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December 23, 2015

VIA FEDERAL EXPRESS

Barbara Leibold, Esq.
Leibold, McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618

Re: Mt. SAC Photovoltaic System – West Parcel Solar Project (“Project”)

Dear Ms. Leibold:

I have carefully reviewed and considered the several points you have raised in your letter to me dated November 18, 2015 concerning the City of Walnut’s objections to Mt. SAC’s West Parcel Solar Project (“Solar Project”). I note that your letter of November 18th was in response to my letter to you dated November 5, 2015 wherein Mt. SAC addressed and refuted the objections the City of Walnut (“City”) had to the Solar Project as set forth in your letter of October 28, 2015 to the Mt. SAC Board of Trustees and CEO William Scroggins. For the reasons stated below, the City’s opposition to the Solar Project as set forth in your November 18th letter is not well taken. Mt. SAC will continue to pursue the construction of the Solar Project once all federal and state permits are issued.

- 1. The West Parcel Solar Project is not an “electrical energy transmission system” under Southern California Edison Rule 21; the project is an electrical energy production and generation facility, the location and construction of which are exempt from City of Walnut building and zoning ordinances.**

Under Government Code section 53091, subdivisions (d) and (e), the location and construction of facilities for the “production and generation of electrical energy by a local agency” are exempt from county and city building and zoning ordinances, as follows:

“(d) Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency.

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.”

(Underscoring added.)

Relying on the last sentence in Section 53091, subdivision (e), as underscored above, the City raises a new argument that the zoning exemption does not apply because the Solar Project is an electrical transmission facility. The City attempts to support this argument by cobbling together excerpts from Southern California Edison (“SCE”) Rule 21, which requires the Solar Project to interconnect with SCE’s distribution system once in service. The City fundamentally misunderstands Rule 21 and its application to the Solar Project.

The Solar Project is an approximately 2.20 megawatt electrical energy facility that will produce and generate approximately 21,671,525 Kwh of clean electrical energy over the next five years, and 103,124,789 Kwh of clean electrical energy over the 25-year life cycle of the project. SCE has confirmed the project qualifies under the California Solar Initiative Program (“CSI Program”) for performance based incentives (“PBIs”) totaling over \$750,000 over the next five years based on the estimated electrical energy “produced [by the system].”¹ (I have attached SCE’s notification letter to Mt. SAC dated October 1, 2015.)

The CSI Program requires that a local agency’s solar project “interconnect” to the local utility company. The CSI Program Handbook describes the interconnection process as follows:

“2.6 Interconnection to the Electric Utility Distribution System

¹ The CSI Program is overseen by the California Public Utilities Commission (“California PUC”) and provides incentives for solar system installations to customers of the state’s three investor-owned utilities (“IOUs”), including SCE. The CSI Program provides upfront incentives for solar systems installed by governmental entities on government property located within the service territories of the IOUs. (http://www.cpuc.ca.gov/PUC/energy/Solar/About_the_California_Solar_Initiative.htm)

All solar electric generating systems receiving incentives under the CSI Program must be connected to the local electric utility's distribution system.

The system interconnection, operation, and metering requirements for solar energy systems shall be in accordance with the local electric utility rules for customer generating facility interconnections. To connect a solar energy system to the utility distribution system, Host Customers, and/or System Owners will be required to execute certain documents such as, but not limited to, an Application to Interconnect a Generating Facility and a Generating Facility Interconnection Agreement or Net Energy Metering (NEM) Agreement with the local electric utility.”

(http://www.gosolarcalifornia.ca.gov/documents/CSI_HANDBOOK.PDF; emphasis added.)

The California PUC states the purpose of net metering is to allow customer electrical energy saving benefits from customer generated facilities:

“NEM [Net Energy Metering] allows a customer-generator to receive a financial credit for power generated by their onsite system and fed back to the utility. The credit is used to offset the customer's electricity bill. NEM is an important element of the policy framework supporting direct customer investment in grid-tied distributed renewable energy generation, including customer-sited solar PV systems.”

(<http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>.)

California PUC Rule 21 sets forth the requirements for interconnection, and each local utility company in turn promulgates its own Rule 21. “**Electric Rule 21 is a tariff** that describes the interconnection, operating and metering requirements for generation facilities to be connected to a utility's distribution system, over which the California Public Utilities Commission (CPUC) has jurisdiction.” (<http://www.cpuc.ca.gov/PUC/energy/rule21.htm>)

SCE Rule 21 (from which you quote in your November 18th letter) implements the “net metering” program approved by the California PUC in SCE's service area, which includes the Mt. SAC campus. SCE Rule 21 makes clear it applies to “generating facilities.” (Rule 21, Part B. 1; emphasis added.) “Generating Facility” is defined to mean “All Generators, electrical wires, equipment, and other facilities, excluding Interconnection Facilities, owned or provided by Producer for the purpose of producing electric power, including storage.” (Rule 21, Part C.)

“Interconnection Facilities” is defined to mean: “The electrical wires, switches and related equipment that are required in addition to the facilities required to provide electric Distribution Service to a Customer to allow Interconnection. Interconnection Facilities may be located on either side of the Point of Common Coupling as appropriate to their purpose and

design. Interconnection Facilities may be integral to a Generating Facility or provided separately. Interconnection Facilities may be owned by either Producer or Distribution Provider.”

Nowhere in the CSI Handbooks or SCE Rule 21 is a local agency’s solar project described as a “transmission facility.” For this reason, your discussion of CAISO’s oversight of SCE’s transmission facilities is irrelevant. Under federal regulation, the business of CAISO is to provide “open and non-discriminatory access to the bulk of the state’s wholesale transmission grid, supported by a competitive energy market and comprehensive infrastructure planning efforts.” (<http://www.caiso.com/about/Pages/default.aspx>.) CAISO has no regulatory control over California PUC Rule 21 and the interconnection of solar generating facilities to a local utility company.

As stated above, the Solar Project is plainly an electrical energy production and generation facility under Section 53091(e). Applying the common sense language of the statute, the Solar Project’s purpose is clearly “for the production or generation of electrical energy” and is not “for the storage or transmission of electrical energy.” As defined in the Merriam-Webster Dictionary, the word “for” is “(a) used as a function word to indicate purpose; (b) . . . to indicate an intended goal; (c) . . . to indicate the object or recipient of a perception, desire, or activity.” (“for.” Merriam-Webster Online Dictionary. 2015. <http://www.merriam-webster.com> (4 Dec. 2015.) The courts will “interpret statutes or written instruments so as to give force and effect to every provision and not in a way which would render words or clauses nugatory, inoperative or meaningless. (See Civ. Code § 1858; *Titan Corp. v. Aetna Casualty & Surety Co.* (1994) 22 Cal.App.4th 457, 473-474.)

Here, the purpose of the Solar Project is to produce and generate solar electrical energy and realize significant savings under Rule 21 net metering tariff.

2. Mt. SAC Issued RFQ/RFP 3005 to solicit proposals for a solar electrical energy facility

The City’s reliance on Mt. SAC’s RFQ/RFP 3005, section 1.2.8.20 to support the claim the Solar Project is a transmission facility misstates the purpose and intent of RFQ/RFP 3005.

Mt. SAC issued RFQ/RFP 3005 to solicit proposals for the design and installation of the Solar Project. RFQ/RFP 3005 states Mt. SAC is “interested in the development of an approximately two (2) megawatts (MW) solar generation systems.” (Emphasis added.) Mt. SAC anticipated it would rely on PBIs to help offset the cost of the Solar Project, and for that reason, Section 1.2.8.20 correctly states the design-builder of the Solar Project “is responsible for obtaining all necessary Utility interconnection approvals and constructing the PV systems interconnection . . . [and] comply[ing] with all interconnection requirements, such as CPUC Rule 21 for the Utility service territory.”

As discussed above, the interconnection required under Rule 21 is a tariff that allows a public entity to interconnect to the local utility to achieve savings through NEM. The interconnection process does not turn what Rule 21 describes as a “generating facility” into a “transmission facility.”

3. The Solar Project is not a “transmission facility” under the Public Utility Code

The City further attempts to support its argument that the Solar Project is a “transmission facility” by citing Public Utility Code section 12808.5 (“Section 12808.5”), which provides in part “no district may locate or construct any lines for the transmission or distribution of electrical energy, including poles and other accessory structures, unless such facilities are approved pursuant to this section.” The reliance on Section 12808.5 is misplaced.

Section 12808.5 is found in the part of the Public Utility Code implementing the Municipal Utility District Act, codified in Public Utility Code sections 11501 *et seq.* (“MUDA”). Section 11503 of the MUDA defines “district” to mean “a municipal utility district.” It is abundantly clear the word “district,” as used in section 12809.5, means a “municipal utility district” and not a community college district like Mt. SAC.

Nor is the City’s citation to Public Utilities Code Division 4, Chapter 5, Articles 2 and 3 at all helpful in supporting the argument that the Solar Project is a “transmission facility.” Article 2, titled “surface transmission” and Article 3, titled “underground transmission” both involve regulating “Utility Corporations and their Employees.” Articles 2 and 3 have nothing to do with California community college districts like Mt. SAC and the Solar Project.

Equally specious is the argument you make that “Because the Project will be interconnected with the CAISO grid so that parallel operation can occur, the Project can transmit power to the grid, and as such is a facility for the transmission of electrical energy.” You are wrong. Under Rule 21, the Solar Project will be connected to SCE’s distribution system, over which the CPUC has jurisdiction.

4. The Solar Project is not a “public building”; accordingly, the City’s zoning ordinance does not make provision for the location or construction of the Solar Project.

Your letter of November 18th also pieces together various Walnut Municipal Code (the “WMC”) ordinances in an attempt to support the vague position first taken in your October 28th letter that the WMC provides for the Solar Project. It does not.² You now make a new argument

² In your October 28th letter you argue the WMC provides for the Solar Project in section 25-39(f), which states that a conditional use permit may be issued by the City for “public utilities or utilities operated by mutual agencies.”

that the City provides for the location and construction of the Solar Project by virtue of WMC Title VI Chapter 25 Section 25-89, which permits “public buildings and uses.” This argument is equally flawed.

You begin your argument by noting the Solar Project was awarded as an energy conservation contract under Government Code sections 4217.10 *et seq.* Your argument falls apart, however, when you rely on the definition of “public buildings” in Government Code section 4217.11(k). The term “public buildings” is not used in Government Code section 4217.11(k) to mean the solar generating facility, but is used to identify the location of the solar generating facility.

Government Code Section 4217.11(e) defines “Energy conservation facility” to mean “alternate energy equipment, cogeneration equipment, or conservation measures **located in public buildings or on land owned by public agencies.**” (Emphasis added.) Government Code Section 4217.11(f) defines “Energy service contract” to mean “a contract entered into by a public agency with any person, pursuant to which the person will provide electrical or thermal energy or conservation services to a public agency from an **energy conservation facility.**” (Emphasis added.)

The very statutory references in the Government Code that you rely on demonstrate the Solar Project is not a public building. It is an energy conservation facility located on public land owned by Mt. SAC.

5. The Solar Project has substantially complied with all aspects of CEQA

Contrary to your assertion, the Solar Project has substantially complied with CEQA by specifically disclosing the Project’s environmental impacts in its CEQA documents. You begin by claiming that further CEQA review beyond the 2012 Facility Master Plan Final EIR (“2012 Final EIR”) is required on the project specifics for the Solar Project and recite the 2012 Final EIR’s disclosure of 333,980 cubic yards of fill dirt needed for the Solar Project. Although that is close to the amount of fill needed, almost half will be accommodated by grading at the West Parcel. The only amount of fill that will need to be hauled (or imported) to the site is approximately 163,571 cubic yards.

As you point out, Mitigation Measure AQ-3 (adopted with the 2012 Final EIR) limits the hauling of earth materials to outside of peak-hour traffic periods. This also will avoid significant traffic impacts. The purported weight limit on Grand Avenue is not a CEQA issue and, as discussed below, does not apply to Mt. SAC’s hauling of earth import. As part of its Mitigation Measure 2c (also adopted with the 2012 Final EIR) requirement, Mt. SAC prepared a truck

You have apparently (and correctly) abandoned this argument as the Solar Project is not “public utilities or utilities”; nor is Mt. SAC a mutual agency.

hauling plan that included an analysis of hauling the 163,571 cubic yards at 20 trucks (14 cubic yards each) per hour during non-peak-hour traffic periods and confirmed that there would not be any degradation of traffic Levels Of Service (“LOS”) below C. Thus, the soil import hauling would not cause a significant traffic impact and no further analysis is necessary.

The 2012 EIR also analyzed other potential impacts of the Solar Project. In Table 3.2.15, the 2012 Draft EIR analyzed the air quality impact of importing far more than this amount—383,000 cubic yards for the construction of three projects simultaneously (Fire Training Academy, Athletic Education Building, Parking Structure, and West Parcel Solar). The Solar Project was separately analyzed for importing 261,000 cubic yards in Table 3.2.12.

The anticipated noise from the construction of the Solar Project was analyzed in Section 3.4 of the 2008 FMP EIR. It evaluated the City’s noise limitations and found that construction noise, in general, would not be significant because the City has already determined that construction noise occurring during certain daytime hours is acceptable. The Solar Project’s construction will adhere to those daytime hours.

Section 3.9 of the 2012 Draft EIR provided additional impact analyses of the Solar Project. Potential aesthetic, greenhouse gas, and biological impacts were provided and appropriate mitigation measures were included and adopted. The 2012 Draft EIR provided a detailed project description of the Solar Project. In Table 2.2.2, the solar project is identified as, “ID number . . . G, West Parcel Solar.” On page 136 in Section 3.9, entitled, “WEST PARCEL SOLAR/RETAIL,” it states:

“The solar project will cover approximately 6.6 acres of the West Parcel. Preliminary plans are for a 1.5 to 2.0 MW electrical output system with ground-mounted tracking solar photovoltaic panels and a small masonry structure to house equipment. The solar tracking panels change their orientation to capture the most sunlight. The steel support system may be 6-10 feet in height and the panels would extend 3-6 feet above the support structure. The solar system will interconnect to the main electrical 12 KW system on campus.”

The 2012 Draft EIR continues on page 137 to describe the grading required: “A preliminary grading plan for the West Parcel (Exhibit 14) resulted in a 9.9 acre pad and requires 261,000 cubic yards of import (Exhibit D-1, Psomas).”

On page 138, the grading plan is depicted showing the pad area, its resultant elevation, and the slope modifications, the access roads, and storm drain.

On page 6 of the 2012 Final EIR, it clarified that the solar project would be 2.0 MW on 10.6 acres. On page 9 of the 2012 Final EIR, it noted that: “Grading for the solar pad on the West Parcel will result in the removal of two drainages classified as non-wetland waters of the United States by the U.S. Corps of Engineers.”

Accordingly, nothing in the currently designed and planned Solar Project would require analysis beyond that done in the 2008 and 2012 EIRs. As you pointed out, CEQA is an informational statute that requires the detailed disclosure of the project's environmental impacts. That is exactly what the 2008 and 2012 EIRs provide, and Mt. SAC is not obligated to conduct unnecessary, needless, expensive, and time-consuming environmental review simply because the City belatedly objects to the Solar Project on CEQA grounds. The time to challenge the 2012 EIR has long passed.

Moreover, as part of its continuing effort to ensure that mitigation measures are in place where changes to the Solar Project occur, Mt. SAC has published an addendum (the "Addendum") to the 2012 Facility Master Plan Final EIR for consideration by the Board of Trustees at the January 13, 2016 meeting. The Addendum addresses several of the City's concerns regarding Mt. SAC's mitigation measures related to the Solar Project. The Addendum puts forth mitigation measures related to the hauling work, a proposed truck haul route and analyses, and environmental evaluation. The changes involve one mitigation measure (MM 2c) proposed to reduce traffic congestion during the A.M. and P.M. peak hours while construction truck hauling takes place. The changes proposed will further assure that potential impacts for truck hauling from the borrow site to the West Parcel do not result in significant impacts during the A.M. and P.M. peak periods and during the hauling period on the area circulation network. The Addendum has been posted to Mt. SAC's website and available for City review at <http://www.mtsac.edu/construction/reports-and-publications/environmental-impact-reports.html>.

6. The grading aspect of the Solar Project is exempt from local zoning and building ordinances and thus no permit is necessary for such work related to the Project.

This is a new argument from the City. Pursuant to Government Code section 53091(e), the Solar Project has absolute exemption from local zoning and building ordinances as discussed above. The plain meaning of the words "location" and "construction" contained within Section 53091(d), (e) includes grading work. Grading is an integral and necessary part of *location and construction* of the Solar Project on the West Parcel.

Moreover, the engineering plans for grading have been carefully drafted to comply with all potential environmental impacts pursuant to CEQA. The previous CEQA documents submitted by Mt. SAC do not subject it to City approval. The City cites no case law or statute that a state agency accepts a city agency's oversight by simply submitting a grading plan that states a future intention to consult with the city about such plans.

7. Vehicle weight limit on Grand Avenue

Another new argument raised in your November 18th letter is that the Solar Project violates WMC Title III, Section 16-8 because truck hauling related to the Solar Project will violate truck weight limits on Grand Avenue. Section 16-8 is implemented to further Vehicle

Barbara Leibold, Esq.
December 23, 2015
Page 9

Code section 35701, which is a part of Vehicle Code sections 35701 to 35704 regulating commercial vehicle weights on streets.

Although not mentioned in your November 18th letter, Vehicle Code section 35703 provides that "No ordinance adopted pursuant to Section 35701 shall prohibit any commercial vehicles coming from an unrestricted street having ingress and egress by direct route to and from a restricted street when necessary for the purpose of . . . making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted street or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted street for which a building permit has previously been obtained."

These statutes, considered together, authorize cities to prescribe regulations for business and commercial vehicles on city streets in furtherance of the orderly conduct of traffic, the safety of the residents, the protection and preservation of the streets, and the general welfare of the community, but at the same time, to see to it that such vehicles, while subject to restriction, can be used for their proper functions where the vehicles are necessarily in such use. The use of the vehicles is not a necessary one if it is merely more convenient, suitable or comfortable, or makes the task less difficult. (*Ratkovich v. San Bruno* (1966) 245 Cal.App.2d 870, 889.)

For the reasons stated above, we do not believe WMC Title III, Section 16-8 regulates the weight of vehicles using Grand Avenue necessary for the construction of the Solar Project. The Solar Project is exempt from City building and zoning ordinances, which includes the requirement for a City building permit. No permit or other entitlement is required from the City.

If you require any clarification or further explanation of the points I have raised above, please contact me directly.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH



Sean B. Absher

Enclosure

cc: Mike Gregoryk, Vice President, Administrative Services, Mt. SAC