

**DOCKETED**

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CALIFORNIA ENERGY COMMISSION

Application for Small Power )  
Plant Exemption for the: )  
 ) Docket No. 20-SPPE-01  
Great Oaks South Backup )  
Generating Facility )  
Sequoia Data Center )  
\_\_\_\_\_ )

COMMITTEE CONFERENCE

REMOTE VIA ZOOM

WEDNESDAY, SEPTEMBER 23, 2020

1:30 P.M.

Reported by:

Elise Hicks

California Reporting, LLC  
(510) 313-0610

APPEARANCES

HEARING OFFICER

Ralph Lee

Linda Barrera

COMMISSIONERS

Karen Douglas, Presiding Member, Commissioner

David Hochschild, Associate Member, Chair

ADVISORS

Kourtney Vaccaro, Advisor to Commissioner Douglas

Eli Harland, Advisor to Commissioner Douglas

Le-Quyen Nguyen, Advisor to Chair Hochschild

Jon Hilliard, Technical Advisor on Siting

STAFF

Lisa DeCarlo, Senior Staff Attorney

Lisa Worrall, Project Manager

RoseMary Avalos, Acting Public Advisor

APPLICANT

Scott Galati, Esquire, Dayzen, LLC

ALSO PRESENT

Wesley Dyer, California Air Resources Board

Lucas Ramirez, Office of Council Member Jimenez, City of  
San Jose

Jakub Zielkiewicz, Bay Area Air Quality Management  
District

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P R O C E E D I N G S

1:34 P.M.

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WEDNESDAY, SEPTEMBER 23, 2020

PRESIDING MEMBER DOUGLAS: This is the  
Committee conference regarding the Application  
for a Small Power Plant Exemption for the Great  
Oaks South Backup Generating Facility.

The California Energy Commission has  
assigned a Committee of two Commissioners to  
conduct these proceedings. I'm Karen Douglas,  
the Presiding Member of this Committee. Chair  
David Hochschild is the Associate Member of this  
Committee.

We are participating remotely today using  
Zoom. And I'd like to introduce some of the  
people in attendance today. Now, Chair  
Hochschild is not here now. We actually pushed  
the start time to 1:30 to attempt to accommodate  
his schedule but I shifted again with some other  
matters. I think he is going to try to make it  
to some portion of this and will be here for our  
closed session.

Kourtney Vaccaro, my Advisor, is on the  
Zoom right now. Eligible Harland, my Advisor, is  
here. Le-Quyen Nguyen, Advisor to Chair  
Hochschild is participating. Jon Hillard,

1 Technical Advisor to the Commissioners on Siting  
2 Matters. Ralph Lee, who we just heard from, Co-  
3 Hearing Officer for this proceeding. And Linda  
4 Barrera, Co-Hearing Officer for this proceeding.

5 At this point, I will also introduce  
6 Noemi Gallardo, the Energy Commission's Public  
7 Advisor.

8 Let me now ask the parties to introduce  
9 themselves and their representatives, starting  
10 with the Applicant.

11 MR. GALATI: Hello. Good afternoon,  
12 Commissioners, Mr. Hearing Officer, and Advisors.  
13 This is Scott Galati, representing SV1 which is a  
14 subsidiary of Equinix, on the Great Oaks South  
15 Project. With me, we have a bunch of people on  
16 the panel. I think I'll introduce them,  
17 Commissioner, if that's okay, if they are needed?

18 PRESIDING MEMBER DOUGLAS: That sounds  
19 good. Thank you very much.

20 Staff please.

21 MS. DECARLO: Good afternoon. This is  
22 Lisa DeCarlo, Energy Commission Staff Counsel.  
23 And also here today is the Energy Commission  
24 Staff Project Manager, Lisa Worrall.

25 MS. WORRALL: Yes. Good afternoon

1 everybody.

2 PRESIDING MEMBER DOUGLAS: Very good.

3 Thank you.

4 And now I'll introduce any public  
5 agencies to introduce themselves.

6 Is there anyone here representing a  
7 federal government agency?

8 What about a state government agency,  
9 other than the Energy Commission?

10 MR. DYER: Hi. This is Wesley Dyer,  
11 Attorney from California Air Resources Board.

12 PRESIDING MEMBER DOUGLAS: Excellent.  
13 Thank you for being here.

14 MR. DYER: Thank you.

15 PRESIDING MEMBER DOUGLAS: Any other  
16 state government agencies, other than the Energy  
17 Commission?

18 We'll move on to officials representing  
19 Native American tribes or nations?

20 How about local agencies? Anyone from  
21 Bay Area Air Quality Management District?

22 MR. ZIELKEIWICZ: Hi. This is Jakub  
23 Zielkeiwicz, representing the Bay Area Air  
24 Quality Management District.

25 PRESIDING MEMBER DOUGLAS: Excellent.

1 Thank you.

2 What about City of San Jose?

3 Anyone else? Any government entity or  
4 agency? All right.

5 At this point, I'll turn the proceedings  
6 over to the Hearing Officers, Ralph Lee and Linda  
7 Barrera.

8 CO-HEARING OFFICER LEE: Thank you. Good  
9 morning. I'm Hearing Officer Ralph Lee. And I'm  
10 accompanied by Linda Barrera, the other Hearing  
11 Officer in this case.

12 The Committee provided notice of today's  
13 Committee conference by its Notice of Committee  
14 Conference and related orders which was filed on  
15 the docket of this proceeding on August 31st,  
16 2020. It was published in English, Spanish, and  
17 Vietnamese. The notice of today's Committee  
18 conference and the other documents related to  
19 this proceeding are available on the Energy  
20 Commission's website in the electronic docket for  
21 this proceeding. Specifically, the dockets are  
22 accessible from the project's website at  
23 [www.energy.ca.gov/sitingcases/greatoakssouth](http://www.energy.ca.gov/sitingcases/greatoakssouth), or  
24 for assistance, you may contact the Energy  
25 Commission's Public Advisor's Office.



1           The purpose of today's hearing is to hear  
2 from the parties on the discussion items  
3 described in the agenda of the notice of today's  
4 Committee conference. The agenda includes the  
5 following topics.

6           First, to hear from the parties about  
7 their positions on the proposal from Energy  
8 Commission Staff, or just Staff for short, to  
9 prepare an Environmental Impact Report, known as  
10 an EIR, as the environmental document for the  
11 application.

12           Second, to hear from the Energy  
13 Commission's Public Advisor's Office and the  
14 parties about opportunities for expanded public  
15 outreach and engagement in this proceeding.

16           Third, to hear from the Public Advisor's  
17 Office and the parties about the feasibility of  
18 holding an in-person event in San Jose,  
19 California.

20           And finally, to hear from the parties  
21 about the status of discovery, any outstanding  
22 issues, proposals for the schedule, and next  
23 steps.

24           We will also provide an opportunity for  
25 the general public and local and state government

1 agencies to provide public comment on matters  
2 related to this proceeding.

3           The Committee may hold a closed session.  
4 At the conclusion of the closed session, if any,  
5 one or more members of the Committee will return  
6 to reopen the record to adjourn this Committee  
7 conference.

8           Before we proceed, I will describe the  
9 remote hearing procedures.

10           Consistent with Governor Newsom's  
11 Executive Order N-25-20 and N-29-20, as well as  
12 the recommendations from the California  
13 Department of Public Health, to encourage  
14 physical distancing to slow the spread of COVID-  
15 19, we are conducting this Committee conference  
16 remotely using Zoom.

17           Look for the black bar at the bottom of  
18 your Zoom screen for participation options. At  
19 the bottom left of your screen, you should see  
20 either a mute icon or an audio settings icon. If  
21 you see an audio settings icon, that means that  
22 you're muted and your un-mute button has been  
23 disabled. We've set up this meeting so that the  
24 parties and the Public Advisor may speak, but  
25 most attendees will not be able to un-mute

1 themselves or speak unless they use the raise-  
2 hand feature to indicate they wish to speak.

3           If you wish to be recognized, please use  
4 the raise-hand feature by clicking on the raise-  
5 hand icon. After clicking on the raise-hand  
6 icon, when it's your turn to speak, we will  
7 enable your mute button to allow you to un-mute  
8 yourself. The un-mute button will appear at the  
9 bottom left of your screen. The general public  
10 will have an opportunity to speak during the time  
11 for public comment before the end of this  
12 conference. If your mute button has been  
13 enabled, we request that you remain muted, unless  
14 it's your turn to speak.

15           And for those calling in on the phone,  
16 you may mute and un-mute your phone by pressing  
17 star six. You should still be able to hear the  
18 meeting. On the phone, to raise your hand, you  
19 may press star nine. If it's your turn to speak  
20 and you've muted your phone by pressing star six,  
21 you will need to un-mute yourself before you  
22 speak by pressing star six again.

23           The raise-hand feature creates a list of  
24 speakers based on the time when their hand was  
25 raised. We will call speakers in that order. I

1 will review these directions again during the  
2 discussion with the parties, and again before we  
3 start the public comment period.

4           Please identify yourself before you  
5 speak. When you speak for the first time, please  
6 say and spell your name slowly. That's important  
7 for me and for the Court Reporter. If you don't  
8 identify yourself, either the Court Reporter or I  
9 may interrupt you to ask that you do so in order  
10 to ensure that we have a complete and accurate  
11 record of this meeting.

12           If you have any questions about today's  
13 process, please use the raise-hand feature now  
14 and I will take your question.

15           If you run into difficulties, please  
16 contact the Public Advisor's Office or Zoom's  
17 help center. The contact information showing  
18 above is on page five of the notice for today's  
19 Committee conference.

20           Do we have any questions? Okay. I'm not  
21 seeing any raised hands, so I'm going to move on.

22           PRESIDING MEMBER DOUGLAS: So, Ralph,  
23 this is Commissioner Douglas. I just wanted to  
24 check in. We may have someone participating on  
25 behalf of the City of San Jose or the Council.

1 Just giving an opportunity for anyone who wants  
2 to introduce themselves.

3 CO-HEARING OFFICER LEE: Sure. If there  
4 are any government agencies that haven't been  
5 recognized, I would request that you please raise  
6 your hand at this time. Okay.

7 PRESIDING MEMBER DOUGLAS: All right.  
8 Well, thank you.

9 CO-HEARING OFFICER LEE: Well, hold on.  
10 I'm seeing a Lucas Ramirez has raised his hand.

11 PRESIDING MEMBER DOUGLAS: Excellent.  
12 That's what I thought. If we could let him  
13 introduce himself, that would be great.

14 CO-HEARING OFFICER LEE: Right. He  
15 should be able to un-mute himself.

16 MR. RAMIREZ: Thank you for the  
17 opportunity. Lucas Ramirez, Office of Council  
18 Member Sergio Jimenez, who represents District 2  
19 of the site -- of the district in which the  
20 project is located. I'm happy to answer any  
21 questions on behalf of the Council Member, if  
22 needed. Thank you.

23 CO-HEARING OFFICER LEE: All right.  
24 Thank you very much.

25 Do we have any other government agencies

1 online who wish to be recognized? Well, seeing  
2 none, let me move on.

3           This Committee conference concerns the  
4 application that the Applicant, SV1, LLC, filed  
5 with the California Energy Commission, seeking a  
6 Small Power Plant Exemption, known as an SPPE,  
7 for the Great Oaks South Backup Generating  
8 Facility. The Applicant proposes to build and  
9 operate the Great Oaks South Backup Generating  
10 Facility and the Great Oaks South Data Center at  
11 a location that is currently vacant at the  
12 southeast corner of Via del Oro and San Ignacio  
13 Avenue in San Jose, California.

14           The backup generating facility would  
15 consist of 36 3-megawatt and 3 0.5-megawatt diesel  
16 backup generators. The backup generating  
17 facility would provide an uninterruptible power  
18 supply to the data center of up to 99 megawatts,  
19 which would be the maximum load of the data  
20 center. The data center would consist of three  
21 two-story buildings totaling 573,000 square feet.

22           Under the law, Public Resources Code  
23 Section 25541, the Energy Commission may grant  
24 and SPPE only when it makes three separate and  
25 distinct findings. First, that the proposed

1 power plant has a generating capacity of up to  
2 100 megawatts. Second, that no substantial  
3 adverse impact on the environment will result  
4 from the construction or operation of the power  
5 plant. And third, that no substantial adverse  
6 impact on energy resources will result from the  
7 construction or operation of the power plant.

8           In addition, the Energy Commission acts  
9 as the lead agency under the California  
10 Environmental Quality Act, known as CEQA. In  
11 reviewing an SPPE, the Energy Commission performs  
12 environmental review of the whole of the action.  
13 For this particular application, the whole of the  
14 action means the backup generating facility, or  
15 data center, and other related features. I may  
16 refer to the whole of the action as the project.

17           Before we hear from the parties on the  
18 discussion items, I note that we did have  
19 representatives here from government agencies,  
20 including the California Air Resources Board,  
21 known as CARB, and the Bay Area Air Quality  
22 Management District, known as BAAQMD. I  
23 personally notified them about this Committee  
24 conference by emails, which I filed in the  
25 docket. And we also have Lucas Ramirez here.

1           And so I would ask the Presiding Member  
2 whether you're willing to ask the agencies for  
3 comments, if any at this time, out of order? Is  
4 that possible?

5           PRESIDING MEMBER DOUGLAS: If that's your  
6 recommendation, I think that would be fine.

7           CO-HEARING OFFICER LEE: Yeah, I  
8 recommend we go ahead and do that. And, of  
9 course, I would allow -- I would recommend that  
10 we allow them to have an opportunity, also,  
11 during the general public comment at the end, in  
12 case something else -- to comment on anything  
13 else that comes up during this proceeding.

14           PRESIDING MEMBER DOUGLAS: Okay. Let's  
15 go ahead and do that. Thank you.

16           CO-HEARING OFFICER LEE: Okay. Yeah, the  
17 Committee encourages interested agencies to  
18 participate in the Great Oaks South proceeding  
19 and to submit any comment or concerns as early as  
20 possible in order to help inform the Energy  
21 Commission Staff's preparation of its  
22 environmental document, and then to comment on  
23 the environmental document once it's published.  
24 And finally, as appropriate, we would encourage  
25 agencies to attend the Committee's evidentiary



1 hearing.

2           And now, turning to the agencies, in no  
3 particular order, may I ask if CARB  
4 representatives have any comment at this time?

5           MR. DYER: Yes, we do. This is Wesley  
6 Dyer,  
7 W-E-S-L-E-Y, last name D, as in dog, -Y-E-R. And  
8 again, I'm an attorney for the California Air  
9 Resources Board. So just, again, thank you to  
10 CEC and the Committee for allowing us to  
11 participate on the panel and to provide some  
12 comments at this time.

13           As I'm sure you're all aware, CARB  
14 Technical Staff has been working with CEC Staff  
15 on how to improve the CEQA and air quality  
16 analyses on present and future data center  
17 projects more generally and, particularly, as  
18 those projects become more common as backup power  
19 systems are called upon more frequently, a trend  
20 which is expected to increasingly continue as the  
21 planet warms. And so it's important that we have  
22 robust analyses here to ensure that backup  
23 generators are as clean as possible.

24           With respect to CEC Staff's  
25 recommendation here to conduct an EIR, CARB very

1 much supports that recommendation. In  
2 particular, CARB strongly encourages more  
3 detailed air quality impact analysis that is  
4 based on or, at least, includes the likely  
5 scenario that multiple generators will be running  
6 simultaneously. And we're currently working with  
7 CEC Staff and BAAQMD Staff closely and  
8 collaboratively to develop such an analysis  
9 moving forward.

10 CARB notes that it's important to fairly  
11 analyze the operations of these generators in  
12 order to inform the public, whom we owe a clear  
13 technical projection of use of these facilities  
14 at foreseeable capacity. And we also note that  
15 the same conditions that may trigger the use of  
16 these backup generators, such as heat storms, are  
17 also associated with other air quality issues,  
18 like smog formation. So we need to think about  
19 operation when air quality is already bad and  
20 when people may be at home and without power, and  
21 including, you know, taking a look at the  
22 cumulative impacts that many such data centers  
23 may have in close proximity.

24 CARB also views a detailed alternatives  
25 analysis as required in an EIR-level review to be

1 extremely important, if not necessary, to this  
2 SPPE process, especially given the expanded air  
3 quality analysis that CARB currently sees as  
4 needed. So the alternatives analysis provided  
5 here in Section 5.6.2 in Chapter 5 of the Great  
6 Oaks South SPPE Application does not allow for a  
7 real meaningful consideration of alternatives.

8           Notably lacking here, from CARB's  
9 perspective, are calculations, vendor or  
10 manufacturer data, studies, and so forth that  
11 really evaluate each alternative generating  
12 technology. And I think this is particularly  
13 relevant, given Governor Newsom's Executive Order  
14 this morning and his illusion of many more to  
15 come. That's really pushing the state towards  
16 more widespread electrification to address  
17 climate, primarily, and also air quality.

18           Lastly, we note that in the Applicant's  
19 status report, that was dated September 11th of  
20 this year, they raise the fact the City of San  
21 Jose conducted -- also conducted an initial study  
22 and adopted a mitigated negative declaration.  
23 But CARB doesn't view this as being necessarily  
24 material here for these purposes. The CEC is the  
25 CEQA lead agency here and is not required to rely

1 on any outside environmental impact document.  
2 The Commission may, certainly, have to consider  
3 such document if it's submitted into the docket.  
4 But it certainly is not, per se, dispositive to  
5 our understanding.

6 More importantly, the project before the  
7 City of San Jose in 2017 and the project before  
8 the Committee now are substantially different.  
9 The Great Oaks Data Center underwent  
10 reconfiguration and added over a dozen more Tier  
11 2 backup generators, and each with more  
12 generating capacity. So regardless of that  
13 previous environmental impact analysis or any of  
14 the quality there, and conducted by the City, it  
15 was conducted on an entirely different project,  
16 from our perspective, and is now outdated.

17 So that's all that CARB has for now.  
18 Again, thanks for including us on this panel  
19 today.

20 CO-HEARING OFFICER LEE: Great. Thank  
21 you.

22 Would the Presiding Member like to ask  
23 any follow-ups or should I move on to BAAQMD for  
24 now?

25 PRESIDING MEMBER DOUGLAS: I think you

1 should move on. Thank you.

2 Well, and thank you all for your  
3 comments.

4 CO-HEARING OFFICER LEE: Mr. Zielkiewicz,  
5 would you -- do you have a comment?

6 MR. ZIELKEIWICZ: Yeah. So, again, my  
7 name is Jakub Zielkiewicz, spelled J-A-K-U-B, for  
8 boy. And the last name is Z, for zebra, -I-E-L-  
9 K-I-E-W-I-C, for Charlie, -Z, for zebra. And I'm  
10 representing the Bay Area Air Quality Management  
11 District. I'd like to, first, thank the  
12 Committee for considering our comments. And  
13 likewise, thank you to Staff for the ongoing work  
14 and collaboration in evaluating the environmental  
15 impacts to air quality, public health, the  
16 climate impacts, those seated with the  
17 development of this and other projects.

18 The last time I provided comment in front  
19 of this Committee in July, the Air District was  
20 aware of more than 1,300 megawatts of likely-to-  
21 be diesel backup generation in planned data  
22 centers in the Bay Area alone. I'm here three  
23 months later today and that number has increased  
24 to nearly 1,500 megawatts across new data center  
25 sites. Again, that's in the Bay Area alone, and

1 there may be others that are not on our radar  
2 quite yet.

3           As before, the significant capacity of  
4 fossil diesel power being planned is of great  
5 concern to the Air District. The air quality,  
6 public health, and greenhouse gas emissions  
7 associated with the 36 diesel generators being  
8 proposed for the Great Oaks South Data Center are  
9 of great concern to us. The Air District does  
10 not view fossil fuel generation at Great Oaks  
11 South as a solution for achieving the objective  
12 of the Air District's Diesel Free by '33  
13 initiative, which was signed onto by the Mayor  
14 and Vice Mayor of San Jose, nor do we view 99  
15 megawatts of diesel engine capacity at Great Oaks  
16 South a solution to achieving carbon neutrality  
17 as soon as possible and no later than 2045,  
18 pursuant to Executive Order B-55-18.

19           The Air District is encouraged by Staff's  
20 proposal to prepare an Environmental Impact  
21 Report. The Air District believes that the EIR  
22 will provide a more robust opportunity to discuss  
23 alternatives and evaluate alternatives to  
24 possible diesel generators, alternatives that  
25 should include alternative technologies and

1 alternative fuels, both of which are available  
2 and currently in use.

3           The notion that alternative technologies  
4 and fuels are commercially or technically  
5 infeasible is a convenient but misleading  
6 argument that reinforces the status quo of fossil  
7 diesel generation. The Air District urges CEC  
8 Staff to continue working with relevant  
9 technology and fuel providers that are reshape  
10 its thinking in an independent manner on the  
11 range of available alternatives to fossil diesel  
12 generators.

13           Lastly, the Air District commends Staff  
14 and Committee for the forthcoming discussion  
15 about opportunities for expanded public outreach  
16 and engagement, including a potential event in  
17 the San Jose community that would be impacted by  
18 this data center.

19           Over the past few years the Air District  
20 expanded its efforts to reduce community exposure  
21 to air pollutants as a result of Assembly Bill  
22 617, Community Health Protection Program. We're  
23 working closely with community groups, with the  
24 California Air Resources Board, environmental  
25 organizations, regulated industry, and other

1 stakeholders to reduce harmful air pollutants.

2 San Jose has been identified as one of  
3 the next AB 617 Community Air Protection Program  
4 communities as a result of numerous high health-  
5 burdened neighborhoods with disproportionately  
6 high exposure to air pollution. The Air District  
7 is encouraged by the Committee's discussion to  
8 more actively engage with the San Jose community.

9 The Air District thanks the Committee for  
10 the opportunity to comment today. We look  
11 forward to collaborating with CEC on the Great  
12 Oaks South Project and future data center  
13 projects. And we look forward to identifying  
14 acceptable alternatives to fossil diesel engines  
15 that contribute to ameliorating and not  
16 exacerbating the climate crisis, that contribute  
17 to meeting the goals of carbon neutrality, to  
18 improving air quality, and to improving public  
19 health for all Californians, and especially those  
20 fence-line communities at facilities, such as  
21 Great Oaks South.

22 Thank you.

23 CO-HEARING OFFICER LEE: Thank you very  
24 much.

25 Now, would Mr. Lucas Ramirez like to make



1 a comment at this time?

2 MR. RAMIREZ: Thank you for the  
3 opportunity. I won't be providing any comments  
4 unique to the Office of Council Member Jimenez,  
5 beyond recognizing the work of City of San Jose  
6 Planning Staff in evaluating the project. And  
7 it's our understanding that there has been  
8 coordination between CEC Staff and our own City  
9 Planning Staff. And the comments that they  
10 submit, you know, will be those on behalf of the  
11 City.

12 I did want to thank the CEC, though, for  
13 providing opportunities for public comment from  
14 residents. We've had the opportunity to meet  
15 with them and recognize the concerns from the  
16 neighborhood and appreciate the opportunity for  
17 residents in our district to share their concerns  
18 and express their opinions in this format.

19 Thank you.

20 CO-HEARING OFFICER LEE: Thank you very  
21 much. And, again, if anything comes up later in  
22 this proceeding, you'll all be invited to speak  
23 during the general public comment period at the  
24 end of this Committee conference as well.

25 Now, let's move on to the discussion of

1 Staff's proposal to prepare an EIR as its  
2 environmental document for review of the Great  
3 Oaks South Application, which is Item 2(a) in  
4 today's agenda.

5           In furtherance of the legal requirements  
6 and to aid in the consideration of an application  
7 for an SPPE under both the Warren-Alquist Act and  
8 CEQA, Staff conducts the initial data gathering  
9 and analysis, and then publishes that analysis  
10 for public review in a CEQA-compliant  
11 environmental document regarding the project. To  
12 date, in SPPE proceedings, Staff has prepared an  
13 Initial Study and Proposed Mitigated Negative  
14 Declaration as its environmental document.

15           However, for this particular application,  
16 on August 7th, 2020, Staff filed a memorandum  
17 informing the Committee that Staff intends to  
18 prepare an EIR as its environmental document.  
19 Both Staff and Applicant addressed this issue in  
20 their September 10th status reports.

21           The Committee has reviewed both status  
22 reports. According to Staff, it would be prudent  
23 to proceed directly to prepare an EIR because  
24 residents, potentially, are affected by the  
25 project, have voiced concerns over the project,

1 and Staff also listed other reasons, including  
2 that its analysis for an EIR would not involve a  
3 large expenditure of additional time or  
4 resources, and that multiple responsible agencies  
5 will likely need to use the resulting  
6 environmental document for their permit reviews.

7           On the other hand, the Applicant urged  
8 the Committee to instruct Staff to prepare an  
9 Initial Study and Proposed Mitigated Negative  
10 Declaration, and not an EIR, on grounds that an  
11 EIR is not warranted in this case. The Applicant  
12 also stressed that the City of San Jose has  
13 issued an Initial Study and Proposed Mitigated  
14 Negative Declaration for an earlier version of  
15 the project.

16           Now I'll move on to the parties. This is  
17 Staff's proposal.

18           So I would ask, would Staff like to begin  
19 our discussion?

20           MS. DECARLO: Yes. Thank you. This is  
21 Lisa DeCarlo, Energy Commission Staff Counsel.

22           And I want to initially thank both CARB  
23 and BAAQMD for their comments and their continued  
24 willingness to sit down with Staff and discuss  
25 our analysis and avenues for improvement and

1 attempts to resolve differing opinions and result  
2 in an improved analysis going forward.

3           We submitted our comments, as you  
4 mentioned, on September 10th, outlining our  
5 thinking with regard to recommending an EIR in  
6 this situation. I do think, at this point, we're  
7 in that gray area where the Commission could go  
8 with an MND or an EIR. But given several factors  
9 that we outlined, it seems that an EIR at this  
10 point is the most prudent avenue, considering  
11 that it will not take a significant amount of  
12 extra work on Staff's part to complete an EIR.  
13 As we mentioned, Staff's analysis is  
14 substantively equivalent to what one sees in  
15 general EIRs. We just call it an MND but the  
16 analysis is a lot more detailed than you would  
17 ordinarily see in an MND.

18           We've been addressing alternatives on an  
19 ad hoc basis in these proceedings as they're  
20 raised by various agencies. So we've touched on  
21 those but an EIR would allow us to dive into  
22 alternatives in a more thorough way, I believe.

23           It's interesting that our regulations  
24 currently require the Applicant to provide an  
25 alternatives analysis. But when you're doing an

1 MND, there's really no place for alternatives.  
2 So an EIR would make it clear that there's a  
3 place for us to really dive into the various  
4 alternatives that have been mentioned in the  
5 other proceedings by the various agencies.

6           We acknowledge that it would take a  
7 little extra time in this proceeding. Now if we  
8 do, ultimately, decide to go with an EIR, and the  
9 Commission feels like EIRs are more prudent in  
10 other proceedings, as well, that time won't be as  
11 significant because we can start off immediately  
12 with an NOP, once we receive an application.  
13 That's, apparently, the biggest hurdle at this  
14 point.

15           Because we've been going forward without  
16 the NOP, the NOP will require us to wait an  
17 additional 30 days before releasing our analysis.  
18 But as Staff has noted in its proposed schedule,  
19 we would already need 60 days once we receive the  
20 final data responses in order to complete our  
21 analysis. So I don't think, in this case, the  
22 requirement for an NOP really adds any additional  
23 time to when we would see the publication of the  
24 CEQA document.

25           And fundamentally, I think, the reason we

1 are proposing an EIR is to allow the Commission  
2 flexibility at the end of this process without  
3 triggering, at that point, the need to go back  
4 and do this all over again. So as we mentioned  
5 in our filing, Staff proposes its conclusions, it  
6 presents its analysis in the published document,  
7 and then we receive comments. And Committee  
8 have, generally, asked Staff to respond to those  
9 comments before we head into evidentiary  
10 hearings.

11           But then we have this second step of the  
12 evidentiary hearings where additional evidence  
13 may be received. And so Staff may initially  
14 think that there's no significant impact,  
15 everything's been mitigated and an MND is  
16 justified, but that doesn't mean, once we get to  
17 the evidentiary hearing, that additional  
18 information won't come up, or the Commission  
19 might feel that it's not necessarily in line with  
20 Staff's conclusions on impacts.

21           And if that were to happen with an MND,  
22 the end result would ultimately be to start the  
23 process over with an NOP, and then an EIR, and  
24 the time that it would take for that, whereas if  
25 we started off with an EIR, the Commission is

1 able to weigh whatever additional evidence other  
2 parties may provide, other agencies concerns and,  
3 ultimately, reach a decision on the exemption  
4 without having to change course with a different  
5 document.

6 Now there may be a situation where the  
7 evidence is so significant that it would require  
8 recirculation of the document. But the bar for  
9 recirculating an EIR is a lot lower -- I'm sorry,  
10 a lot higher than the bar for recirculating an  
11 MND. So that EIR still gives the Commission more  
12 flexibility in the end.

13 And as you've heard from the agencies  
14 today, there are concerns with these facilities  
15 in general. We're working with them to try and  
16 get the Commission an analysis and a document  
17 that satisfies CARB and BAAQMD. But there are  
18 significant disagreements currently with Staff  
19 and those agencies in terms of what's necessary  
20 in terms of the analysis, what's defensible, what  
21 assumptions can be made? Is modeling really  
22 feasible for these emergency situations?

23 So I would love for us to, ultimately,  
24 reach agreement. And we're all hoping for that  
25 but, at the end of the day, we may not. And so

1 the Commission may be presented with a situation  
2 where we have Staff's analysis and we still have  
3 CARB and BAAQMD expressing disagreement with that  
4 analysis, that it fully meets the requirements of  
5 CEQA. And so it's not inconceivable that these  
6 disagreements may carry over to the evidentiary  
7 hearings. And that really wouldn't be possible  
8 with an MND.

9           So, anyway, those are our basic reasons  
10 for recommending an EIR in this situation.

11           We also have, I forget if I mentioned or  
12 not, the public comments we received. So we also  
13 have, in addition to concerns expressed by the  
14 agencies, the potential for the residents and the  
15 public to continue to be involved in this  
16 proceeding and raise concerns up to the  
17 evidentiary hearing.

18           And so we believe doing an EIR at the  
19 front stage allows the Commission to proceed in  
20 an orderly manner and hear and respond to any  
21 concerns raised by members of the public or the  
22 agencies.

23           So that's the basic position that we have  
24 on this. And I'm happy to respond to any  
25 questions or any concerns from the dais or from



1 the Applicant.

2 PRESIDING MEMBER DOUGLAS: So --

3 CO-HEARING OFFICER LEE: Thank you.

4 PRESIDING MEMBER DOUGLAS: Sorry. I'll  
5 just --

6 CO-HEARING OFFICER LEE: Oh, go ahead.

7 PRESIDING MEMBER DOUGLAS: -- yeah, I'll  
8 just jump in for a moment. This is Commissioner  
9 Douglas.

10 So, Ms. DeCarlo, it sounds like you're  
11 saying that -- and you've said a number of  
12 things, and some are really more procedural  
13 considerations and timing considerations, but in  
14 terms of what the most appropriate document is,  
15 at least one of the things that I heard you say  
16 is that there seems to be some chance in your  
17 mind that either the Committee, when presented  
18 with all of the evidence that comes before us,  
19 might find that there is, at least, a fair  
20 argument that there could be a significant  
21 environmental impact, or that Staff conceivably  
22 might find it, or that one of the other agencies  
23 participating, Air Resources Board or BAAQMD, for  
24 example, might raise those sorts of concerns.  
25 And is that one of the underlying reasons why

1 Staff is recommending an EIR?

2 MS. DECARLO: Yes. Yes. Because the --  
3 even if the Committee did not believe that there  
4 would be an impact after seeing the evidence, if  
5 anyone has raised -- that's their argument, the  
6 Commission is obligated to then produce an EIR in  
7 order to reach a conclusion.

8 PRESIDING MEMBER DOUGLAS: Got it. Thank  
9 you. That's the only question I have for you  
10 right now.

11 CO-HEARING OFFICER LEE: Yeah. This is  
12 Hearing Officer Ralph Lee. I may have more  
13 questions but I would like to hear what the --  
14 whether the Applicant has any response to that  
15 first.

16 Mr. Galati, do you have a response?

17 MR. GALATI: Yes, I do. Thank you. This  
18 is -- sorry, Elise, I forgot to spell my name for  
19 you. It is Scott, S-C-O-T-To, Galati, G-A-L-A-T-  
20 I, representing SV1. Thank you for the  
21 opportunity to respond to this.

22 First of all, I'd like to just put things  
23 in perspective. The project is not a power  
24 plant. It certainly falls under the Commission's  
25 regulations but what it is, is a data center with

1 backup generators. Those backup generators are  
2 prohibited by law to operate unless there is an  
3 emergency. So at no point can SV1, which is  
4 owned by Equinix, turn on a backup generator  
5 under the law and have that generator power the  
6 facility. It's only when there is an emergency  
7 loss of utility power.

8           So let's put that in perspective because  
9 Equinix has three data centers in the San Jose  
10 area. And since 2016, up to yesterday, the --  
11 all three of those data centers, the total  
12 combined hours of emergency operation has been  
13 two hours in four years. That includes the  
14 Public Safety Power Shutoff programs which never  
15 required the generators to run. And this  
16 facility is in San Jose and it just up the street  
17 on Great Oaks Boulevard. In addition, none of  
18 those facilities ran during either extreme heat  
19 event or storm event.

20           I wanted to put this in perspective for  
21 the public because the public, I believe,  
22 inappropriately believes that the generators run  
23 often or it runs like a power plant. So just to  
24 be clear, the generators do run for testing and  
25 maintenance, but this Applicant does them one at

1 a time. They usually run for 15 minutes to an  
2 hour once a month. The Applicant has even agreed  
3 to take a limitation on the number of hours it  
4 will use for testing and maintenance, and a  
5 condition that it will never run more than one  
6 generator at a time.

7 In addition, some of the things you heard  
8 about the last project versus this project, what  
9 you didn't hear is that, yes, these generators  
10 are larger and, yes, they do generate more  
11 electricity, but they also have been incorporated  
12 with diesel particulate filters which are not  
13 required by the Bay Area Air Quality Management  
14 District. In fact, the Bay Area has just issued  
15 permits for a facility using Tier 2 generators,  
16 similar size, without diesel particulate filters.  
17 And we can docket that information later.

18 But I think it's important to put this in  
19 perspective, I think, hearing the CARB  
20 representatives speak, is that the generators are  
21 going to be running frequently when that is not  
22 the experience, nor did that occur during the  
23 extreme heat event. In fact, during the extreme  
24 heat event, there were about 100 megawatts of  
25 generators that went on in the Silicon Valley

1 Power area. Those all went on voluntary because  
2 the Governor had asked them to. None of those  
3 generators would have been curtailed. The only  
4 curtailment, because of the heat storm, in the  
5 Silicon Valley Power was 12 megawatts, which is  
6 about four or five generators that ran for 30  
7 minutes.

8           So that is an important overlay. Number  
9 one, we're the same data center we were. We do  
10 have larger generators, and a few more. We're  
11 using less water than the project was allowed to  
12 use before. We went from 1,300 acre feet a year  
13 to 4 acre feet. The buildings are in the same  
14 location. They're slightly smaller. It's on the  
15 same site. And so it's not just that the City of  
16 San Jose did an IS -- excuse me, an Initial Study  
17 Mitigated Negative Declaration for the first  
18 project, it's the fact that the project is very  
19 similar to what it was.

20           We are in no way, shape or form saying  
21 that the Staff should not analyze the changes,  
22 including the larger generators and how they  
23 operate. And, in fact, we hired a consulting  
24 firm that prepared the Initial Study Mitigated  
25 Negative Declaration for the City of San Jose to

1 prepare our application to the Commission.

2           In addition, when Staff was first  
3 proposing a EIR, we filed, recently, an  
4 alternatives section that was also reviewed and  
5 prepared by that consultant, as well, with their  
6 advice. There's some things that we need to  
7 clear up. We're happy to talk about these more  
8 in detail. But it's important to determine  
9 whether an EIR needs to be prepared or not.

10           I heard Mr. Dyer testify that our  
11 alternative analysis was not appropriate because  
12 it didn't include vendors. Equinix has been  
13 operating data centers for a long time and, in  
14 fact, has two fuel cells in operation, so it has  
15 experience on how fuel cells operate. And large  
16 fuel cells take almost 12 hours to start up.  
17 Remember, the purpose of the entire backup  
18 generator is so within minutes, actually within  
19 11 or 12 seconds from a loss of power, the  
20 generators can kick on for the purposes of not  
21 losing client data.

22           We don't own the servers that are in our  
23 facilities. We have clients who provide the  
24 servers in those facilities. And those clients  
25 demand an insurance policy that their data will

1 not be lost, that the internet will continue to  
2 function. And, currently, they ask us to provide  
3 the most reliable facility possible, and that is  
4 a liquid fuel emergency generator with redundant  
5 generators in case those generators break.  
6 That's what we provide. Just needed to make that  
7 clear.

8           The idea that an EIR is required because,  
9 during evidentiary hearing, new information can  
10 be provided can be simply handled by the  
11 Committee here. As I have proposed in the past,  
12 someone who intervenes late in the process  
13 without commenting on the environmental document,  
14 those are the types of intervenors that bring up  
15 new issues that could have been resolved in the  
16 right way.

17           We ask the Committee to require people  
18 who want to intervene and participate in the  
19 evidentiary hearings to file comments, either  
20 come to a meeting or actually file written  
21 comments on the environmental document, so that  
22 Staff has a fair opportunity to look at it and  
23 address it. The Committee can look at those  
24 responses to determine at that time, at the  
25 prehearing conference, whether the parties are

1 ready to go to evidentiary hearing. And it can  
2 eliminate this possibility of surprise that keeps  
3 happening late in the process by actually  
4 enforcing rules on when people can bring up  
5 issues and when they cannot. It doesn't stop  
6 public comment but it certainly allows for --  
7 encourages agencies and individuals to  
8 participate at a time when Staff needs the  
9 information so it can do its analysis.

10           We strongly believe that an ISMND is  
11 adequate for this project. And we're not talking  
12 about any Initial Study or Mitigated Negative  
13 Declaration. We're talking about the type of  
14 analysis that Staff does, which we all believe on  
15 our side that that is already an EIR. If the  
16 Energy Commission is interested in an  
17 alternatives analysis, it can simply order Staff  
18 to include one. We certainly have. And we're  
19 happy to discuss those issues as we go forward.  
20 But it's important to keep this project and what  
21 it does and what it does not do in mind when the  
22 Committee is considering that.

23           So I don't have anything more but I'm  
24 available to answer questions. Thank you very  
25 much.



1 CO-HEARING OFFICER LEE: This is Hearing  
2 Officer Ralph Lee. Thank you.

3 I'll invite Staff. Did you have any  
4 reply to what Mr. Galati just said?

5 MS. DECARLO: No. Thank you.

6 CO-HEARING OFFICER LEE: Okay. I don't  
7 have any further questions. Then I think, unless  
8 the Presiding Member has any questions, I'm going  
9 to move on to the next discussion item.

10 So the second discussion item is, in our  
11 notice, we said we were going to have a  
12 discussion among Staff, Applicant, the Energy  
13 Commission's Public Advisor's Office, and the  
14 Committee about opportunities for expanded public  
15 outreach and engagement in this proceeding.

16 At our last Committee conference on July  
17 13th, the Energy Commission's Public Advisor's  
18 Office gave a presentation that touched on public  
19 outreach and engagement. And so I'll start this  
20 discussion by Public Advisor's Office to report  
21 any update on public outreach and engagement  
22 since the last meeting and provide any  
23 recommendations, if any.

24 Do we have a representative from the  
25 Public Advisor's Office available at this time?

1 MS. AVALOS: Yes. I'm RoseMary Avalos  
2 with the Public Advisor's Office. And I'm  
3 representing Noemi Gallardo, our Public Advisor.

4 CO-HEARING OFFICER LEE: Thank you. Did  
5 you have any report that you --

6 MS. AVALOS: Yes.

7 CO-HEARING OFFICER LEE: -- can offer?

8 MS. AVALOS: Yes.

9 CO-HEARING OFFICER LEE: Thank you.

10 MS. AVALOS: Yes. With regard to in-  
11 person engagement, the Public Advisor's Office  
12 tends to encourage in-person engagement with the  
13 public for all types of CEC proceedings. The  
14 close contact with the public helps the CEC build  
15 relationships and trust and make participation  
16 more convenient for stakeholders.

17 The City of San Jose allows for some  
18 outdoor and indoor gatherings with modifications.  
19 And this goes to regard to the question of in-  
20 person meetings in the community.

21 However, in this proceeding, due to the  
22 totality of the circumstances, including the  
23 national COVID-19 pandemic, air pollution caused  
24 by wildfires, energy emergencies caused by recent  
25 heat waves, and the state's ban on travel and

1 limited budget, the Public Advisor recommends not  
2 holding an in-person gathering for the Great Oaks  
3 South Data Center proceeding. The health risk of  
4 exposing Staff and the public to the coronavirus,  
5 polluted air, and heat outweigh an benefit that  
6 an in-person gathering could provide to the local  
7 community.

8           The Public Advisor recognizes that the  
9 SCU Lightning Complex Fire has been contained,  
10 heat has decreased and air quality has improved,  
11 but Santa Clara County, where San Jose is  
12 located, is still in the substantial tier of  
13 county risk level, according to the Governor's  
14 Blueprint for a Safer Economy. This is the  
15 second most restrictive tier and mean some  
16 nonessential indoor business operations are  
17 closed.

18           Our City contacts have verified that the  
19 policy and practice of the city is not -- is to  
20 not hold in-person meetings and to close all city  
21 buildings during the pandemic. Instead, the City  
22 is relying on virtual platforms, like the Zoom  
23 and via phone, to conduct its public proceedings  
24 and public participation.

25           Additionally, the travel ban is still in

1 place. And state agencies are still under  
2 pressure to reduce spending. Doing an in-person  
3 would cost more money than a virtual convening  
4 and would require a member of Staff to travel.

5           Thus, the Public Advisor advises against  
6 an in-person gathering and recommends adhering to  
7 state policy and following local practice by  
8 holding a community meeting via Zoom. To better  
9 accommodate the public, the Zoom event should be  
10 held after traditional work hours, preferably  
11 around 6:00 or 6:30 p.m., and could be focused on  
12 enabling the public to ask questions and comment.

13           Interpreting services should be provided  
14 if we requested. And notification should go out  
15 via numerous local mediums. It would add value  
16 it was possible to allow Staff, and the City  
17 representatives from the locally official  
18 offices, and the Air District to present and  
19 provide additional information to the public.

20           And with regard to a possible question  
21 about billboards, I'll wait for that question,  
22 okay?

23           CO-HEARING OFFICER LEE: Well, this is  
24 Hearing Officer Ralph Lee. I don't have any  
25 specific questions. If you had anything else to

1 add, this would be the time.

2 MS. AVALOS: Okay. There have been  
3 discussions with regard to a more extensive  
4 outreach. And one of the suggestions was placing  
5 a construction billboard at the site of the  
6 proposed project.

7 And the Public Advisor recommends that  
8 the Committee ask the Applicant to cover the cost  
9 of producing and posting a construction board or  
10 multiple construction boards at the proposed  
11 Great Oaks South Project site, preferably in a  
12 location near the street where residents and  
13 passers-by are more likely to view the board.  
14 The reason for the billboards is to provide an  
15 additional mechanism to inform the public about  
16 the proposed project and provide contact  
17 information in case the public has additional  
18 questions.

19 The Public Advisor recommends the  
20 announcement on the board or boards be in  
21 Spanish, Vietnamese, and Chinese, and in a large  
22 font to help ensure that the text can be easily  
23 read. The Public Advisor thinks that this  
24 additional measure will be a cost effective  
25 benefit to the public, particularly because not

1 all notices were translated in languages from the  
2 inception of the proceeding.

3 Thank you.

4 CO-HEARING OFFICER LEE: Thank you.

5 Let's see, this was in our notice of the  
6 event for today. I would ask -- we have a couple  
7 of recommendations from the Public Advisor's  
8 Office, and that's not the scope of potential  
9 topics we have today. But one was for no -- what  
10 I heard, I believe, was no in-person event but a  
11 possible public event after work hours via Zoom.  
12 And the second recommendation involving a sign on  
13 the project site.

14 Does the Applicant have any response to  
15 the Public Advisor's Office's recommendation or  
16 report?

17 MR. GALATI: I can report to you that  
18 there are already signs up associated with the  
19 original application to the City. Maybe those  
20 could be used or extended. But we'll go ahead  
21 and work with the Commission Staff and the Public  
22 Advisor offline.

23 My understanding was the recommendation  
24 was that the Commission would actually make the  
25 notices, so that they're comfortable with it, but

1 we would allow access to the site for them to be  
2 put up or extended. And the request was for us  
3 to fund it; correct?

4 CO-HEARING OFFICER LEE: Excuse me. I'm  
5 not sure I completely caught what you just said.  
6 Did you say there has been a recommendation? You  
7 mean the recommendation today from the Public  
8 Advisor's Office?

9 MR. GALATI: Yeah. I apologize, Mr. Lee.  
10 The recommendation that I heard from the Public  
11 Advisor's Office, what I was trying to understand  
12 was what we were being asked to do. I thought it  
13 was we were being asked to fund.

14 We have existing signs up. Maybe they  
15 could be used or extended, is what I was saying,  
16 because those signs are up because of the  
17 application pending before the City of San Jose.  
18 But since it was -- the recommendations were that  
19 the notices look at certain way and be in  
20 different languages, I didn't know if the  
21 Commission wants to put up -- prepare the notices  
22 and they're asking us just to fund it, or are  
23 they asking us very specifically to go out and  
24 also do that?

25 CO-HEARING OFFICER LEE: Well, this is

1 Hearing Officer Ralph Lee.

2 I'm not sure that we have a  
3 recommendation right now. I'm just trying to get  
4 some information about what's recommended and  
5 what's possible and what's there.

6 MR. GALATI: There are signs there now.  
7 I don't know if those are acceptable to the  
8 Commission.

9 So I guess what I would say is we're  
10 happy to work with the Commission to make sure  
11 that people know about the project. And we  
12 comply with the City rules right now about how  
13 they require the notification. If the Commission  
14 wants additional notification, we'd be happy to  
15 work with them.

16 CO-HEARING OFFICER LEE: Okay. Great.  
17 And would it be -- if, I mean, if the signs, if  
18 there is some additional signage, is that  
19 something that is feasible for the Applicant to  
20 install?

21 MR. GALATI: It certainly is feasible. I  
22 wish I could say yes. I don't have the person  
23 who can write the check. I can tell you this,  
24 that there is a deposit with the Commission. And  
25 that might be something that the Commission would



1 like to take care of doing out of that deposit.

2 CO-HEARING OFFICER LEE: Let me move to  
3 staff.

4 Does Staff have any response to either  
5 the Public Advisor's Office's recommendation or  
6 to the Applicant's response to that?

7 MS. WORRALL: I'm raising hand -- raising  
8 my hand.

9 CO-HEARING OFFICER LEE: Oh.

10 MS. DECARLO: Lisa, we can hear you. You  
11 can go ahead.

12 MS. WORRALL: Oh, you can? Good.

13 MS. DECARLO: YES.

14 MS. WORRALL: I'm sorry because I've got  
15 various modes. And my wi-fi is three megabits,  
16 so didn't want to lose you guys.

17 Yes, so listening to what RoseMary is  
18 recommending, the Public Advisor's Office, I  
19 could feasibly see that it's something that Staff  
20 could organize. As far as the placement of the  
21 sign, I mean, as far as coordinating to get the  
22 text correct, I could see Staff could feasibly do  
23 that, putting a sign, and then placement and  
24 things like that. That may be easier for the  
25 Applicant since it's their property.

1 I happen to know the property is back  
2 against Via del Oro and the residents are sort of  
3 across the street. And there's a parcel, a big  
4 parcel of land, that's between where the  
5 residences are on the, I would say, probably  
6 south side of Santa Teresa, so there's a big  
7 parcel of land and a main road that's in between.  
8 So you would probably have to go around to the  
9 back of the property for residential -- to get  
10 residential visibility of the signs. I mean, you  
11 can't place the signs on the other parcels. That  
12 was just my thoughts.

13 Yeah, so that's really all I have, I  
14 think.

15 CO-HEARING OFFICER LEE: Okay. Thank  
16 you.

17 MS. WORRALL: Yeah. I mean, as far as --

18 CO-HEARING OFFICER LEE: I think --

19 MS. WORRALL: -- outreach, we do have --  
20 you know, so the argument for the -- in favor of  
21 the EIR is that we will be holding a scoping  
22 meeting. And so that's an opportunity for  
23 additional comment from the public. And instead  
24 of a 30-day comment period on the environmental  
25 document, it would be a 45-day comment period, so

1 you'll have a longer comment period.

2 And so that's all.

3 CO-HEARING OFFICER LEE: Okay. Thank  
4 you. I think, unless the Presiding Member has  
5 any further comments, I'm going to move on to our  
6 next discussion item.

7 PRESIDING MEMBER DOUGLAS: Yeah. Thank  
8 you. No comments from me.

9 CO-HEARING OFFICER LEE: Thank you.

10 The notice of today's Committee  
11 conference also included a discussion item on,  
12 let's see, next steps, issues, and a schedule,  
13 and the status of discovery. Yeah, that's the  
14 last discussion item on today's Committee  
15 conference.

16 Can Staff start us off on that? Does the  
17 Staff have a report on the progress of the  
18 application?

19 MS. WORRALL: Sure. Surely. Staff  
20 continues to work diligently on their technical  
21 analyses and certainly appreciates the  
22 Applicant's ongoing efforts to provide responses  
23 as additional information becomes available.  
24 We've had a meeting with Pacific Gas and Electric  
25 Company which was very productive.

1           We have a couple of -- just a few  
2 outstanding data responses that we require. For  
3 the technical area of air quality, we had a  
4 question about, in response to the revised AQ and  
5 HRA analysis that was documented -- docketed on  
6 August 25th. There was a question about the 21  
7 kV underground distribution lines being included  
8 in the emissions calculations. And we're just  
9 expecting -- we're waiting for a response on  
10 that.

11           Also, there was a request for the  
12 technical data sheet for the small engines  
13 associated with -- this was part of responses,  
14 SV1 Supplemental Responses to Revised AQ  
15 Analysis, which was docketed on September 4th.

16           And for cultural resources, we're just  
17 missing one report -- Scott's aware of this,  
18 Scott's aware of all of this -- for Dataset 2,  
19 Data Request 49.

20           For transportation, a vehicle miles  
21 traveled analysis for CEQA compliance, and a  
22 local transportation analysis and transportation  
23 demand management plan for compliance with City  
24 of San Jose regulations are required.

25           That's about it for outstanding data's

1 discovery.

2 Our proposed schedule remains unchanged.

3 Yeah. And that's about it.

4 CO-HEARING OFFICER LEE: Thank you. This  
5 is Hearing Officer Ralph Lee.

6 Does Staff have an estimate of how close  
7 it is to having the information it needs and to  
8 complete an environmental document?

9 MS. WORRALL: I don't know. It's really  
10 on when the Applicant can submit all this. I  
11 mean, I wouldn't think the air quality  
12 information would take terribly long, nor the  
13 cultural and tribal cultural resources  
14 information. The transportation analysis, that  
15 might take a little longer. So this was  
16 something that we had discovered during our  
17 coordination with the City of San Jose to make  
18 sure that we were responsive to their -- any kind  
19 of specific thresholds of significance that they  
20 had.

21 But our, essentially, our estimate is we  
22 would produce a document 60 days after the  
23 receipt of the last information from the  
24 Applicant.

25 CO-HEARING OFFICER LEE: Okay. Well,

1 thank you.

2 Does the Applicant have anything to add  
3 to that discussion?

4 MR. GALATI: Yes. The -- we're aware of  
5 the technical data sheet and the 21 kV  
6 underground emissions, neither of which are  
7 probably going to be necessary to determine  
8 whether there's an impact or needs mitigation but  
9 it does fill out the record, so we are working on  
10 those. We think we can get those to Staff next  
11 week, including the missing cultural report as  
12 well. That was sort of lost in my work, so I  
13 apologize for that.

14 As far as the transportation VMT, we also  
15 did talk to the City. And I think there's a  
16 misunderstanding about the level of analysis that  
17 needs to be done. We have worked, also, with a  
18 consultant to try to understand that issue. And  
19 we think that it might be a good idea to have a  
20 call with Staff and the City so that we all get  
21 on the same page. We're unclear as to what we,  
22 specifically, need to provide. So I think we  
23 could set that up quickly. I didn't think we  
24 needed that at first but I think we do need that  
25 so that we have the direction of what it is that

1 we're being asked to provide.

2 MS. WORRALL: Yeah. Not a problem. I  
3 can do that.

4 MR. GALATI: Okay. Thank you. So we are  
5 working well with Staff.

6 We do believe that 60 days is an awful  
7 long time after the last bit of information, so  
8 let's think about this for a minute.

9 The air quality has everything that they  
10 need, except for the calculations for fugitive  
11 dust when the trenches are dug, which are not  
12 going to be a significant impact, we're using  
13 best management practice, so that's missing.

14 The technical data sheet for the small  
15 generators, we have provided the information once  
16 we provided the technical data sheet that  
17 corroborates it. But Staff can certainly  
18 finalize the analysis based on what it has and  
19 wait for the sheet to be able to refer to it.

20 And then transportation, we understand  
21 why the transportation section might not be able  
22 to be written. But it seems like everything else  
23 can be written, except for maybe a portion of the  
24 air quality analysis that deals with an issue  
25 that is not likely to result in a significant

1 impact. It's emissions from digging a trench.

2 So we would hope that Staff is working on  
3 that now and that can respond and create a  
4 document 30 days after it receives the last of  
5 the information.

6 Now if the Committee orders a Notice of  
7 Preparation and there is a public comment period  
8 on that Notice of Preparation, we've already  
9 received a lot of comments from the public.  
10 Remember what those comments are for. They're  
11 not for should we have the project be approved or  
12 not be approved. Those comments are to tell the  
13 Staff what to review and what to analyze. The  
14 Staff is already committed to analyzing 23  
15 sections at a level that is already an EIR level.  
16 I don't think that the additional public comment  
17 would inform that analysis, that we haven't  
18 already received, which there's been quite a bit  
19 of public comment so far.

20 So we do believe that Staff should be  
21 able to produce the document, whichever it is,  
22 quicker than it is saying it should.

23 Thank you.

24 CO-HEARING OFFICER LEE: Yeah. Thank  
25 you.



1           Again, this is Ralph Lee.

2           Well, as Staff prepares its analysis,  
3 isn't -- is Staff expecting some information from  
4 CARB or BAAQMD that they -- that they're going to  
5 wait for before they file their environmental  
6 document?

7           MS. DECARLO: I mean, we'll certainly be  
8 paying attention to what CARB is going to file on  
9 October 15th in the Sequoia proceeding. We  
10 continue to have discussions with the two  
11 agencies on a, mostly, weekly basis. And that  
12 will certainly inform our ultimate analysis in  
13 this proceeding.

14           But as far as anything formally submitted  
15 by CARB or BAAQMD, while we certainly welcome any  
16 additional information they can provide, whether  
17 it be regarding the feasibility of various  
18 alternatives, alternatives that they've  
19 identified that are commercially available and  
20 being used in these situations elsewhere, would  
21 be helpful. Also, information regarding how they  
22 see the modeling being done, any of that  
23 information would be welcome. But we're  
24 certainly, at this point, not expecting them to  
25 file anything formally.

1 CO-HEARING OFFICER LEE: Okay. Thank  
2 you.

3 Well, again, I have nothing further. And  
4 unless the Presiding Member has any --

5 MS. WORRALL: I just wanted just to add a  
6 couple things. This is Lisa Worrall here.

7 Just -- we just -- our cultural resources  
8 technical Staff just received the responses to  
9 Dataset 49, with the exception of just one  
10 report, but that just happened today. And they  
11 needed that information in order to their impact  
12 analysis. So they're just sort of, you know,  
13 being able to get to their impact analysis  
14 portion of the section right now.

15 And then, of course, the transportation  
16 section, you know, would be -- yes, so two big  
17 sections, you know, still need to be prepared.  
18 And then if we do, you know, provided we keep  
19 moving forward with doing an EIR, then, you know,  
20 we have alternatives that we're, you know,  
21 working on right now. And, yeah, so that's just  
22 the various things that end up going into it.

23 CO-HEARING OFFICER LEE: Well, great.  
24 Thank you.

25 This is Ralph Lee.

1           Commissioner Douglas, do you have any  
2 further questions or comments before we move on  
3 to public comment?

4           PRESIDING MEMBER DOUGLAS: Not for the  
5 parties. But I would be interested if CARB and  
6 Bay Area are on, if they could speak to the  
7 question of what, if anything, they might intend  
8 to submit in this -- on this project? And would  
9 it be in the form of comment on the environmental  
10 document or something ahead of that, or  
11 testimony, if they know?

12           CO-HEARING OFFICER LEE: Is CARB  
13 available first?

14           MR. DYER: Yeah. This is, again, Wesley  
15 Dyer with CARB.

16           And, also, I'll say that our October 15th  
17 comments will also address kind of more broader  
18 concerns that we have that -- it will be  
19 specifically for Sequoia, but there are concerns,  
20 also, more broadly that will be applicable here.  
21 And so if that's helpful, I think that we can,  
22 also, kind of echo those in this proceeding as  
23 well. And I would anticipate that we are looking  
24 into and interested in commenting on the  
25 Environmental Impact Analysis for this project as

1 well.

2 But, again, we're still working with both  
3 CEC Staff and BAAQMD Staff and internally to  
4 really put together concretely what those are  
5 going to look like and consist of.

6 CO-HEARING OFFICER LEE: Great. Thank  
7 you.

8 BAAQMD, did you have any response to  
9 Commissioner Douglas' question?

10 MR. ZIELKEIWICZ: So this is Jakub. I  
11 mean, similar to what CARB said, I mean, again, I  
12 anticipate that we'll be commenting on the EIR or  
13 environmental analysis and participating in  
14 future proceedings. And, again, we're working  
15 with the CEC and CARB Staff to identify any data  
16 needs.

17 CO-HEARING OFFICER LEE: Thank you.

18 MR. GALATI: Mr. Lee, may I please  
19 address the Commissioner?

20 CO-HEARING OFFICER LEE: Is that Mr.  
21 Galati?

22 MR. GALATI: Yes.

23 MR. RAMIREZ: Yeah. Please go ahead.

24 MR. GALATI: Commissioner Douglas, I've  
25 been doing work at the Commission a long time.

1 And I haven't really worked with CARB in any of  
2 the proceedings that we've been in. And so I'm  
3 just assuming that they may not realize how much  
4 the Commission encourages workshop and  
5 collaboration between the parties so that issues  
6 can be worked out. The hearings are not the  
7 place to work these things out, if we can find  
8 agreement or disagreement.

9           So I really think that what could  
10 possibly happen here is that information would be  
11 provided and then there would be a surprise at  
12 the end in comments on the document that causes  
13 us all to roll up our sleeves. I'd really like  
14 you to entertain possibly ordering a workshop  
15 where we can get in a room with CARB, Bay Area,  
16 and Staff, get our technical experts together,  
17 and really have some of the discussions that  
18 we've had with Staff about emergencies and how  
19 difficult they are to model, and about  
20 alternatives. We've gone down the path a lot on  
21 a lot of the projects. And we think that there  
22 might be a lot of information that CARB could  
23 gain from us as well. And it would avoid any  
24 surprise and wasteful hearings in front of  
25 Commissioner time.

1 Thank you.

2 PRESIDING MEMBER DOUGLAS: So thank you,  
3 Mr. Galati. And those are helpful comments. And  
4 that really is why I asked that question.

5 We do have a process where we encourage  
6 the parties and interested agencies to meet and  
7 work on issues ahead of time through workshops,  
8 typically, in order to resolve the issues that  
9 can be resolved and, where necessary, clearly  
10 present disagreements to the Committee in a way  
11 that the Committee can weigh evidence and make a  
12 decision. And so it would be extremely helpful  
13 to have CARB and BAAQMD -- and, of course, Bay  
14 Area is experienced in our proceedings -- but it  
15 would be very helpful to have that level of  
16 engagement. Now Staff did mention that there are  
17 weekly meetings or so, something like that.  
18 Hopefully, that can lead to some engaged work  
19 through the process on this proceeding.

20 So I hear your comments, Mr. Galati. We  
21 will consider your request.

22 And let me just ask Staff if they have  
23 any comment about Mr. Galati's suggestion of a  
24 workshop?

25 MS. DECARLO: This is Lisa DeCarlo,

1 Energy Commission Staff Counsel.

2 I mean, we're definitely supportive of  
3 CARB and BAAQMD getting a better understanding of  
4 where the project proponents are coming from in  
5 term of their reliability needs and their  
6 investigations into alternative technologies and  
7 what they've found. So the more discussion and  
8 conversation along those lines, I think, the  
9 better for the process in general.

10 PRESIDING MEMBER DOUGLAS: Great. Thank  
11 you.

12 CO-HEARING OFFICER LEE: Thank you. This  
13 is Ralph Lee.

14 Before we move on to public comment, I  
15 would acknowledge that the Chair, the Associate  
16 Member of this Committee, has joined the meeting.

17 And I'll invite either the Presiding  
18 Member or the Chair to make any additional  
19 comments before we move on to public comment.

20 CHAIR HOCSCCHILD: No additional comment  
21 from me. Thanks.

22 CO-HEARING OFFICER LEE: Thank you.

23 PRESIDING MEMBER DOUGLAS: Nothing.

24 Nothing from me either. Thank you.

25 CO-HEARING OFFICER LEE: Thanks. So that

1 concludes our discussion of the schedule and  
2 status.

3           And now we'll move on to the public  
4 comment period. Comments are limited to three  
5 minutes per person.

6           If you're on a computer, the way we're  
7 going to do this is, please, use the raise-hand  
8 feature to let us know that you'd like to  
9 comment. If you change your mind, you can always  
10 lower your hand again by using the same icon.  
11 We'll call on you, and then un-mute your line so  
12 that you can state your comment. And if you  
13 press the un-mute button, it will appear -- or if  
14 we un-mute you, it will -- your un-mute button  
15 will appear for you to press on the lower left of  
16 your Zoom screen.

17           And again, for those using a telephone,  
18 you can dial star nine to raise your hand. And  
19 if you've muted your phone using star six, you  
20 may need to press star six again to un-mute  
21 yourself. If you're on the phone, we'll tell you  
22 that your line is open and call on you by reading  
23 off the last three numbers of the phone number.  
24 I think that's everything.

25           I'm seeing some hands starting to raise.



1 Can I have the Public Advisor announce the names  
2 of the people who are -- our Public Advisor's  
3 Office representative, RoseMary Avalos, announce  
4 the commenters in the order that they've raised  
5 their hand?

6 MS. AVALOS: Yes. Yes. The first  
7 commenter is Bill Dunmyer.

8 And, Mr. Dunmyer, please spell your first  
9 and last name, and then go ahead and make your  
10 comment. And you may have to un-mute on your  
11 end.

12 CO-HEARING OFFICER LEE: Please go ahead,  
13 Mr. Dunmyer.

14 MR. DUNMYER: Can you all hear me?

15 MS. AVALOS: Yes.

16 CO-HEARING OFFICER LEE: Fine. This is  
17 Ralph Lee. Your voice is a little bit low, is  
18 the only thing.

19 MR. DUNMYER: Let me see here. Is this  
20 any better?

21 CO-HEARING OFFICER LEE: Yes. Thank you.

22 MR. DUNMYER: Okay. Well, ladies and  
23 gentlemen, thank you for letting me speak. I  
24 wish that San Jose in 2017 had given us the same  
25 opportunity. Maybe this project would have

1 turned out a little bit differently.

2           You all did a good job of convincing me.  
3 I did job of staying out of government. I don't  
4 know how you keep all these acronyms straight in  
5 your minds.

6           At any rate, I do have a brief comment I  
7 want to make in regards to a comment that Mr.  
8 Galati, essentially, talked about. He did a good  
9 job of trying to move this from a small power  
10 plant to a, quote, "backup emergency situation,"  
11 so I applaud him for that.

12           The -- you know, our minds on our side is  
13 that this -- 36 massive generators don't look  
14 like a small backup situation. It looks like a  
15 real power plant. And I don't know how they're  
16 placed next to Santa Teresa Boulevard or how  
17 that's going to be. If the buildings are on this  
18 side and the generators are behind them, that's  
19 one thing. But it raises questions as to what  
20 these things are going to look like from our  
21 residence. And it really kills our value of the  
22 houses that we've been in for 20-some years.

23           So on the environmental side, it's my  
24 understanding that generators are -- you know,  
25 that meet today's standards should produce zero

1 emissions. So I'm very interested in seeing an  
2 environmental report done, even if these things  
3 only operate a small period -- amount of time.  
4 So that would be number one.

5           Secondly, noise standards. When all 36  
6 of these go online, and nobody can say whether or  
7 not they're going to go all online or not, but if  
8 they did, what is that going to sound like, a 747  
9 taking off next door? That's something to be --  
10 something that should be discussed and something  
11 you should look into.

12           In regards to the water, I read  
13 someplace, somewhere on this report, that there's  
14 a massive amount of water being used by these  
15 generators. I have a question as to where that's  
16 going to come from. Is this coming from the  
17 normal wells, the drinking wells that we use  
18 here? Because we're short of water as it is.

19           Secondly, is -- are the wells -- if they  
20 are not, if the well -- if it's coming from a  
21 well, a different well of what we use for  
22 drinking water here, then are they being -- are  
23 they using the water that is being -- that was  
24 from a well that had gone down, at least not used  
25 any longer by Great Oaks, because of poison that

1 was spilled into it by Fairchild so many years  
2 back? So I have questions in that regards too.  
3 If they are using that water, that poisoned  
4 water, how does that impact the City of San Jose?  
5 What does the City of San Jose have to do to  
6 clean up that water which has spilled into the  
7 system?

8           And let's see. What else?

9           Oh, noise abatement. I don't know,  
10 again, where these generators are going to be  
11 placed. But I'm hoping that someone took the  
12 initiative and thought about building some noise  
13 abatement around these things so that they could  
14 damper the amount of noise it's going to be  
15 projecting.

16           And I guess that's all the issue I had.  
17 So I know that not -- many of you can't make any  
18 comments now because it sounds like there's a  
19 good chance that an environmental report will be  
20 done and some of these issues will be addressed,  
21 so thank you.

22           CO-HEARING OFFICER LEE: Thank you.

23           MS. AVALOS: Thank you. Okay. The next

24 --

25           CO-HEARING OFFICER LEE: Yeah, please,

1 Ms. Avalos --

2 MS. AVALOS: -- the next --

3 CO-HEARING OFFICER LEE: -- go ahead.

4 MS. AVALOS: -- the next public comment  
5 is from Patricia Sheehan.

6 Please spell your first and last name and  
7 state your affiliation. And go ahead. Your line  
8 is open.

9 MS. SHEEHAN: Hi. My name is -- can you  
10 hear me?

11 MS. AVALOS: Yes.

12 MS. SHEEHAN: My name is Patricia  
13 Sheehan,

14 S-H-E-E-H-A-N. I live on San Ignacio and have  
15 been here for close to 40 years.

16 One, I never heard of this project until  
17 my neighbor told me about it. So I'm quite  
18 concerned. How come the neighborhood was never  
19 given any kind of notice of this proposal?

20 Two, Mr. Galati said that we don't lose  
21 electricity that often. He's very wrong. We  
22 just lost electricity the other night. Last  
23 year, we lost electricity for four days. And we  
24 are now going into the big fire season. And when  
25 that happens, PG&E pulls back on our use by

1 shutting it off and keeping the area safe.

2           So, Mr. Galati, you're very wrong on  
3 saying we don't lose our electricity often here.  
4 We do. I live here and I have had to live  
5 through that.

6           I am very concerned about noise. When  
7 these generators come up, what is it going to be  
8 like for us? I like to sleep with my windows  
9 open. If you come down San Ignacio, you will see  
10 all of the federal lands behind me, where we have  
11 coyotes coming down the street, we have deer  
12 coming down the street. Is your noise going to  
13 drive all of this away? Is your noise going to  
14 keep me up at night because I sleep with all of  
15 my windows open?

16           Another comment prior to my speaking was  
17 the water. I came to San Jose in 1976, right  
18 when the Fairchild fiasco was going on. And I  
19 happened to work in the law firm who was making  
20 these settlement distributions. Ever since  
21 Fairchild poisoned our water wells, I've never  
22 drank water from these wells. What's going to  
23 happen to our water wells with this big company?

24           My other concern is I saw the picture of  
25 what it's going to look like. Most of the

1 buildings over there on the other side of Santa  
2 Teresa are only two-story buildings. They don't  
3 stick out. And your building looks like it's  
4 going to look like a very ugly business. That's  
5 kind of sad.

6           Unfortunately, I mean, I know that the  
7 land is valuable. I know that people want it.  
8 But I just want to make sure that us over here,  
9 that our value, our property values don't plummet  
10 because of you bringing this business, this  
11 company. How many people are going to be working  
12 in this business? How is going to affect the  
13 traffic?

14           I think these are all issues that I would  
15 like to see addressed. And I would like to see  
16 in writing the proposal.

17           Thank you for your time.

18           CO-HEARING OFFICER LEE: Thank you.

19           Ms. Avalos, our next public commenter?

20           Well, let's see. This is Ralph Lee. I  
21 see Nick Renna.

22           Can we have him un-muted please?

23           MR. RENNA: You got me?

24           CO-HEARING OFFICER LEE: Is that Mr.  
25 Renna?

1 MR. RENNA: Yes, this is Nick Renna.

2 CO-HEARING OFFICER LEE: Yeah. This is  
3 Hearing Officer Ralph Lee. Please go ahead.  
4 Sorry.

5 MR. RENNA: First name is Nick, N-I-C-K,  
6 last name Renna, R-E-N-N-A.

7 First of all, I want to start off by  
8 thanking Wesley Dyer, and I didn't catch Jakub's  
9 last name, but Jakub, for their comments about  
10 the EIR. I think that's very important. And I'm  
11 really suspicious of the fact that the  
12 representative from the company is not wanting to  
13 do an EIR. It sounds like there's some fear  
14 there that there might be something put out there  
15 that he doesn't want anybody to see, that's Mr.  
16 Galati.

17 He also mentioned the fact that he -- the  
18 systems would only be up 15 minutes an hour for  
19 each month. And, in fact, he put something out  
20 on the docket sometime ago that each system would  
21 be under maintenance 100 hours each for each  
22 system or each generator per year, 100 hours per  
23 year for each one, so that's 3,600 hours. And  
24 that's about 150 days of 24 hours a day, so if  
25 they're run sequentially.



1           We have three data centers that are  
2 within a half a mile of here. So now I don't  
3 know how many generators are at those data  
4 centers. But -- so we talk about the pollution,  
5 we talk about the, you know, the NOx, and it's  
6 concerning to all of us in this neighborhood,  
7 mainly because we live in a bowl. You know, this  
8 is -- we're surrounded by hills or mountains or  
9 whatever you want to call them and everything  
10 accumulates here. We end up having poor air  
11 quality all the time. This is going to  
12 exacerbate the situation and create a huge  
13 problem for those people with conditions that are  
14 like allergies and that sort of thing.

15           So, you know, three minutes isn't enough  
16 to say everything I want to say, you know? But  
17 for the most part, as Mrs. Sheehan said, we were  
18 not notified about this. There was no community  
19 outreach until March of this year. And the  
20 initial proposal for the 21 generators and these  
21 three data centers, no one ever knew about this  
22 back in 2017.

23           This was all done with -- I think it was  
24 Harry Freitas that signed off on this. He was  
25 the head of the department, planning department.

1 And I don't know how he would have done that  
2 without community approval or community  
3 involvement, but it happened. And now, three  
4 years later, and we're asking for more  
5 generators, we're asking for more -- basically,  
6 they're asking for permission rather than -- you  
7 know, to do this, and I think it's wrong. And I  
8 think it's -- and it exacerbates the situation.

9           And I think that what Mrs. Sheehan said  
10 was the fact that we're worried about our home  
11 values. I mean, I've been here for 45 years.  
12 And, you know, I think my value of my property  
13 that I've invested my life into is going to go  
14 down because of this unit out there.

15           So whether it be environmental, whether  
16 it be, you know, the value of the homes, whether  
17 it be the possibility that each of these  
18 generators are sitting on 90,000 gallons of  
19 gasoline or petrol or whatever in the hell it is,  
20 that, you know, a disaster could occur. You  
21 know, San Bruno all over again. You know, what  
22 are we looking at here?

23           Anyway, I have a lot more to say but my  
24 time is up, I see. But I thank you for your  
25 time. And I hope that someone pushes to put

1 these people to the fire, put their feet to the  
2 fire, and make them really think about whether  
3 this is really a viable project or not.

4 MS. AVALOS: Okay. Thank you, Mr. Renna.

5 Our next public speaker is Mimi  
6 Patterson. And again, please state your name,  
7 and spell your first and last name and your  
8 affiliation. Thank you. Go ahead. Your line is  
9 un-muted. Mimi Patterson?

10 Okay. It looks like she lowered her  
11 hand.

12 I just want to remind folks on the phone,  
13 if you want to make a public comment, you can  
14 dial star nine to raise your hand, and start six  
15 to mute and un-mute yourself.

16 Mimi Patterson has raised her hand again.

17 Go ahead. Your line is open. Mimi  
18 Patterson? Ms. Patterson, your line is open?

19 CO-HEARING OFFICER LEE: Well, this is  
20 Hearing Officer.

21 MS. AVALOS: Okay. Go ahead, Hearing  
22 Officer Lee.

23 CO-HEARING OFFICER LEE: Yeah. This --

24 MS. AVALOS: There are no more raised  
25 hands.

1 CO-HEARING OFFICER LEE: This is Ralph  
2 Lee, the Hearing Officer.

3 If Mimi Patterson wants to interrupt me,  
4 that's fine, but I think she may be having  
5 technical difficulties. And I think we need to  
6 move on to the last phase of this proceeding.

7 So now I'll ask the Presiding Member if  
8 we need to move to closed session?

9 PRESIDING MEMBER DOUGLAS: Yes. This is  
10 Commissioner Douglas. I think we should go into  
11 closed session.

12 And, perhaps, if this works for you,  
13 Chair Hochschild, report back in about an hour?

14 CO-HEARING OFFICER LEE: This is Ralph  
15 Lee.

16 Then at this time, we'll move on to  
17 closed session. The Committee now adjourns to  
18 closed session in accordance with California  
19 Government Code Section 11126(c)(3), which allows  
20 a state body, including a delegated committee, to  
21 hold a closed session to deliberate on a decision  
22 to be reached in a proceeding that the state body  
23 was required by law to conduct.

24 So we're going to return here in about an  
25 hour, so won't return before, let's say, before

1 4:15, so we'll return at 4:15 to --

2 MS. AVALOS: Excuse me.

3 CO-HEARING OFFICER LEE: Sorry. Go  
4 ahead.

5 MS. AVALOS: Excuse me, Hearing Officer  
6 Lee. Mimi Patterson wanted to speak. She was  
7 having problems but it seems that she's able to  
8 open her line. Is it still time for her to be  
9 able to speak?

10 CO-HEARING OFFICER LEE: Yes. Yes,  
11 please, before we move on to closed session.

12 Mimi Patterson, please go ahead.

13 MS. AVALOS: Okay. She's still having  
14 technical difficulty. We'll try to communicate  
15 with her offline. Thank you, Hearing Officer  
16 Lee.

17 CO-HEARING OFFICER LEE: Yeah. Thank  
18 you.

19 And you'll always be free to submit  
20 comments online.

21 And so with that, we'll move on to --  
22 we'll go to closed session. And we'll be back  
23 here at 4:15 to report any actions and,  
24 potentially, to ask additional questions that are  
25 raised during our deliberations.

1           And so, with that, we're moving on to  
2 closed session. Thank you.

3           (The Committee recessed into closed session  
4 from 3:12 p.m., until 4:15 p.m.)

5           PRESIDING MEMBER DOUGLAS: Hi everybody.  
6 This is Commissioner Douglas. It's 4:15 and we  
7 are reporting back from closed session  
8 deliberations. We have no reportable actions.

9           Hearing Officer Lee, do you want to make  
10 any comments at this point or say anything?

11           CO-HEARING OFFICER LEE: No, thank you.

12           PRESIDING MEMBER DOUGLAS: All right.  
13 Well, with that, we thank everybody for your  
14 participation. And today's Committee conference  
15 is adjourned.

16 (The Committee conference adjourned at 4:15 p.m.)

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CERTIFICATE OF REPORTER

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 24th day of September, 2020.



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ELISE HICKS, IAPRT  
CERT\*\*2176

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.



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MARTHA L. NELSON, CERT\*\*367

September 24, 2020