okay, my apologies. Before we take public comment, I’m going to talk about -- I’m going to respond and provide guidance on schedule. The moment we’ve all been waiting for.

So what we would like is for Staff to get
back to the parties and the Committee as soon as possible about whether the proposed January 15th date for -- is it -- right, for publishing the initial study, is it possible to send an email today to the Committee and the parties confirming whether that date will work?

MR. PAYNE: I would say, no.

HEARING OFFICER LEMEI: Okay.

MS. VACCARO: So, thank you. Excuse me. This is Courtney Vaccaro. So, thank you. We appreciate that you believe you can’t get that to the Committee today. But is there any reason, and if so, we would like to know why you could get such an email out to the Committee and the parties by tomorrow explaining what Staff’s rationale is for why January 15 would not work for the publication of that document? So, essentially, what we’re getting at is if you can’t do it today, we’d really like you to do it tomorrow. And if that’s not possible, could you help us understand why and when we might be able to get such an email?

MR. PAYNE: I would say the main issue has to do with the fact that we, until very recently, have been prioritizing work that is
similar on Walsh. We’ve only recently switched our emphasis to this project and work is ongoing, as we speak, to get these answers to these exact questions you’re asking. I checked in, even this morning, to find out whether what we got in the context of the information that came in at 8:00 a.m. gave us the answers we needed, and I got the answer that we don’t have it yet and I don’t know when, the exact time, that will come in.

So as soon as possible is doable but I can’t tell you if as soon as possible means tomorrow, the following day, or the next day. But I feel confident in why I proposed the 23rd as a date we could not only have an answer but work out a schedule with the Applicant confirming we can hit January 15th or not. I feel very confident I can do that.

Other than that, as soon as possible is as soon as possible. And I will, you know, endeavor to get it to you as quickly as possible, and if that’s tomorrow, I will give you the answer. I just can’t give you the answer based on the information I have at 10:30, 10:40 this morning.

MR. KNIGHT: This is Eric Knight, a
Manager in Environmental Office.

We’re committed to getting a response back to the Committee tomorrow on whether or not we can meet the 15th or not. So we’ll marshal everybody together and review the data responses and see where we’re at. But we have heard some things today, too, that I think we need to take into consideration, the concerns on the part of the Committee in terms of air quality and cumulative and whatnot, so --

MR. DEVINE: Thank you, Eric.

MR. KNIGHT: -- but we will get back to you, yes.

MR. DEVINE: Appreciate that. So we’ll appreciate Staff’s best efforts to just marshal the time and attention to get an answer to us and to the parties by email by close of business tomorrow about whether the 15th is going to work. And if the 15th -- if the answer is that the 15th will not work, please tell us why. And at that point, you should work with the Applicant to try to propose a joint schedule to the extent that you’re able to, understanding that the Committee will take everything upon submission in determining a schedule.
Thank you.

HEARING OFFICER LEMEI: All right. That concludes the discussion of schedule.

So now we would like to ask any members of the public in the room, and I do not believe there are any members of the public in the room.

MS. AVALOS: No, there’s no public in the room.

HEARING OFFICER LEMEI: Okay. In that case, I’d like to -- we’d like to go to the WebEx.

Are there any members of the public participating electronically? I am seeing none, o by telephones or any other means that we’d be able to communicate? It sounds like we do not have any members of the public wishing to comment.

So I think the Committee at this time does not feel the need to go into closed session.

So just checking on protocol. I have been deputized to adjourn the Committee Conference. Thank you all for participating.

(Thereupon, the Committee Conference was adjourned 11:11 a.m.)

-- o O o --
REPORTER’S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2020.

_________________________________
Eduwiges Lastra
CER-915
CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

____________________________
MARTHA L. NELSON, CERT**367

February 11, 2020