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STATE of CALIFORNIA
 STATE ENERGY RESOURCES CONSERVATION and
 DEVELOPMENT COMMISSION

In the matter of:)	Docket No. 19-SPPE-05
)	
Application for Small)	
Power Plant Exemption for)	
the:)	
)	
MISSION COLLEGE BACKUP)	
GENERATING FACILITY)	
_____)	

COMMITTEE CONFERENCE

Held at the

California Energy Commission
 Warren-Alquist State Energy Building
 1516 Ninth Street
 First Floor, Charles Imbrecht Hearing Room
 (Hearing Room B)
 Sacramento, California 95814

Wednesday, March 4, 2020

Reported by:
 Susan Palmer, CET-124, CER-124

APPEARANCES

Siting Committee Members & Advisors:

Commissioner Karen Douglas, Presiding Committee Member
Vice Chair Janea Scott, Associate Committee Member
Kourtney Vaccaro, Advisor to Commissioner Douglas
Eli Harland, Advisor to Commissioner Douglas
Rhetta deMesa, Advisor to Vice Chair Scott
Linda Barrera, Advisor to Vice Chair Scott
Kristy Chew, Technical Advisor on Siting Matters
Ralph Lee, Hearing Officer

Staff from the California Energy Commission:

Lon Payne, Project Manager
Lisa DeCarlo, Staff Attorney
Michael Murza, Staff Attorney
Eric Knight, Environmental Office
Matthew Braun, CEC staff, Environmental Office

Public Advisor's Office:

RoseMary Avalos

Applicant:

Drew Johnson, Vice President of Development,
Oppidan Investment Company
Scott Galati, Esq.

Also present:

Liza Lopez, CEC staff, Office of the Chief Counsel
Raj Singh, CEC staff, Informal Technology Services Branch

Public Commenters:

Maggie Campbell, Laborers Union
Diego Hernandez, Laborers Union

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P R O C E E D I N G S

MARCH 4, 2020 10:01 a.m.

PRESIDING MEMBER DOUGLAS: All right. Well, good morning, everybody. This is the Committee Conference regarding the Application for a Small Power Plant Exemption for the Mission College 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 the Committee. The Vice Chair of the Energy Commission Janea Scott is the Associate Member of the Committee.

And at this point I will introduce some of the people here today. My advisor, Kourtney Vaccaro, is to my right. And my advisor, Eli Harland, is to her right. And Kristy Chew, the Technical Advisor to the Commission on Siting Matters, is to Eli Harland's right. And then Ralph Lee is right next to me. He's our Hearing Officer. Vice Chair Scott is next to me, and her advisors, Rhetta Demesa and Linda Barrera are going to the left.

And at this point I will ask the parties to please introduce themselves and their representative -- representatives, starting with the Applicant.

MR. JOHNSON: Hi. Good morning, everybody. Drew

MS. DEMESA: You have to push the button.

MR. JOHNSON: Green means go.

1 PRESIDING MEMBER DOUGLAS: Green means go.

2 MR. JOHNSON: Good morning, everyone. Drew
3 Johnson, Oppidan Investment Company. We are the owner of
4 the site of the Applicant. And our counsel Scott Galati
5 will be here shortly.

6 PRESIDING MEMBER DOUGLAS: Super. Thank you.
7 Staff.

8 MR. PAYNE: Good morning. Lon Payne, Project
9 Manager for Staff.

10 MS. DECARLO: Good morning. Lisa DeCarlo, Energy
11 Commission Staff Attorney.

12 MR. MURZA: Good morning. Michael Murza, Staff
13 Attorney.

14 PRESIDING MEMBER DOUGLAS: Thank you.

15 Are there any public agencies, state, federal,
16 local, tribal, represented in the room today aside from the
17 Energy Commission?

18 All right. Let me ask about the phone lines or
19 WebEx, or anyone representing public agencies on WebEx?

20 No, clearly not.

21 All right. Let me just ask the Applicant then:
22 What is Mr. Galati's timing and are you comfortable
23 proceeding, or are you requesting -- do you want us to
24 attempt to wait for him? What's the status?

25 MR. JOHNSON: Let's go ahead and start with the

1 presentation of the big picture that I was going to do
2 anyway. We had docketed some images from the proposed
3 project, so this is my first one so I don't know what I
4 don't know, but I was going to give a presentation on the
5 proposed project so I feel comfortable there.

6 PRESIDING MEMBER DOUGLAS: That sounds great.
7 Okay, so when you give the presentation, please speak into
8 the mic.

9 And I forgot to note the Public Advisor's Office
10 is represented as well.

11 So with that then let me just ask if the Vice
12 Chair has any opening remarks at all?

13 COMMISSIONER SCOTT: I do not.

14 PRESIDING MEMBER DOUGLAS: Okay, not at this time.

15 And so I'll turn the proceeding over to the
16 Hearing Officer Ralph Lee, who will start by discussing the
17 Small Power Plant Exemptions generally and then lead a
18 discussion about the Mission College SPPE, and then we'll
19 transition into presentations.

20 HEARING OFFICER LEE: Thank you. Good morning.

21 Notice of today's Committee Conference was
22 provided on February 20th, 2020. This notice and other
23 documents related to this Application for Exemption are
24 available on the Energy Commission's website in the docket
25 for this proceeding. The docket number is 19-SPPE-05.

1 At today's conference first I will give an
2 overview describing a Small Power Plant Exemption, also
3 known as an SPPE, and then I will outline some of the rules
4 applicable to the Energy Commission's proceedings. After I
5 give that overview, the Public Advisor or a representative
6 thereof, will discuss opportunities for public participation
7 in this proceeding. Next we'll hear from the Applicant and
8 Staff on the specifics of the Mission College SPPE
9 Application. During that discussion, the Committee and the
10 parties will discuss a schedule and any other topics
11 regarding the SPPE application as stated in the agenda for
12 today.

13 The Committee has also given notice that it may
14 hold a closed session. We'll decide whether that's
15 necessary after we hear from everyone.

16 First an overview of the SPPE framework.

17 Under the Warren-Alquist Act, the Energy
18 Commission has the exclusive authority to consider and
19 ultimately approve or deny applications for the construction
20 and operation of thermal power plants that will generate 50
21 megawatts or more of electricity. The law allows the Energy
22 Commission to grant an exemption from this authority if a
23 project will generate from 50 to 100 megawatts and if it
24 meets certain criteria. This exemption is known as the
25 Small Power Plant Exemption.

1 The Warren-Alquist Act authorizes the Energy
2 Commission to grant an SPPE if it makes three distinct
3 determinations, that the proposed power plant has a
4 generating capacity of no more than 100 megawatts, that no
5 substantial adverse impact on the environment will result
6 from the construction or operation of the power plant, and
7 that no substantial adverse impact on energy resources will
8 result from the construction or operation of the power
9 plant.

10 In addition to meeting the Warren-Alquist Act
11 requirements, the Energy Commission must also analyze the
12 SPPE application under the California Environmental Quality
13 Act, known as CEQA. The Energy Commission is the CEQA lead
14 agency and considers the whole of the action. For the
15 Mission College SPPE Application, the whole of the action
16 means not just the backup generators but also the entire
17 data center complex that the generators back up, the
18 substation, and even the landscaping.

19 It is important to note that if the Energy
20 Commission decides to grant the Mission College SPPE
21 Application, the grant would not constitute project
22 approval. Instead, upon being granted an exemption from the
23 Energy Commission's Power Plant Licensing Process, the
24 project owner would then seek permits and licenses that are
25 required from other local agencies, which for the Mission

1 College Project includes without limitation the City of
2 Santa Clara and the Bay Area Air Quality Management
3 District. Those agencies will conduct any other necessary
4 environmental analysis as response to agencies under CEQA.

5 Today's Conference is one of several events that
6 will be held over the next several months. At these events
7 members of the public can provide comments on the project.
8 This Committee will eventually hold an evidentiary hearing
9 on the Application. The evidentiary hearing is part of the
10 adjudicative process the Energy Commission is required to
11 follow in consideration SPPE applications.

12 Similar to a trial, the Energy Commission resolves
13 the issue of whether or not to grant an exemption by
14 reviewing evidence submitted by the parties. In all SPPE
15 applications there are at least two parties, the applicant
16 requesting the exemption and the Energy Commission staff
17 performing the initial environmental analysis. The Energy
18 Commission's regulations also allow any person, including a
19 member of the public, to become a party to its proceedings.
20 We refer to a person that becomes a party as an intervenor.
21 Intervenors have the right to present evidence, both
22 documents and testimony; to question other parties'
23 witnesses; and to challenge other parties' evidence.

24 After the evidentiary hearing is complete, the
25 Committee will prepare its proposed decision. This proposed

1 decision will include the Committee's analysis of the
2 project under both the Warren-Alquist Act and CEQA. The
3 Committee's proposed decision is then considered by the
4 Energy Commission at a public hearing. The Energy
5 Commission will ultimately decide whether to adopt, modify,
6 or reject the Committee's proposed decision.

7 And now I'll give an overview of the ex parte
8 rule. The Energy Commission's regulations and state law
9 require that we ensure a fair process for everyone who
10 participates in this proceeding. One way we do that is
11 through the ex parte rule. What this means is that parties
12 to a proceeding and interested persons outside of the
13 Commission, that is, the general public, are prohibited from
14 communicating to the presiding officers about anything that
15 may be in controversy or dispute unless notice is given to
16 allow an opportunity for all other parties to participate in
17 that communication. Prohibited communications include
18 voicemails, text messages, emails, letters, telephone calls,
19 and in-person discussions. Essentially, any form of
20 communication.

21 In this proceeding the presiding officers are the
22 Commissioners on this Committee, both Commissioner Douglas
23 and Vice Chair Scott, as well as the other three
24 Commissioners of the Energy Commission, also the Hearing
25 Officer, which is me. Ex parte communications are also

1 prohibited with individuals assisting the Presiding
2 Officers, which in this proceeding includes anyone serving
3 as an advisor to the Commissioners and any attorney or other
4 expert assisting the Committee or Commissioners with this
5 proceeding.

6 And that concludes my introductory statements.

7 Now I invite the Public Officer's Office to
8 present on how it can help members of the public participate
9 in this proceeding. And then after that we'll move onto
10 Applicant's presentation.

11 MS. AVALOS: Hello. My name is RoseMary Avalos
12 and I'm an Outreach Specialist with the Public Advisor's
13 Office.

14 The CEC's Public Advisor is Noemi Gallardo. She
15 isn't here today due to another obligation. I will provide
16 her contact information in the presentation for the public
17 to contact her and our office. (The information is
18 contained on the slide.)

19 I am here today for the purpose of helping inform
20 the public about how to navigate and participate in
21 proceedings for Small Power Plant Exemptions, also known as
22 SPPE. The reason this is important, because state
23 proceedings may seem like a long-winded path that can
24 generate confusion, but the Energy Commission's Public
25 Advisor's Office is here to provide guidance.

1 The process I will review with you in this
2 presentation will include information about the Public
3 Advisor, outreach we conducted to the public and interested
4 stakeholders, parties involved in the process, how to
5 participate through informal and formal methods, how to
6 obtain additional information about the Mission College
7 proceeding, and contact information for the CEC Public
8 Advisor.

9 I'd also like to note that by the end of this week
10 we'll make sure to share this presentation through our
11 online docket system so that the public may have access to
12 information included here.

13 A little bit about the CEC Public Advisor. The
14 Public Advisory role is mandated by the Statute in the
15 Warren-Alquist Act. The Public Advisor must be a licensed
16 attorney who is nominated by the Energy Commission and
17 appointed by the Governor for a three-year term. The Public
18 Advisor's duties and tasks include helping the public
19 understand Commission processes, assisting the public
20 participate in proceedings, recommending to the Commission
21 approaches to engage the public, ensuring timely notices to
22 the public, identifying missing stakeholders and helping
23 conduct outreach to them, assisting with access to language
24 services, and reasonable accommodation. I will note that no
25 requests of this type were made by this -- for this status

1 conference.

2 Here I want to emphasize early that the takeaway
3 from this presentation is that the CEC really values public
4 participation and the Public Advisor is here to function as
5 a bridge between the public and the CEC. Our staff has a
6 lot of experience to answer questions. And if we don't have
7 immediate answers, we'll help track down the Commission's
8 subject matter experts who do.

9 Please don't hesitate to contact us with any
10 questions or guidance at our email or call our main line.

11 There are various parties involved in SPPE
12 proceedings, as you see here. I'd like to highlight
13 intervenor and interested parties who are the persons who
14 may provide comments in the proceeding and who you will hear
15 more about in this presentation.

16 An intervenor is a person or a group that
17 intervenes as a party to a proceeding. An interested party
18 is any person who the CEC finds and acknowledges as having a
19 real and direct interest in a proceeding.

20 A bit about the public outreach conducted for
21 Mission College SPPE. Staff emailed through the CEC list
22 serve the notice of receipt, which said acknowledgement of
23 this proceeding; of the notice of Committee Status
24 Conference, today's hearing.

25 CEC's Cultural Resources Division shared the

1 Notice of Receipt to California Native American Tribes
2 associated with the project area and staff notified
3 residents within a thousand feet of the project site. The
4 Public Advisor's Office sent these notices to interested
5 parties in our data center spreadsheet, including local- and
6 state-elected representatives, Air District officials, Parks
7 and Recreation Department, Chamber of Commerce, community-
8 based organizations, environmental and social justice
9 advocates, environmental health groups, asthma clinic, local
10 schools, places of worship, daycare centers, and soccer
11 clubs.

12 Now the main event. There are two ways to
13 participate in SPPE proceedings: Informal, as a member of
14 the public; and informal, as an intervenor. As I mentioned
15 before, the Commission values public participation. And it
16 makes a significant difference to having a robust record to
17 help the Committee make an informed decision.

18 The informal approach is similar to participation
19 in other proceedings. Any member of the public or
20 interested party can follow what is happening in an SPPE
21 proceeding by signing up for the project list serves. The
22 links are included here. Anyone can attend proceeding
23 events, like this status conference, in person or remotely.
24 You can also submit comment as follows:

25 During the public comment period at events, which

1 you can't attend, relay comments through the Public Advisor
2 by providing your comments ahead of time, or submit written
3 comments to the docket.

4 We realize that submitting comments takes time and
5 resources. So if you're limited, in order to maximize your
6 participation, your focus could be to provide comments
7 through efilng and at evidentiary hearings.

8 The formal approach to participate in SPPE
9 proceedings is to become an intervenor. I will highlight
10 here that an intervenor is similar to applicant and staff,
11 such as the right to present evidence or witnesses, object
12 to other party's evidence, cross-examine other witnesses,
13 and file a motion. These opportunities also come with
14 corresponding responsibilities and obligations, including
15 filing a petition with the required information to intervene
16 in a timely manner.

17 If you are interested in obtaining more detailed
18 information about each SPPE proceeding including the Mission
19 College Data Center, you can go to the CEC's website. Here
20 we include links to the general page to find this meeting
21 information and a link to go directly to Mission College.

22 Finally, here is the contact information for the
23 Public Advisor's Office. But please feel free to reach out
24 with questions or for guidance. Thank you.

25 HEARING OFFICER LEE: Thank you.

1 We now invite Applicant to present an overview of
2 its Mission College SPPE Application.

3 MR. JOHNSON: Good morning, everybody. Again,
4 Drew Johnson, Oppidan Investment Company.

5 Our project is on a 16-acre site, again in Santa
6 Clara. And in 2018 a prior project was approved through the
7 City on the site, including an IS/MND for a 495,000-foot
8 two-story single building data center, associated private
9 substation, and -- and then it was -- the project was
10 dropped by the owner and the property was put up for sale
11 again.

12 The property is in a light industrial zoning
13 district, which office, warehouse, and data centers are
14 approved use.

15 We purchased the property and subsequent to that
16 filed demolition and grading applications on the current
17 usage are based on the past approval of the project with the
18 City of Santa Clara. We have obtained those permits and
19 started on that work. And we made application for the Power
20 Plant Exemption based on the changes between our project and
21 the prior-approved project.

22 So our project is slightly smaller on the building
23 square footage. We're 490,000 feet. We have fewer
24 generators but larger generators for an overall increase of
25 about 18 megawatts of generating capacity on the site than

1 what was prior approved.

2 Our project is more -- we have more equipment
3 inside of the building, so green space and the landscaping
4 has increased on our project. And probably the main change
5 from a technology standpoint on data centers for our project
6 is our technology relies on evaporative cooling which is air
7 flow instead of water based or VX cooling. So as a result
8 of that our project uses about 90 percent less water than
9 the prior-approved project as we depend on air flow. And
10 then the water we do use can be recycled water or industrial
11 water, of which there is an existing connection off of
12 Mission College Boulevard.

13 Some other planning notes, that we have the
14 existing building on the site was a 360,000-foot two-story
15 kind of office tech building that was built in the '80s. It
16 was part for office levels, and that's the building that
17 currently is being torn down right now. Because the data
18 center use requires less parking and less traffic, we're
19 closing three curb cuts with the 16-acre site and overall
20 improving the traffic flow in the area compared to the prior
21 office building.

22 This is the main view shed from the public side of
23 Mission College, which Mission College Boulevard is a minor
24 arterial in Santa Clara. And the view, I guess if you were
25 maybe 20 feet in the air somehow from Mission College on the

1 public side of the building, you can see the stand well
2 glass curtain wall on the left side of the east elevation
3 and then the metal panels.

4 And then on the right side of the picture, toward
5 the east-facing elevation, that's the wall of louvers where
6 it depends on the air flow to go over the server rooms,
7 where that's where the air is sucked in and go over the
8 equipment, and then it's blasted through the top.

9 So we are seeking approval, just noting that this
10 isn't a ground -- or this isn't a start-from-scratch project
11 but rather we have studied the incremental change from the
12 prior approval to the approval we're seeking now, focused
13 around the air quality of the generators being larger. And
14 then the other planning factor is the size of the building,
15 the green space, water usage, all the traffic all going down
16 based on the existing approvals.

17 MR. HARLAND: The next slide.

18 MR. JOHNSON: Yeah. So there is a picture of the
19 generator yard. You can see that the full-build scenario of
20 the generator yards are interior to one another, screened by
21 the building, and then the screening wall also in front.
22 You know what's missing in this slide, which the prior
23 project has, is because all of the HVAC systems are now
24 inside the building you won't see any of the cooling yards
25 that were kind of industrial looking. That was in the prior

1 project's cover rules. This is also from Mission College
2 Boulevard, main view.

3 This is just an overall colored site plan of the
4 full-build scenario. In the left-hand side of the site,
5 that small rectangle is the location of the private
6 substation. That substation was a component of the prior
7 project, and SVP had approved its siting location and power
8 generation, and capacity as part of the prior approvals that
9 the IS/MND was based on as well.

10 HEARING OFFICER LEE: Anything else?

11 Well, then...

12 MR. GALATI: I guess I'll just introduce myself
13 for the record. Scott Galati is here, and tardy and
14 apologizes to the Committee.

15 HEARING OFFICER LEE: Thank you.

16 We will now discuss the status issues, next steps,
17 and schedule. In the Committee's February 20th Notice,
18 which I mentioned earlier, the Committee directed Staff to
19 file an Issues Identification Report, Status Report, and
20 Proposed Schedule, which I will collectively call status --
21 the Staff's Report.

22 The Committee also directed Applicant to respond
23 to Staff's Report, which I will call Applicant's Response.
24 We thank Staff and Applicant for complying with these
25 Committee directives.

1 We now ask Staff to present on the topics
2 addressed in its Staff Report or any other relevant topic.

3 MR. PAYNE: Lon Payne, Project Manager for Staff.
4 I don't have any pretty slides, but I did ask for a short
5 memo on the screen, so it's there now.

6 Staff docketed its Status Report and
7 investigations and the proceeding schedule on February 25th,
8 and the Applicant docketed its response on March 2nd. As
9 mentioned in the Status Report, Staff docketed a small
10 number of follow-up data requests on February 24th. The
11 Applicant was able to provide replies to those questions on
12 February 27th, and we appreciate the quick turnaround.

13 At this stage Staff believes it has all the
14 information it needs to finalize its analysis and take the
15 necessary steps towards the publication of its Initial
16 Study. With respect to the schedule, it will not be
17 possible for Staff to publish the Initial Study by March
18 16th due to the number of sections that aren't completed and
19 Staff's workload on other activities and proceedings.

20 For example, Staff's priority this week is to
21 respond to CEQA comments on the Sequoia Initial Study and to
22 intervenor's motion -- and to an intervenor's motion to
23 compel, both of which are due on Friday, March 6th. Staff
24 believes that publication of the Mission College Initial
25 Study some time between April 9th and the 16th is realistic.

1 Staff has also seen Mr. Galati's suggestions
2 addressing the scope of Staff's analysis. Staff does not
3 believe adopting these suggestions would have any
4 discernible positive effect on our publication date and
5 might even end up resulting in delays. We will use the
6 existing environmental document to the degree it is relevant
7 and helpful to Staff's analysis. Otherwise we will continue
8 with our ongoing analysis with the goal of publishing an
9 initial study as quickly as possible.

10 Thank you, and we would be happy to answer any
11 questions you have.

12 HEARING OFFICER LEE: Okay. Can you address
13 whether the Applicant's February 27th docketing of data
14 responses renders the motion to compel moot?

15 MR. PAYNE: The motion to compel is on another
16 project.

17 HEARING OFFICER LEE: Excuse me. I mean motion to
18 -- for leave to file additional data requests.

19 MS. DECARLO: Hi. Lisa DeCarlo. Yes. Thank you.
20 The Applicant has provided data responses. We reviewed
21 those. Those do satisfy, we believe, the requests. So if
22 the Committee does want not to move on the motion, it seems
23 like it has been rendered moot.

24 We understand that Mr. Galati had already
25 indicated previously that we did not need to file a motion.

1 However, we did want to acknowledge the Committee's role in
2 adjudicating whether or not Staff have the right to request
3 additional data outside the support area.

4 MS. VACCARO: Thank you. Kourtney Vaccaro, for
5 the record.

6 Thank you, Ms. DeCarlo. Would you just go ahead
7 and submit to the record written withdrawal of the motion,
8 just so that we have a complete record. We have it here
9 orally, but to just go ahead and close that loop --

10 MS. DECARLO: Sure.

11 MS. VACCARO: -- of what you're saying today.
12 Thank you.

13 HEARING OFFICER LEE: Thank you.

14 And we now ask Applicant to discuss any responses
15 to Staff's Issues, Identification, and Status Report, to
16 discuss anything raised by Staff this morning, or any other
17 relevant topic.

18 MR. GALATI: I'd just like to first start -- I
19 guess I have to first start by disagreeing with Staff's
20 characterization on the amount of work that's necessary.
21 Many of the sections should simply say, as we did in our
22 Application, we followed the exact IS/MND and addendum
23 format. The person that prepared the Application is the
24 consultant that would have been hired by the city to process
25 the addendum. So we asked that person to prepare an

1 addendum in the way that you would do that the city would
2 adopt and send out for public review. That's what we sent
3 to Staff.

4 We understand that Staff needed to take a look
5 from start to finish of few areas that are affected by the
6 changes in the project. And we focused the brand new
7 analysis on all of those areas.

8 But let's take the cultural for a second. The
9 cultural was approved. Nothing has changed on the site. We
10 proposed Staff's standard mitigation language that they have
11 been doing in other projects in our application. The
12 cultural analysis should simply say: The changes don't
13 affect cultural, Applicant has provided a proposed
14 mitigation measure incorporated into the design, we agree
15 with it, the findings of the prior IS/MND remain unchanged.
16 That's how every other agency would process a project such
17 as this. And this can be done in a lot of areas.

18 For example, in water. When there is a 90-percent
19 reduction, there is no need for an analysis because the
20 prior amount of water was determined by the city to be less
21 than a significant impact, and the project approved.

22 And so we're really thinking that the document
23 that Staff prepares is about half the size, even less, than
24 what they would prepare in a project that started from
25 scratch. We talked to Staff about this in the pre-filing

1 meeting. We prepared our Application this way. It has been
2 consistent with this approach, and that's why we ask for
3 Staff to finish its analysis because we don't think the work
4 is that necessary.

5 I remind you that the project, those areas that
6 were easy we could write in a day. Those areas haven't
7 changed. We haven't changed our project description. We
8 haven't -- we haven't had many data requests in those areas.
9 Usually the data requests are: How do you lay your
10 foundations, were they 20 feet or 30 feet, things of that
11 nature. Clarifying questions to fill in the blanks of a
12 project description that don't affect the analysis.

13 So the project was filed in November and so we
14 don't think that a March 16th date is unachievable.

15 As far as Staff workload is concerned, I remind
16 the Committee that we pay for Staff's time. Staff has
17 outside consultants. We would like them to use that to work
18 on this project.

19 I am consistently asking for Staff to speed up.
20 It's what I do for a living. But this is the time I come to
21 you and not only tell you Staff should speed up, Staff
22 should speed up because they should not overdue the amount
23 of work that's necessary to get to a decision point for the
24 Committee. And so this is a project that is nearing
25 completion on demolition, has a tenant for phase one, has

1 all the approvals necessary to begin grading from the city,
2 and we ask the Committee to work diligently.

3 I don't know if there are members of the public
4 that are concerned about this project, we'll wait to hear,
5 but it doesn't appear that there are issues associated with
6 this project and it's just Staff time. We ask the Committee
7 to adopt an order so Staff can show what they are capable of
8 doing, because we think they can meet the March 16th
9 approval date.

10 We're available to answer any questions. I guess
11 -- we didn't provide a legal brief, I didn't think I needed
12 to. But you know CEQA actually encourages if not requires
13 the Committee to use a prior IS/MND that has been submitted.
14 Your own regulations say that a prior IS/MND must be brought
15 into your record. There only reason that I can see why that
16 would need to be brought into your record is so that you can
17 tier off of it. And, as we know, the guidelines really
18 encourage tiering so that we don't reinvent the wheel each
19 time.

20 This isn't something that's outdated. It's 2018.
21 And where there were changes, if you see in my Status
22 Report, we have addressed them. For example, wildland fires
23 was something new. Vehicle miles traveled was something
24 new. So anywhere where there was some new change in the
25 law, we addressed. We have an updated request on those

1 points. And anywhere that the project changed, created an
2 impact that was green, we also addressed -- or different, we
3 also addressed.

4 So we ask the Committee to be aggressive on our
5 schedule. And we're confident that Staff can meet the
6 deadline of March 16th.

7 HEARING OFFICER LEE: Does Staff have a response?

8 MS. DECARLO: Lisa DeCarlo. I can let Mr. Payne
9 discuss Staff workload if anybody wants to dive into that
10 any more than Staff has indicated.

11 I will briefly address the CEQA issue. It is true
12 CEQA allows an agency to rely on a previously-permitted
13 project as the baseline for additional analysis of project
14 changes. I'm not so sure, though, that this is the type of
15 situation on -- which presents the best case for doing that.
16 The originally-approved project, as the Applicant has
17 indicated, was withdrawn. This is a new project. While it
18 takes some of the environmental analysis of the original
19 project, there are significant changes.

20 Additionally, it's unclear whether the city at the
21 time even had the jurisdiction and authority to approve that
22 previous project, considering that it did involve backup
23 generators, presumably that were within the Energy
24 Commission's jurisdiction. So I'm not sure that legally we
25 would be in the best position to present an analysis that

1 relied solely on the previously-permitted project as the
2 baseline from which it was started.

3 Staff has been proceeding with its analysis, with
4 the information provided on the project as the site stands
5 now. We are relying on the provided IS/MND for relevant
6 information and analysis, but we are not at this point
7 unless further directed by the Committee using the previous
8 permit as the baseline from which we are starting our
9 analysis.

10 MR. PAYNE: And I can jump in with a couple of
11 comments regarding the schedule. We have already stated
12 that March 16th is not doable. That's in 12 days. The
13 schedule drivers have to do less with what Scott had
14 mentioned as easy sections that we could do in an hour in a
15 day. It's driven by the sections that take the most time to
16 do and how many other sections need information from that
17 section in order to be completed. And so it is -- knowing
18 what I know about the more complicated technical sections,
19 for example, air quality and how our mandatory findings and
20 our ultimate mitigated -- if that's what we end up doing --
21 would flow from that analysis, that the dates I've given are
22 our best case scenario, that's April 9th through the 16th,
23 is somewhere in that range.

24 The second thing I would point out is that
25 consistent with what's happened on other projects, it is

1 possible we may have some slight mitigation measures on one
2 or two areas. We don't have those confirmed yet, but I can
3 predict that since Bio (phonetic) has had minor
4 modifications to Applicant-proposed measures on the last
5 couple projects, it's possible that they may have similar
6 language that we would need to run before the Applicant and
7 the city to get our agreement and approvals, which then find
8 their way into our document, and the time it takes to do
9 that is also something that would drive the schedule
10 certainly beyond March 16th.

11 So, again, the April 9th to the April 16th is
12 realistic. It's something that we think we can do. I would
13 suggest in terms of -- to the degree you wanted to put a
14 specific date in an order, I would go with the 16th but with
15 our commitment to try to publish that earlier, in fact as
16 early as we can, as we stated in our statement. Thank you.

17 MR. GALATI: May I reply?

18 HEARING OFFICER LEE: Please.

19 MR. GALATI: As far as mitigation measures are
20 concerned, remember there is an IS/MND from the original
21 project with all the mitigation provided by the City of
22 Santa Clara. What new mitigation would come out of reducing
23 impacts for most areas and changing the generators, as you
24 know, there wasn't -- there hasn't been any Staff-proposed
25 mitigation measures in the area of air quality on projects

1 that started from scratch. So the primary focus here is to
2 get an air permit, and all of the mitigation measures that
3 are associated with air quality that have been proposed have
4 been those that are related to construction.

5 As most applicants have said, it didn't result in
6 a mitigation measure, we're happy to do it. But I don't
7 think there is any coordination with any city or anyone else
8 to come up with new mitigation measures since the full
9 package is what the city allowed the project to be built on
10 as it is.

11 So this project is very, very different. This
12 project is similar to Vantage, and that's how we started
13 proceeding on Vantage and probably should have ended up on
14 Vantage, but we do believe that this has nothing to do with
15 the city had the authority to issue the permits. As it
16 does, that the city did complete CEQA analysis, and you
17 should rely on that CEQA analysis. That's why there is an
18 entire tiering section in both the statute and the CEQA
19 guidelines to really allow that to be done. And I think
20 there is no reason not to in this case.

21 And if it's the long sections that are taking
22 time, we understand that that takes some time. We have --
23 we did file in November and we've been asking, even at
24 business meetings this project be adopted and pursued like
25 an addendum, and it should be. And there is really no legal

1 reason for the Commission to reinvent the wheel, put out a
2 brand new IS/MND evaluating all of the new areas. It's just
3 -- it just is duplicative work.

4 HEARING OFFICER LEE: Thank you.

5 Anything else?

6 Okay. With that I think we'll move on. Do either
7 the Presiding or Associate Member of this Committee have any
8 final remarks? If not, we'll move onto public comment.

9 ASSOCIATE MEMBER SCOTT: I have nothing right now.

10 PRESIDING MEMBER DOUGLAS: I don't have any final
11 remarks but I do have a question for Staff. It's really a
12 workload question that, you know, we're very cognizant of
13 the fact that we have multiple data center cases with fairly
14 overlapping schedules. And so I was just wondering if you
15 could clarify how Staff is managing that multiple caseload.

16 You did mention prioritizing a response on one
17 certain case -- it's nice to see Eric coming up.

18 But it would be helpful if you could shed a little
19 light on that.

20 MR. KNIGHT: This is Eric Knight, Environmental
21 Office Manager in the Siting Division.

22 We are using a past project or workload project
23 based in the area of air quality and greenhouse gas
24 emissions. For the most part, we are able to divvy up
25 projects within our existing staff. Where you really start

1 seeing bottlenecks is the supervisor and management duties,
2 so. But we do, where it makes sense, assign the same person
3 to projects where they're very similar because it's an
4 efficiency there, but then we also do kind of staggered.
5 But we're using the best arguably out there where it makes
6 sense.

7 PRESIDING MEMBER DOUGLAS: I thought so. And so
8 that's -- that's all. And -- thank you.

9 HEARING OFFICER LEE: Okay. With that we'll move
10 onto public comments. That concludes our discussion of
11 schedules, status issues, next steps.

12 Do any members of the public wish to make public
13 comment? We have some blue cards. Let's take Diego
14 Hernandez first.

15 MR. HERNANDEZ: Hello, everyone. Very intimate.

16 (Laughter.)

17 MR. HERNANDEZ: Well, my name's Diego Hernandez
18 and I'm a member of the Laborer's Union. And I'm here on
19 behalf of Northern California District Council of Laborers.

20 I would like to ask the -- sorry. I'm going to
21 start over here.

22 Northern California has over 40,000 members that
23 work in the construction industry. And a project like this
24 one would provide a living wage with benefits for those
25 members. Twenty-three thousand hours are represented on the

1 project at this for at least 15 months. For 15 months, this
2 project will provide 23,000 manhours, labor hours.

3 And on behalf of the District Council we urge you
4 to approve the Application. And that's all I have.

5 HEARING OFFICER LEE: Thank you.

6 And next we have Maggie Campbell.

7 MS. CAMPBELL: Good morning, Commissioners,
8 Hearing Officer, Staff. My name is Maggie Campbell and I'm
9 a 24-year member of the Laborers Union in Northern
10 California.

11 On behalf of my brothers and sisters that live in
12 the area surrounding Santa Clara, I'm here today to speak in
13 favor of the Mission College Backup Generating Facility
14 Application. This project is valued at real close to 100
15 million. Projects like these provide good-paying jobs with
16 benefits so that we can afford a home, so that we can take
17 care of our families.

18 We ask in earnest that you support this
19 application today. Many of my brothers and sisters in and
20 near the Santa Clara area will have an opportunity for the
21 first time to work in the community that they live in, and
22 that's important for us. We really appreciate your time
23 today and we appreciate your service to our great state.
24 Thank you.

25 HEARING OFFICER LEE: Thank you.

1 Do we have any other public comments in the room?

2 Seeing none, we'll go to WebEx. Were going to
3 mute -- unmute everyone on WebEx for public comment.

4 Nobody? Okay. There are no --

5 MR. BRAUN: Ralph. I'm sorry, I can't -- Matt
6 Braun -- but everybody online left because they couldn't
7 hear anything, so for 40 minutes all they heard was
8 scratching. So all my staff left. That's why everybody
9 else signed off too. So it hasn't been broadcast for 40
10 minutes. That's why you probably can't get any people right
11 now to comment.

12 HEARING OFFICER LEE: Okay. (Conferring with
13 staff.) I will respond to that last comment that, for the
14 record, at least as far as we can tell, and our IT
15 department, who is attached, connected to this hearing
16 listening on two separate devices, was in fact able to hear
17 everything that we've been saying. And so we'll move on.

18 The Committee has decided not to adjourn to closed
19 session, so I will give the conduct of this Conference back
20 to Commissioner Douglas to adjourn.

21 PRESIDING MEMBER DOUGLAS: Well, appreciate
22 everybody's participation. I appreciate the public
23 commenters coming in today. And we -- with that, we're
24 adjourned.

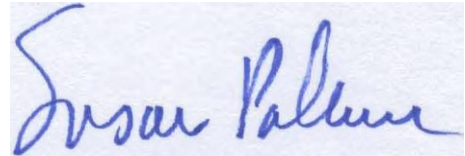
25 (Whereupon, the Conference was concluded at 10:48 a.m.)

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 20TH DAY OF MARCH, 2020.



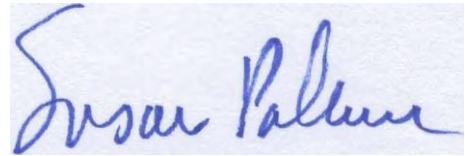
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And 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 20th day of March, 2020.



Susan Palmer
Certified Reporter
CERT 00124