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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Small Power Plant)
Exemption for the:)
)
Laurelwood Data Center)

Docket No. 19-SPPE-01

**LAURELWOOD DATA CENTER
STATUS REPORT #2**

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July 18, 2019

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STATE OF CALIFORNIA
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**LAURELWOOD DATA CENTER
STATUS REPORT #2**

In accordance with the *Revised Notice of Status Conference and Further Orders* docketed on July 12, 2019,¹ MECP1 Santa Clara 1, LLC (the “Applicant”) files this Status Report to inform the Committee on the progress of the Laurelwood Data Center (“LDC”) application for a small power plant exemption (“SPPE”).

The project is proceeding apace, following the usual and expected processes. The Commission’s SPPE review is an iterative process. This iterative process improves the project and provides a sharper focus for review by the public and the decisionmakers. As described in *Status Report #1*, the project refinements submitted by the Applicant on June 13th arose following discussions with and direction from the City of Santa Clara (“City”). The Applicant incorporated design improvements that significantly reduced expected water use from the project and made site adjustments in response to input from the City.

In addition to the refinements that inevitably follow from interactions with the City and the Staff, there was also an important policy decision made. Specifically, it was decided that the demolition that will be conducted by the prior site owner, Siliconix, will be included in the SPPE’s environmental analysis. Consideration of demolition in the SPPE process is a policy decision.² That policy decision resulted in the need for some additional information on demolition of existing buildings and foundations, but no changes of any significant scope or magnitude to the LDC.

¹ TN#: 228946.

² At this time, the Applicant is not objecting to the inclusion of demolition of the existing site foundations by the prior owner in the SPPE process in the interest of moving this process forward in a timely manner. As to the law, consideration of demolition in the SPPE process is not mandated. Demolition of the existing structures on the site by the prior owners is not “piecemealing” as defined in CEQA case law. The second, critical prong of *Laurel Heights Improvement Association v. Regents of the University of California* (47 Cal. 3d 376, 396 (Cal. 1988), “Laurel Heights”), confirms that separate consideration of demolition in the usual City processes would not be piecemealing. Moreover, demolition of the existing structures has “Independent Utility.” Under the Independent Utility test, an activity may be reviewed and approved separately from other activities if the activity has independent utility and will serve a purpose even if the larger project is not constructed. (*Del Mar Conservancy, Inc. v. City Council of the City of San Diego*, 10 Cal. App. 4th 712 (1992); *Planning and Conservation League v. Castaic Lake Water Agency*, 180 Cal. App. 4th 210, 237 (2009)). In this case, site demolition has independent utility, namely, demolition will create a site marketable and ready for new uses. Demolition grants no rights to any future uses. It is, instead, a policy choice to include demolition – a choice that the Applicant accepts and respects as it is ultimately borne from a desire to provide a robust record.

With respect to schedule, the refinements made in the City's processes and the additional information submitted in response to the policy decision to include demolition, do not result in any substantial changes to the project design and thus do not warrant any significant delays in schedule.

FILINGS SINCE THE LAST STATUS REPORT

Since *Status Report #1*, the Applicant has made the following submittals in response to requests for information from CEC Staff:

- June 21st: Responses to informal data requests³ and clarifications to the project description.⁴
- June 27th: Responses to Staff's Data Request Set 1B.⁵
- July 8th: Revised construction emissions estimates and health risk assessment.⁶
- July 16th, 2019: Data Response Set 4.⁷

On July 8, 2019, CEC Staff filed its *Motion for Leave to File Additional Data Requests* ("Motion").⁸ Maintaining the schedule and receiving a timely decision on the SPPE application is a priority; therefore, the Applicant filed responses to the data requests appended to the Motion on July 16, 2019.⁹

On July 16, 2019, Staff filed "*Staff's Second Motion for Leave to File Additional Data Requests*" (the "Second Motion").¹⁰ Staff's request, predicated largely on the supposition that air conditioning/HVAC units on the roof of the buildings -- not the backup diesel generators -- have the potential to be a hazard for local aircraft. Grounded largely on a more than 96% decrease in HVAC water use, the requests in the Second Motion strain credibility.¹¹

The Applicant is presented once again with a Hobson's choice on this Second Motion: (1) object to the additional Data Requests, and thereby potentially suffer further scheduling delays, or (2) provide responses that may also result in further scheduling delays. Given these difficult choices with schedule implications, the Applicant will commit to discussing the Second Motion with Staff to resolve these issues.

³ TN#: 228822.

⁴ TN#: 228823.

⁵ TN#: 228854.

⁶ TN#: 228913.

⁷ TN #:229001.

⁸ TN#: 228917.

⁹ TN #: 229001: "As acknowledged in Staff's Motion, the period for discovery and issuance of data requests has ended. Without waiving its rights to object to the issuance of any other data requests, MECPI Santa Clara 1, LLC's (MECP or the Applicant) provides the attached responses to California Energy Commission (CEC) Staff Data Request, Set 4."

¹⁰ TN #: 228999.

¹¹ *Id.*: "The expected project water demand drops significantly [from an annual average of approximately 145 million gallons per year] to approximately 5.4 million gallons per year, excluding negligible landscaping and other maintenance uses." (Appendix A, p. 1.) It is this more than ninety-six percent (96%) reduction in water use that is the claimed basis for aviation concerns.

SCHEDULE

The *Committee Scheduling Order* provided for publication of the Initial Study and Proposed Negative/Mitigated Negative Declaration (“IS/MND”) by July 11, 2019. The Applicant acknowledges that a minor extension of schedule is not unreasonable due to the project refinements and policy decisions discussed above, especially since the Applicant is acting diligently and expeditiously to respond to Staff’s requests for information.

While the Applicant does not agree with the policy judgement to include demolition in this process, the Applicant respects the agencies’ collective judgment and has provided additional information on demolition of existing structures and foundations. However, the Applicant emphasizes that these improvements are not substantial changes to the project. The CEC’s iterative process specifically provides flexibility to accommodate improvements to a project through the course of a proceeding without substantially delaying a final decision.

The Applicant would not object to a minor extension of the dates set forth in the Committee’s Scheduling Order for publication of the IS/MND, consistent with the minor refinements and production of information on demolition. Applicant respectfully requests that modifications to the schedule ultimately result in (1) publication of the IS/MND on July 29, 2019, and (2) maintaining a Final Decision by the Commission in October 2019. Any further slippage in the schedule, which the Commission’s own regulations define as a 135-day process,¹² is both unnecessary and untenable.

To achieve these dates, the Applicant proposes the following modifications to the schedule:

- July 29, 2019: Staff Files IS/ MND.
- August 12, 2019: Last Day to File Petition to Intervene.
- August 28, 2019: Public Comment Period on IS/MND Ends.
- August 28, 2019: Opening Testimony Due
- September 4, 2019: Reply Testimony Due
- September 11, 2019: Evidentiary Hearings
- September 2019: Committee Issues Proposed Decision
- October 2, 2019: Final Decision (Regularly Scheduled Commission Business Meeting)

July 18, 2019

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¹² 20 CCR § 1945(b).