

5/25/21

Item 6.L

Julie Minot

From: Deanna Santana
Sent: Tuesday, May 25, 2021 3:24 PM
To: Nora Pimentel; Julie Minot
Subject: FW: Bloom Energy

Importance: High

Nora or Julie,

Can you forward to the Council as PMM?

Thanks,

Deanna

Sent: Tuesday, May 25, 2021 3:17 PM

To: Shawn Soderberg <Shawn.Soderberg@bloomenergy.com>

Cc: Sharelynn Moore <Sharelynn.Moore@bloomenergy.com>; Chris Butcher <CButcher@thomaslaw.com>; Manuel Pineda <MPineda@SantaClaraCA.gov>

Subject: RE: Bloom Energy

Hi Shawn:

This is to acknowledge receipt of your request for a continuance. We will pass on your request to the City Council at tonight's meeting, with a staff recommendation that the Council consent to the continuance of this item.

Thanks

Xander

Alexander Abbe | Assistant City Attorney
City of Santa Clara | City Attorney's Office
1500 Warburton Avenue | Santa Clara, CA 95050
T: 408.615.2230 | F: 408.249.7846



From: Shawn Soderberg <Shawn.Soderberg@bloomenergy.com>

Sent: Tuesday, May 25, 2021 2:59 PM

To: Manuel Pineda <MPineda@SantaClaraCA.gov>; Alexander Abbe <aabbe@SantaClaraCA.gov>

Cc: Sharelynn Moore <Sharelynn.Moore@bloomenergy.com>

Subject: Bloom Energy

POST MEETING MATERIAL

Manuel and Alexander

On behalf of Bloom Energy, we request that the City Council continue the hearing on our three appeals until the next regularly-scheduled Council meeting. The appeals are currently set on the Council's 5/25/2021 Agenda as Item 6.L (Consent Agenda – 21-673).

Please respond by: (1) providing written confirmation that the City agrees and consents to this continuance, and (2) confirming that the continuance will be announced at today's City Council meeting.

Thank you, Shawn

Shawn M. Soderberg
EVP, General Counsel & Secretary

Bloom energy

Office: 408-543-1191; Mobile: 650-804-0330
4353 N.1st Street, 4th Floor, San Jose, CA 95134

Julie Minot

From: Deanna Santana
Sent: Tuesday, May 25, 2021 3:24 PM
To: Nora Pimentel; Julie Minot
Subject: FW: Bloom Energy

Importance: High

Nora or Julie,

Can you forward to the Council as PMM?

Thanks,

Deanna

Sent: Tuesday, May 25, 2021 3:17 PM
To: Shawn Soderberg <Shawn.Soderberg@bloomenergy.com>
Cc: Sharelynn Moore <Sharelynn.Moore@bloomenergy.com>; Chris Butcher <CButcher@thomaslaw.com>; Manuel Pineda <MPineda@SantaClaraCA.gov>
Subject: RE: Bloom Energy

Hi Shawn:

This is to acknowledge receipt of your request for a continuance. We will pass on your request to the City Council at tonight's meeting, with a staff recommendation that the Council consent to the continuance of this item.

Thanks

Xander

Alexander Abbe | Assistant City Attorney
City of Santa Clara | City Attorney's Office
1500 Warburton Avenue | Santa Clara, CA 95050
T: 408.615.2230 | F: 408.249.7846



From: Shawn Soderberg <Shawn.Soderberg@bloomenergy.com>
Sent: Tuesday, May 25, 2021 2:59 PM
To: Manuel Pineda <MPineda@SantaClaraCA.gov>; Alexander Abbe <aabbe@SantaClaraCA.gov>
Cc: Sharelynn Moore <Sharelynn.Moore@bloomenergy.com>
Subject: Bloom Energy

Manuel and Alexander

On behalf of Bloom Energy, we request that the City Council continue the hearing on our three appeals until the next regularly-scheduled Council meeting. The appeals are currently set on the Council's 5/25/2021 Agenda as Item 6.L (Consent Agenda – 21-673).

Please respond by: (1) providing written confirmation that the City agrees and consents to this continuance, and (2) confirming that the continuance will be announced at today's City Council meeting.

Thank you, Shawn

Shawn M. Soderberg
EVP, General Counsel & Secretary

Bloomenergy

Office: 408-543-1191; Mobile: 650-804-0330
4353 N.1st Street, 4th Floor, San Jose, CA 95134

5/25/21

Item 6.L.

Julie Minot

From: Tangri, Shiraz <stangri@meyersnave.com>
Sent: Monday, May 24, 2021 9:52 PM
To: Alexander Abbe; Mayor and Council
Cc: Kulkarni, Amrit; James.Matthews@bloomenergy.com; Debby Fernandez; Gloria Sciara; cbutcher@thomaslaw.com
Subject: City Council Written Petitions re Bloom Energy - 5/25/2021 Council Agenda Item 6.L (21-673)
Attachments: 2021-05-24 - Bloom Energy - Meyers Nave Letter to Alexander Abbe.pdf

Dear Mr. Abbe and Honorable Mayor and City Council Members –

Please see the attached letter from Amrit Kulkarni in reference to the above appeals regarding Permit Applications PLN2021-14843, PLN2021-14844 and PLN2021-14845, scheduled for the May 25, 2021 City Council hearing as Item 6.L (21-673).

Thank you.

Shiraz D. Tangri

Principal

meyersnave

[email](#) [bio](#) [website](#)

office: 213.626.2906 mobile: 310.994.0641

Oakland · Los Angeles · Sacramento · San Diego · Santa Rosa

Confidentiality Notice: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

POST MEETING MATERIAL



1999 Harrison Street, 9th Floor
Oakland, California 94612
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Amrit S. Kulkarni
Attorney at Law
akulkarni@meyersnave.com

May 24, 2021

Via E-mail

Alexander Abbe, Assistant City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

**Re: Bloom Energy – Minor Use Permit Applications for
2200 Mission College Boulevard (PLN2021-14843),
2970-3000 Corvin Drive (PLN2021-14844), and
2960 Corvin Drive (PLN2021-14845)
City Council Meeting of May 25, 2021 – Item 6.L (21-673)**

Dear Mr. Abbe:

We are in receipt of your letters dated May 7 and May 20, 2021 concerning Bloom Energy's ("Bloom") applications for Bloom Fuel Cell Power System projects in the City of Santa Clara ("City") and Bloom's related appeals. In addition, on May 23, 2021, we received an e-mail from Deputy City Clerk Simrat Dhadli, advising that Bloom's appeals are included as Item 6.L (21-673) on the Consent Calendar of the Agenda for the City Council's May 25, 2021 meeting.

It will be of no benefit to the administrative process or to a reviewing court for the parties to continually re-argue the same issues verbatim. However, there are a few points that require clarification.

1. Bloom requests that the City Council grant the appeals by directing City staff to process immediately the building permit applications based on clear authority in the City's municipal code establishing that these projects are entitled to ministerial building permits. Further, as a matter of law, these permits must be issued without further environmental review pursuant to the California Environmental Quality Act ("CEQA"), or pursuant to one or more CEQA exemptions based on the substantial evidence presented to the City.
2. The City Council Agenda for the May 25, 2021 meeting attaches the three appeal Petitions submitted by Bloom on April 27, 2021. Each of these Petitions expressly references and incorporates this firm's April 27, 2021 letter submitted in conjunction with the appeal. However, the City failed to include the April 27, 2021 letter and its attachments on the Agenda. The failure to do so violates the City Council Policy Manual's policy requirement that "[a]ll written material (request and any support material) will be submitted on the agenda in the form

substantially provided by the requester and without any staff analysis.” Further, this misleading and intentional failure does not disclose to the public or the City Council the substantial evidence in the record relevant to the appeals. Bloom requests that the April 27, 2021 letter from Meyers Nave, with all supporting attachments, be provided directly to all Council members immediately.

3. Your May 20, 2021 letter is inconsistent with and appears to contradict the City’s inclusion of Bloom’s appeals on the May 25, 2021 City Council Agenda. The administrative record does not support your assertion that Bloom’s administrative challenge is untimely as to the City’s determination that use permits are required for the above-referenced Bloom Energy Server installations. Your letter references correspondence from February, April and May 2020 in which the City argued that a CUP would be required; none of these communications provided a final determination on Bloom’s building permit applications, which remain pending. Bloom did not accede to the City’s arguments. The City has not taken any formal action on the building permit applications. On April 1, 2021, City staff provided a written determination regarding the completeness of Bloom’s applications based on the Project Clearance Committee (PCC) meeting of March 23, 2021.

Similarly, the record here contradicts your argument that Bloom’s challenges are not ripe regarding the completeness of the use permit applications and that an Initial Study is required. The April 1, 2021 determination letters states “this communication relays that the Use Permit application ... is incomplete.” The letters also states that “the City has determined that the project is not eligible to proceed under any California Environmental Quality Act (CEQA) exemption.” On May 4, 2021, City staff demanded that Bloom pay over \$120,000 to go forward with CEQA review – an extraordinary fee for projects that have no identified significant environmental impacts. Bloom’s appeals of the April 1, 2021 staff determinations are therefore both ripe and timely. The April 27, 2021 Meyers Nave letter addresses the grounds for the appeals in detail, and as noted above must be considered by the City Council in reviewing the appeals.

4. Your May 7, 2021 letter willfully misses the point of Bloom’s evidence that Bloom Energy Servers are not “electric power plants” that use thermal energy to produce electricity. To be clear, Bloom Energy Servers do not use thermal energy to produce electricity – they use a chemical reaction. Whether Bloom chooses to include a separate compartment of its energy servers to convert natural gas into hydrogen or to directly deliver hydrogen to the Energy Server is irrelevant to the fact that the electricity is produced through a chemical reaction.

5. Bloom disagrees with both of your statements in your May 7, 2021 letter that there is not substantial evidence in the record to support the application of one or more CEQA exemptions and that exceptions to the exemptions apply. As stated above, this disagreement should be resolved by the City Council in response to Bloom’s appeals. We do note the following, however. First, a trial court’s previous conclusion that Bloom Energy Servers could have more greenhouse gas (“GHG”) emissions than SVP’s overall power production in a completely different context was not a judicial declaration of that fact and is not binding. Moreover, it is irrelevant because the GHG emissions that Bloom Energy Servers would be

Alexander Abbe
May 24, 2021
Page 3

displacing are not SVP's, but rather state-wide grid power and diesel back-up generators; Bloom Energy Servers are indisputably more GHG-efficient than either power source. Second, as noted previously, there is no substantial information in the record whatsoever that Bloom Energy Servers will have significant air quality emissions or any hazardous substances impacts.

Thank you for your attention to this matter. Please note that we are forwarding this letter to all City Council members immediately for their consideration of Bloom's appeals at the May 25, 2021 City Council meeting.

Very truly yours,



Amrit S. Kulkarni

ASK:SDT

c: (Via E-mail Only)

Santa Clara City Council Members

James Matthews, Bloom Energy

Debby Fernandez, Associate Planner, City of Santa Clara

Gloria Sciara, Development Review Officer, City of Santa Clara

Christopher Butcher, Thomas Law Group

3770674.4