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John Carrier, CH2MHILL

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Scott Scholz

Elizabeth Cord, STCAG

Issa Ajlouny

Jeff Wade

Molli Dent, City of San Jose

Dian Grueneich, CVRP

Oliver Kraemer

William J. Garbett

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## 1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Good  
3 afternoon. My name is Robert Laurie, I'm a  
4 Commissioner at the California Energy Commission,  
5 and Presiding Commissioner hearing the case of the  
6 Metcalf Energy Project.

7 To my right on the dais is Mr. Stan  
8 Valkosky. Mr. Valkosky is the Hearing Officer  
9 assigned to this case, and Mr. Valkosky will  
10 administer these proceedings.

11 To Mr. Valkosky's right is Mr. Mike  
12 Smith, who is the Senior Advisor to Commissioner  
13 and Chairman Bill Keese.

14 First, let me semi or fully apologize  
15 for the formality of the setting here today. I  
16 believe we have intervening parties down there  
17 somewhere, and it is an inconvenience to you, and  
18 I recognize that. And we will seek to  
19 accommodate, to the best extent possible.

20 Ladies and gentlemen, these proceedings  
21 are being reported and recorded, so when you speak  
22 we'll ask you to identify yourselves fully and  
23 completely.

24 At this time I'd like to call on Mr.  
25 Valkosky for a summary of the proceedings as they

1 are to take today, and for an introduction of the  
2 parties. Mr. Valkosky.

3 HEARING OFFICER VALKOSKY: Thank you,  
4 Commissioner Laurie.

5 I'd like to start by having the parties  
6 introduce themselves, starting with Applicant,  
7 then Staff, then moving to the Intervenors.

8 Mr. Harris.

9 MR. HARRIS: Thank you. My name is Jeff  
10 Harris with Ellison, Schneider and Harris, on  
11 behalf of Calpine/Bechtel.

12 To my right is Mr. Ken Abreu, with  
13 Calpine/Bechtel Joint Venture, who's the Project  
14 Manager. To my left, immediate left, is Mr. Steve  
15 DeYoung, who's the Environmental Project Manager  
16 for the Calpine/Bechtel Joint Venture, and to his  
17 left is Mr. John Carrier, from CH2MHILL,  
18 Consultant to the Joint Venture.

19 Thank you.

20 HEARING OFFICER VALKOSKY: Thank you.  
21 Staff.

22 MS. WILLIS: Thank you. I'm Kerry  
23 Willis, Staff Counsel. And to my right is Paul  
24 Richins, who is the Project Manager for this  
25 project. To my left is Alan Rosen and Steve

1 Baker, who will be our witnesses for Noise.

2 HEARING OFFICER VALKOSKY: Thank you.

3 To the Intervenors, please. Ms.

4 Grueneich, I guess you're starting.

5 MS. GRUENEICH: I'm -- I apologize. Am  
6 I supposed to be making sure I speak into this for  
7 the recording?

8 HEARING OFFICER VALKOSKY: Yes.

9 MS. GRUENEICH: Okay. Dian Grueneich,  
10 Counsel for CVRP, Intervenor, and to my left is  
11 our witness today, Mr. Steve Radis.

12 MS. CORD: Is this working? Okay. I'm  
13 Elizabeth Cord. I'm representing Santa Teresa  
14 Citizen Action Group.

15 MR. AJLOUNY: Issa Ajlouny, Intervenor.

16 MR. SCHOLZ: Scott Scholz, Intervenor.

17 MR. GARBETT: William Garbett, on behalf  
18 of the public, Intervenor.

19 HEARING OFFICER VALKOSKY: Thank you,  
20 sir.

21 I'd also like to point out in the rear  
22 of the room our Public Adviser, Ms. Roberta  
23 Mendonca.

24 Do you have any statement you'd like to  
25 make, Ms. Mendonca?

1 PUBLIC ADVISER MENDONCA: Good  
2 afternoon. Because of the setup today it will be  
3 very important for members of the public who wish  
4 to make public comment to request a blue card, and  
5 then we will see to it that Mr. Valkosky, the  
6 Hearing Officer, is aware that you are wanting to  
7 make a comment.

8 Thank you.

9 HEARING OFFICER VALKOSKY: Thank you.

10 By way of background, I'd just like to  
11 state this is the second set of Evidentiary  
12 Hearings for the proposed Metcalf Energy Center.  
13 The Committee noticed today's set of hearings in a  
14 notice and order issued on December 8th, last  
15 year. That document also contained filing dates  
16 for testimony.

17 In addition to the October 2000 Staff  
18 Assessment and the AFC and its associated  
19 supplements, other filings pertinent to this set  
20 of hearings include Applicant's Group A testimony,  
21 which was filed December 20th; City of San Jose  
22 testimony, filed January 3rd; Group 2 testimony  
23 filed on behalf of Mr. Ajlouny, filed January 3rd;  
24 CVRP's Hazardous Material Management testimony,  
25 filed January 4th; Applicant's rebuttal testimony,

1 for Water and Haz Mat filed January 10th; CVRP's  
2 Noise testimony, filed January 11th; and  
3 Applicant's rebuttal testimony on Hazardous  
4 Materials Management, dated January 11th, 2001.

5 The documents to which I have just  
6 referred, with the exception of the last, are  
7 reflected on the tentative exhibit list, which you  
8 all have before you. The document that didn't  
9 make it on that list and which I have assigned the  
10 number Exhibit 36, is the last document to which I  
11 referred. In other words, Applicant's rebuttal  
12 testimony on Hazardous Materials Management,  
13 essentially that responding to CVRP's testimony,  
14 and Applicant's rebuttal is dated January 11th.

15 So the next exhibit in numbered order,  
16 at least as I have it, will be Exhibit Number 37.

17 And we'd also like to assure everyone  
18 here that may be parked in the civic lot that we  
19 will break in time to allow everyone to move their  
20 cars, since, as I understand it, it closes at 7:00  
21 p.m.

22 The purposes and procedures. The  
23 purpose and procedures we'll follow today are the  
24 same as at the previous Evidentiary Hearings.  
25 Basically, a party sponsoring a witness shall

1       briefly establish the witness's qualifications and  
2       have the witness orally summarize prepared  
3       testimony before requesting that that testimony be  
4       moved into evidence. Relevant exhibits may be  
5       offered into evidence at that time, as well.

6               At the conclusion of a witness's direct  
7       testimony, the Committee will provide the other  
8       parties an opportunity for cross examination,  
9       followed by redirect and recross examination, as  
10      appropriate.

11             At the conclusion of each topic, we will  
12      provide an opportunity for public comment on that  
13      topic.

14             Parties are encouraged to consolidate  
15      presentations by witnesses and/or cross  
16      examination to the greatest extent possible, in  
17      order to minimize duplication and conserve hearing  
18      time.

19             The items on the agenda today -- and  
20      copies of the agenda are available on the table  
21      over by the doors -- is, first, Noise, and then  
22      Soil and Water Resources, to the extent time  
23      permits. There is certainly the very real  
24      possibility that we will not be able to finish  
25      both topics today, and that Soil and Water may

1 well be continued until tomorrow.

2 With that, what I have for the Noise  
3 topic are witnesses from Applicant, Staff, and  
4 CVRP. Is that the same as everyone else has?

5 Okay. I see no dispute with that. We  
6 will start on the topic of Noise. Mr. Harris,  
7 your witness, please.

8 MR. HARRIS: Thank you. Would you like  
9 the witnesses to --

10 HEARING OFFICER VALKOSKY: I would, yes.

11 MR. HARRIS: And Mark goes up here.

12 HEARING OFFICER VALKOSKY: Sir, I'd like  
13 you to -- for all the witnesses, too, I'd like you  
14 to introduce yourself, spell your last name for  
15 the record, and the reporter will administer the  
16 oath.

17 PRESIDING MEMBER LAURIE: Sir, why don't  
18 you sit on the other side of the table so more of  
19 the parties can --

20 HEARING OFFICER VALKOSKY: Or is it  
21 possible to sit at the end of the table? Maybe  
22 that's the best compromise.

23 PRESIDING MEMBER LAURIE: I just want to  
24 make sure the -- all the Intervenors and the  
25 reporter can see you.

1                   MR. HARRIS: I would ask that the  
2 witness be sworn now.

3                   HEARING OFFICER VALKOSKY: If the  
4 witness could introduce himself, spell his last  
5 name first, please.

6                   MR. BASTASCH: Sure. My name is Mark  
7 Bastasch, B-a-s-t-a-s-c-h.

8                   HEARING OFFICER VALKOSKY: Thank you.  
9 Swear the witness, please.

10                   (Thereupon Mark Bastasch was, by  
11 the reporter, sworn to tell the  
12 truth, the whole truth, and  
13 nothing but the truth.)

14                                   TESTIMONY OF

15                                   MARK BASTASCH

16 called as a witness on behalf of the Applicant,  
17 having first been duly sworn, was examined and  
18 testified as follows:

19                                   DIRECT EXAMINATION

20                   BY MR. HARRIS:

21                   Q    Thank you. Can you state your name  
22 again for the record, please?

23                   A    Mark Bastasch.

24                   Q    And what subject matter testimony are  
25 you here to sponsor today?

1           A     Noise.

2           Q     Specifically, which documents are you  
3 sponsoring as part of that testimony?

4           A     Section 8.5 of the AFC, Supplements A  
5 and C to the AFC; Responses to CEC Data Request  
6 Numbers 56 through 62, and 177 through 183;  
7 Responses to Intervenor Jeff Wade's Data Request  
8 JW1-25; and the comments filed on the PSA with  
9 regard to Noise, Sets 1, 7, and 9.

10           MR. HARRIS: Okay. For clarification,  
11 Section 8.5 of the AFC is Exhibit 1. Supplement A  
12 is Exhibit 3, Supplement C is Exhibit 5.  
13 Responses to CEC Data Request Numbers 56 through  
14 61 is Set A, which is previously marked as Exhibit  
15 13. Numbers 117 -- excuse me, 177, 178, 179, and  
16 181 of Set 2 are part of previously marked Exhibit  
17 27. Numbers 180, 182, 183, are part of Set 2C,  
18 previously marked as Exhibit 21.

19           Responses to Intervenor Jeff Wade's Data  
20 Request JW1-25 is previously marked as Exhibit  
21 16A.

22           Comments on the PSA regarding Noise, Set  
23 1, that is a new exhibit, and I'd ask that an  
24 exhibit number be assigned to that document.

25           HEARING OFFICER VALKOSKY: Assign that

1 Exhibit Number 37.

2 (Thereupon Exhibit 37 was marked  
3 for identification.)

4 MR. HARRIS: Set 7 comments are  
5 previously marked as Exhibit 23; and Set 9 has  
6 been previously marked as Exhibit Number 30.

7 BY MR. HARRIS:

8 Q Now, Mark, I want to ask you, do you  
9 have any changes, corrections, or clarifications  
10 related to your testimony?

11 A One -- one change or clarification in  
12 Condition of Certification, NOISE-7.

13 Q That's NOISE-7?

14 A Correct.

15 Q Okay. And what is that proposed change?

16 A We'd request that horizontal drilling  
17 activities be excluded from that condition.

18 Q And can you explain why you'd be  
19 requesting that horizontal directional drilling be  
20 excluded from that -- from that limitation?

21 A Twenty-four hour operation of horizontal  
22 directional drilling is required in order for the  
23 drill bit not to get stuck.

24 Q And what happens if that does not  
25 continue on a continuous basis?

1           A     I understand that you basically have to  
2 start over again.

3           Q     And about how long of a timeframe are we  
4 looking at for this section?

5           A     Horizontal directional drilling is  
6 scheduled to take approximately two to three  
7 weeks.

8           Q     Okay. So this is basically identifying  
9 a constraint that doesn't fit with the technology.  
10 Horizontal directional drilling is meant to avoid  
11 sensitive areas; is that correct?

12          A     Correct.

13          Q     And the alternative to that would be an  
14 open trench through those areas; is that correct?

15          A     Correct.

16          Q     Okay. Thank you.

17                     With that clarification, are there any  
18 other changes or corrections to your testimony,  
19 beside the one you just mentioned for Condition 7?

20          A     No.

21          Q     Thank you.

22                     Now, were these documents prepared  
23 either by you or at your direction?

24          A     Yes.

25          Q     And are the facts stated therein true to

1 the best of your knowledge?

2 A Yes.

3 Q Are the opinions stated therein your  
4 own?

5 A Yes.

6 Q And do you adopt this as your testimony  
7 for this proceeding?

8 A Yes.

9 Q Could you now briefly review your  
10 qualifications for us, please?

11 A Sure. I'm a Registered Professional  
12 Engineer. I have been working in the field of  
13 acoustics ever since 1994. I've prepared numerous  
14 noise assessments for both transportation and  
15 industrial projects in California, and other  
16 states, as well.

17 Q And what about your educational  
18 background?

19 A I have a Master's degree from Rice  
20 University in Houston, Texas, and I have a  
21 Bachelor's of Science from -- from Cal Poly San  
22 Luis Obispo. Both are in Environmental  
23 Engineering.

24 Q Thank you. If you would now, I'd like  
25 you to take a moment and briefly summarize your

1 testimony for the Committee, please.

2 A Sure. We -- we started this project by  
3 conducting a background noise survey at the  
4 nearest sensitive receptor, the Passantino  
5 residence. We also surveyed other residential and  
6 sensitive receptors in the area. From that  
7 background noise survey we determined the  
8 background noise levels, and -- determined and  
9 designed the level that would be in compliance  
10 with the local LORS and the CEC's five decibel  
11 threshold. The goals of the design level were to  
12 ensure that there would be no adverse impacts on  
13 residences. Those impacts are defined by  
14 compliance with all the local and state LORS.

15 In our evaluation of the noise impacts  
16 of the project, we evaluated construction and  
17 operational impacts, and proposed mitigation  
18 measures to ensure compliance with all applicable  
19 LORS. We deemed that 49 decibels at the nearest  
20 residence was acceptable for the area that we're -  
21 - that the project is proposed in.

22 The existing area is subject to high  
23 intermittent noise from traffic and trains, and is  
24 an area where the daytime noise level will be  
25 dominated by other sources other than Metcalf.

1 The Metcalf project will only impact night time  
2 noise levels on residences are -- when people are  
3 inside their residence.

4 The area is, like I stated, a frequent  
5 commuter and -- subject to frequent commuter and  
6 freight rail traffic. The Monterey Road traffic  
7 is historically a high noise area. It was the  
8 former route of US 101, and the area is slotted  
9 for major urbanization, including the CVRP  
10 development, which is expected to -- to increase  
11 both freight and -- not freight, but commuter and  
12 -- commuter rail traffic, as well as automobile  
13 traffic in the area.

14 We -- we responded to the Staff and the  
15 public, and their concerns. We evaluated the  
16 cumulative impacts with respect to CVRP. We found  
17 that the CVR impact -- CVRP's impacts are more  
18 widespread than the Metcalf impacts. Metcalf is a  
19 point source, and is only affecting a limited area  
20 when compared to CVRP. Because they are  
21 increasing noise along transportation corridors,  
22 they have a much more widespread effect.

23 And, like I stated before, the area is  
24 currently agricultural with one or two family  
25 dwellings interspersed. The area is slotted for

1 urban and suburban development. The increase in  
2 development will increase the ambient over time.  
3 We designed to the current ambient conditions,  
4 thereby ensuring satisfaction and no further  
5 nuisance as time proceeds, because the ambient  
6 will increase as development and urbanization  
7 increases. Therefore, Metcalf's impacts will be  
8 diminished.

9 We -- we determined that we had  
10 compliance with all LORS, and the -- that we've  
11 adequately taken into account the effects of the  
12 Tulare Hill.

13 Q Okay. I want to ask you a couple  
14 questions about the assumptions you made about the  
15 ambient noise levels there currently. And I want  
16 to make sure I understand the modeling  
17 assumptions.

18 Did you say that you assumed the current  
19 conditions, even though the CVRP development and  
20 other development in the valley will increase that  
21 background ambient?

22 A Correct.

23 Q So that's the most conservative approach  
24 you can take, in terms of ambient?

25 A Correct.

1 Q Okay. You also mentioned that CVRP --  
2 excuse me, that the Tulare Hill will provide  
3 certain shielding effect, not completely,  
4 obviously, but for a portion of that CVRP project.  
5 Is that correct?

6 A It -- there is -- the contour does  
7 follow -- the noise contour does follow the tow of  
8 the hill.

9 Q And will that hill absorb some of that  
10 sound, as well?

11 A It will absorb some.

12 Q Before -- I want to take you through  
13 Staff's analysis, and then I'll -- on to CVRP's  
14 testimony. So let me go back to the -- the Final  
15 Staff Assessment and ask you a few questions about  
16 that.

17 The Final Staff Assessment determines  
18 that the project is in compliance with the  
19 applicable laws, ordinances, regulations and  
20 standards. Did you do an independent analysis, as  
21 well, of the applicable LORS?

22 A I did.

23 Q And what determination did you make with  
24 regard to those LORS?

25 A Metcalf complied with the LORS.

1 HEARING OFFICER VALKOSKY: Off the  
2 record, please.

3 (Off the record.)

4 HEARING OFFICER VALKOSKY: Back on the  
5 record.

6 BY MR. HARRIS:

7 Q All right. We were talking about the  
8 Final Staff Assessment. Just got through the LORS  
9 issue. I want to ask you now about the Conditions  
10 of Certification.

11 Now, you noted at the beginning that  
12 change to Condition 7 that you suggested. Have  
13 you had a chance to review the Final Staff  
14 Assessment?

15 A I have.

16 Q And you've had a chance to review the  
17 Conditions of Certification in the FSA?

18 A I have.

19 Q And are those conditions acceptable to  
20 you?

21 A Yes.

22 Q Okay. I want to change gears a little  
23 now and go to the CVRP testimony that was  
24 prefiled. Have you had a chance to review that  
25 CVRP Noise testimony?

1           A     I have.

2           Q     Okay.  One of the issues raised in there  
3           is about the question of what would be the  
4           dominant noise source in the area.  Will Metcalf  
5           be the dominant noise source in the area?

6           A     The -- the dominant noise source in the  
7           area will be the daytime traffic and the -- and  
8           the rail traffic.  Metcalf's impacts are limited  
9           to the night time hours.

10          Q     Okay.  So during the daytime hours in  
11          particular, it's clear that Metcalf will not be  
12          the dominant noise source; is that correct?

13          A     Correct.  The area is subject to -- to  
14          high volumes of traffic, both rail and vehicle.

15          Q     And -- and is that both with existing  
16          conditions and with anticipated future conditions?

17          A     Correct.

18          Q     Is the dominant noise source currently,  
19          then, the rail line, or is it the -- the roads?

20          A     The rail line accounts for the peak  
21          noise levels.  The roads account for the largest  
22          noise levels that have any duration in time.

23          Q     Okay.  Thank you.

24                     With regard to the design philosophy.

25          Do you believe that the CVRP testimony accurately

1 reflects your 49 dBa design philosophy?

2 A No, I think that they thought we were  
3 doing some sort of numeric averaging and playing a  
4 24 hour averaging game. The plant is being  
5 designed to a 49 decibel level continuous. That's  
6 to include start-up and shutdown. If you're at  
7 the Passantino residence, for example, if you're  
8 there for ten minutes, one hour, or ten hours, and  
9 you'd measure during that time period, we  
10 anticipate the noise level to be 49 decibels.

11 Q Okay. So the -- regardless of the exact  
12 time of your exposure over that timeframe, whether  
13 it's ten minutes or an hour or ten hours, you'd be  
14 exposed to 49 dBa average. Is that your  
15 testimony?

16 A Correct. That's the design goal.

17 Q The Passantino property is located  
18 approximately how far from the Metcalf site?

19 A It's approximately 1200 feet.

20 Q Okay. And did you notice in CVRP's  
21 testimony that they've indicated that they thought  
22 their project was about a thousand feet away from  
23 the Metcalf site?

24 A I did.

25 Q And do you agree with that assessment?

1           A     Not from the maps that I have seen.

2           Q     Okay, thank you.

3                     I want to talk a little bit about the  
4     timeframes in the CVRP analysis. Does CVRP focus  
5     on daytime or night time frames?

6           A     I believe, by the way they present their  
7     data, they're -- they're looking at night time  
8     impacts.

9           Q     And focusing on night time impacts, what  
10    -- what effect does that have in terms of how MEC  
11    appears?

12          A     MEC is -- is the dominant source during  
13    the night time hours.

14          Q     Okay. So a proper focus, then, would be  
15    to focus on both daytime and night time hours; is  
16    that correct?

17          A     Daytime, evening, and night time hours.  
18    Nowhere in their testimony did they state or  
19    summarize any of the existing measurements that we  
20    have taken, or that they have taken as part of  
21    their EIR.

22          Q     Okay. CVRP also focused on recreational  
23    areas. What was your analysis, or your review of  
24    their testimony in this regard?

25          A     They -- they were focusing on

1 recreational areas, not -- not the project site,  
2 nor their project site. They were focusing on  
3 plant levels, and not including existing ambient  
4 levels or ambient DNL levels.

5 The -- the recreational area that they  
6 identified would be subject to noise that is  
7 similar to levels recorded at the Passantino  
8 property. It is approximately the same distance  
9 from Monterey Road, and from the UPRR railroad  
10 tracks.

11 Q Okay.

12 A And that the impacts that they  
13 identified would be -- would be mainly during the  
14 late evening and night time hours, when, as I  
15 stated, the background drops off and Metcalf  
16 becomes the dominant source. Times when that area  
17 would not typically be used for recreational  
18 opportunities.

19 Q Okay. So moving on now to the -- the  
20 question of the noise levels inside the CVRP  
21 buildings. From your analysis, what's the outside  
22 noise level at the nearest CVRP building?

23 A As shown in Attachment 182R, included in  
24 Supplement C, the outside noise level at the  
25 nearest CVRP building will be approximately 45

1       decibels.

2           Q     That's the outside noise level?

3           A     Correct.

4           Q     Typically, what's the noise level for  
5       the inside of a building?

6           A     Regulations call for a 45 decibel DNL --

7           Q     So the --

8           A     -- level. We will -- we will end up  
9       complying with that.

10          Q     So --

11          A     Any typical structure would afford  
12       adequate mitigation if -- if at all needed.

13          Q     So the 45 dBa for interior noise is  
14       typical related to HVC and other --

15          A     Correct. I would expect the noise  
16       environment in here to be in the 40s.

17          Q     Okay. So the noise, again, on the  
18       outside, related to Metcalf, is that that same  
19       ambient --

20          A     Correct.

21          Q     -- impact. Okay. And the building  
22       itself will also provide some sound baffling for  
23       that 45 outside?

24          A     Correct, especially with an industrial  
25       or campus industrial type building that is being

1 proposed.

2 MR. HARRIS: Thank you.

3 Just checking on documents. We'll be  
4 right with you. Sorry.

5 (Pause.)

6 MR. HARRIS: All right. I think we're  
7 fine on documents.

8 At this point I would make the witness  
9 available for cross examination.

10 HEARING OFFICER VALKOSKY: Thank you,  
11 Mr. Harris.

12 Before we begin, I just have just a  
13 couple of questions for the witness.

14 Are there -- first, are there any of the  
15 revised Conditions of Certification proposed by  
16 CVRP that you would view as acceptable?

17 THE WITNESS: I believe the current  
18 conditions proposed by Staff are acceptable, and  
19 the conditions, the proposed changes are  
20 unwarranted, with the evidence.

21 HEARING OFFICER VALKOSKY: Okay. In  
22 your --

23 FROM THE AUDIENCE: Can I ask the  
24 witness to talk into the mic at all times?  
25 Because when you turn and look, we can't hear that.

1 HEARING OFFICER VALKOSKY: Okay.

2 Your testimony indicates that there are  
3 certain additional measures which are feasible at  
4 the source. Could you explain what the -- what  
5 these measures are?

6 THE WITNESS: Additional measures,  
7 meaning specifying additional -- additional  
8 mitigation measures at the plant?

9 HEARING OFFICER VALKOSKY: Yes.

10 THE WITNESS: The additional mitigation  
11 measures at the plant would include specifying  
12 equipment that would -- that would achieve a lower  
13 decibel rating, including cooling towers and --  
14 and additional sounds, for example, or -- and/or  
15 enclosures.

16 HEARING OFFICER VALKOSKY: And are these  
17 measures that Applicant is going to adopt or is  
18 not going to adopt?

19 THE WITNESS: There are certain measures  
20 that we are going to adopt. I'm unclear as to  
21 which measures you're referring to.

22 HEARING OFFICER VALKOSKY: Okay. The  
23 testimony indicates that there's -- there are  
24 additional feasible measures which Applicant, at  
25 least as I read it the testimony, is not going to

1 employ because of the approximately \$5 million  
2 additional cost. What I would like to --

3 THE WITNESS: That's -- that is --

4 HEARING OFFICER VALKOSKY: Okay.

5 THE WITNESS: -- correct.

6 HEARING OFFICER VALKOSKY: Okay. I  
7 would like to know what those measures are, and  
8 basically the rationale for not choosing to employ  
9 them.

10 THE WITNESS: There is a -- a list of  
11 measures included, and I'll have to refer to the  
12 -- to the testimony filing to get those.

13 HEARING OFFICER VALKOSKY: That's fine.

14 THE WITNESS: But the general -- the  
15 general answer to that is the -- the measures, the  
16 additional measures which are specified are deemed  
17 excessive, given the cost, and the limited benefit  
18 to -- to the residents, or the affected -- the --  
19 the additional -- the specific measures proposed  
20 in the \$5 million assessment are -- have been --  
21 are deemed excessive or unreasonable, given their  
22 cost, and that we're talking about relatively few  
23 affected receptors. And that those receptors are  
24 -- that we proposed alternative mitigation for  
25 those receptors, that will limit that impact.

1 HEARING OFFICER VALKOSKY: Is it -- and  
2 you can just, I think it's best if you address the  
3 audience. You can keep your back to me, that's  
4 fine.

5 And again, is it possible to quantify  
6 how much -- how much of a noise reduction would be  
7 attributable to these -- to those proposed --

8 THE WITNESS: The \$5 million figure came  
9 from an acoustical analysis that would achieve the  
10 45 decibel level at the Passantino residence.

11 HEARING OFFICER VALKOSKY: Okay. So as  
12 -- as opposed to a 45 decibel?

13 THE WITNESS: As opposed to a 49.

14 HEARING OFFICER VALKOSKY: As opposed to  
15 a 49 decibel level. Okay.

16 And again, could you just list what  
17 those measures are?

18 THE WITNESS: Sure. Let me find them in  
19 the testimony.

20 MS. GRUENEICH: And, excuse me, if there  
21 is a specific exhibit number or page reference,  
22 maybe we could get that and then we can all follow  
23 along.

24 HEARING OFFICER VALKOSKY: When you say  
25 testimony, you're referring to your prepared

1 testimony, or one of the exhibits that have been  
2 introduced?

3 THE WITNESS: The exhibits.

4 HEARING OFFICER VALKOSKY: The exhibits.  
5 Okay. If you can -- in that case, if you could  
6 refer to the specific exhibit.

7 (Inaudible asides.)

8 THE WITNESS: I believe that issue arose  
9 after the PSA hearings. I don't have a copy of  
10 the submittal that we filed with the CEC in my  
11 records here.

12 HEARING OFFICER VALKOSKY: Okay. Mr.  
13 Harris, can you help the witness out?

14 MR. HARRIS: Yeah. Give us a moment,  
15 we're looking.

16 HEARING OFFICER VALKOSKY: We'll go off  
17 the record temporarily.

18 (Off the record.)

19 HEARING OFFICER VALKOSKY: All right.  
20 I'll note for the record that the document in  
21 question is still being searched for, and we'll  
22 hold open the opportunity to bring it in on Mr.  
23 Harris' redirect.

24 Last -- last question I have for the  
25 witness. Does the county noise ordinance require

1 analysis of or set standards for vibration  
2 impacts?

3 THE WITNESS: I've got the county regs  
4 right here. I'll review those.

5 (Pause.)

6 THE WITNESS: Looking at what I have as  
7 page 3,277 of Chapter 7, Control of Noise and  
8 Vibrations, Santa Clara County Code, this is  
9 Section 2.7, Vibration. Operating or permitting  
10 the operation of any device that creates a  
11 vibrating or a quivering effect that, A, endangers  
12 or injures the safety or health of human beings or  
13 animals, or annoys or disturbs persons of normal  
14 sensitivities, or endangers or injures persons or  
15 real property.

16 HEARING OFFICER VALKOSKY: Is it your  
17 opinion that that ordinance applies to the  
18 proposed project?

19 THE WITNESS: Now, whether or not it  
20 applies, it is my opinion that we comply with the  
21 -- with the ordinance.

22 HEARING OFFICER VALKOSKY: Okay. Let me  
23 -- let me rephrase that.

24 Is it your testimony that your analysis  
25 included any vibration impacts --

1 THE WITNESS: Yes, I did.

2 HEARING OFFICER VALKOSKY: -- emanating  
3 from the project?

4 THE WITNESS: I would again refer to  
5 Attachment 182R --

6 HEARING OFFICER VALKOSKY: Speak into  
7 the microphone, please.

8 THE WITNESS: I would refer to  
9 Attachment 182R that was submitted as part of  
10 Supplement C. There are several pages which are  
11 wholly devoted to the vibration impacts.

12 HEARING OFFICER VALKOSKY: Okay. And --

13 THE WITNESS: And the -- the summary  
14 there is that the plant vibrations are -- are not  
15 a -- are not a significant impact, given the --  
16 the traffic, the rail traffic and the -- and the  
17 vehicle traffic in the area.

18 HEARING OFFICER VALKOSKY: Is it your  
19 testimony that the scope of that analysis included  
20 the proposed Cisco development?

21 THE WITNESS: Whether -- this analysis  
22 applies whether there's development there or not.

23 HEARING OFFICER VALKOSKY: Okay, fine.

24 Thank you.

25 Staff?

1 MS. WILLIS: Thank you. Actually, you  
2 just asked my first two questions, so I'm going to  
3 move on to the change in NOISE- 7 that you just  
4 proposed.

5 CROSS EXAMINATION

6 BY MS. WILLIS:

7 Q Since this is the first time we've heard  
8 about it, I want to have -- ask some clarifying  
9 questions.

10 Could you please clarify again what --  
11 the change that you're proposing?

12 A We're requesting that we be able to  
13 construct -- to conduct construction activities  
14 outside of the timeframe that is specified in  
15 NOISE-7, given the technical limitations of the  
16 horizontal drilling.

17 Q And what would those timeframes be?

18 A It would be 24 hours a day for  
19 approximately two to three weeks.

20 Q Is that -- would that be two to three  
21 weeks straight through?

22 A I understand so.

23 Q And can you -- can you explain -- can  
24 you explain what the noise level of horizontal  
25 drilling would be?

1           A     It can vary.  We're -- we haven't -- in  
2     my -- in my experience, I conducted measurements  
3     on similar activities that were conducted in  
4     Delta.  I would anticipate that we would have to  
5     provide mitigation measures, such as silencers, in  
6     order to -- to mitigate noise to a reasonable  
7     level.

8           Q     And what would a reasonable level be?

9           A     One with which we did not sustain  
10    significant complaints.  As a construction  
11    activity, it's --

12          Q     Do you have -- do you have a figure on  
13    the noise level?

14          A     For horizontal directional drilling, I  
15    do not.

16          Q     Okay.  So your testimony is you'd wait  
17    until you hear complaints?

18          A     No.  I would propose mitigation to the  
19    horizontal directional drilling, and we would  
20    increase mitigation if we received complaints.

21          Q     And you mentioned silencers.  Is there  
22    any other kind of mitigation that you would  
23    propose?

24          A     There's acoustical enclosures that  
25    probably could -- could shroud equipment.

1 Potentially, the creation of temporary walls, or  
2 barriers.

3 Q And in what location would this drilling  
4 take place?

5 A The locations are specified, what I have  
6 a Figure 4D of the Metcalf Energy Center BRMIMP,  
7 it specifies the linear corridor. The -- the  
8 horizontal directional drilling will be used to  
9 drill underneath Monterey Road and underneath the  
10 UPRR railroad tracks, as well as it appears under  
11 U.S. 101.

12 MS. GRUENEICH: Excuse me. Could I just  
13 ask if we could have an identification of the  
14 document you were referring to, and if it's an  
15 exhibit in the record, or at least where -- where  
16 we might locate it.

17 HEARING OFFICER VALKOSKY: It is not yet  
18 an exhibit. I believe it was referred to as  
19 contained in the Biological Resources mitigation  
20 plan. Is that correct, Mr. Harris?

21 MR. HARRIS: Yes, that is correct.

22 MS. GRUENEICH: Thank you.

23 BY MS. WILLIS:

24 Q And what receptors would this drilling  
25 impact?

1           A     The Passantino residence, and their  
2           neighbors. That appears -- that appears to be the  
3           only residence in the area. There may be some  
4           impacts to some other residences along Monterey  
5           Road, whether the levels expected during the  
6           horizontal directional drilling would be  
7           significant enough to affect those.

8           Q     Now, just for clarification, one more  
9           time. This is drilling that would take place 24  
10          hours a day?

11          A     Yes. You need to keep the drill bit  
12          moving, otherwise it will seize on you.

13          Q     And -- and your testimony is that you're  
14          not -- you don't know what the sound level would  
15          be?

16          A     Correct. I can't predict what the sound  
17          level will be at this moment. If I -- I had  
18          references, or had access to measurement data  
19          which was conducted for the Delta, I could provide  
20          you with a prediction. But I'm not --

21          Q     That's --

22          A     -- that --

23                   MS. WILLIS: Okay. Thank you.

24                   HEARING OFFICER VALKOSKY: Does that  
25          conclude your cross, Ms. Willis?

1 MS. WILLIS: Yes, it does.

2 HEARING OFFICER VALKOSKY: Ms.  
3 Grueneich.

4 MS. GRUENEICH: Thank you.

5 I am going to be asking questions from  
6 some documents. For example, we just referred to  
7 the Santa Clara County noise element, and I've  
8 made copies. I don't think they need to be marked  
9 as exhibits, so I'm happy, because the reference  
10 is to laws. And also, previously Mr. Beers had  
11 asked for permission that we could have an  
12 illustrative handout with regard to the location  
13 of the proposed power plant, as well as some of  
14 the surrounding uses.

15 And since then we've worked with Mr.  
16 Harris and the Staff. We have that available in  
17 both an eight by -- and a half by eleven, and a  
18 larger blow-up. And I thought it might be useful  
19 for me to distribute these materials now, as  
20 opposed to each time I get to it in my questions I  
21 walk around the room.

22 So if that's okay, what I would do is  
23 just take a minute and make sure folks have  
24 documents that I might be asking questions about.

25 HEARING OFFICER VALKOSKY: Any problems

1 with that, Mr. Harris?

2 MR. HARRIS: My understanding is that  
3 the one document is an illustrative example of the  
4 site.

5 MS. GRUENEICH: Absolutely.

6 MR. HARRIS: Is that -- is that the  
7 document you're talking about, or was there a  
8 second document?

9 MS. GRUENEICH: It's -- this is it. I  
10 have some questions. Again, I'm just thinking it  
11 would be easier for -- I have the Santa Clara  
12 County noise element. We do have a -- I will be  
13 referencing this AFC, I think it's Data Response  
14 182, and to the extent that people don't have it  
15 readily available I just made some copies so  
16 people know what tables or figures I'm referring  
17 to.

18 MR. HARRIS: I guess the question --

19 MS. GRUENEICH: So I'm happy if when you  
20 see it, you have a problem, then let me know. I  
21 just was thinking it'd be easier if I gave them  
22 all out now, as opposed to jumping up and down.

23 MR. HARRIS: Yeah. The illustrative  
24 example, I mean, I have no problem with that. I  
25 guess I'm curious about the code sections, and --

1 and what those are.

2 HEARING OFFICER VALKOSKY: Well, I mean,  
3 it's just something we're all going to refer to.  
4 The code says what the code says.

5 MR. HARRIS: Okay. Then you'll make  
6 those available to the witness, as well, I guess.

7 HEARING OFFICER VALKOSKY: Sure.

8 MR. HARRIS: Okay.

9 HEARING OFFICER VALKOSKY: Okay.

10 MS. GRUENEICH: It'll be a minute.

11 HEARING OFFICER VALKOSKY: Off the  
12 record again, please.

13 (Off the record.)

14 HEARING OFFICER VALKOSKY: Back on the  
15 record.

16 Mr. Harris.

17 MR. HARRIS: I think we're going to ask  
18 for a break here. These documents that have just  
19 been handed to us are similar to things that we  
20 brought in preparation for this line of  
21 questioning, but they're not precisely the same.  
22 So we want to give our witness an opportunity to  
23 figure out whether he's got duplicative material,  
24 or additional material.

25 HEARING OFFICER VALKOSKY: Okay. About

1           how long will that take?

2                       MR. HARRIS: Well, if it had been  
3           prefiled, then -- and served properly, we'd be  
4           moving along. I may -- it may take me at least 15  
5           minutes to make sure my witness knows what he has  
6           before him, since it's just been delivered.

7                       HEARING OFFICER VALKOSKY: I'd like one  
8           -- one point of clarification. Ms. Grueneich, on  
9           the document that you handed us, it says Appendix  
10          3.5, Noise Impact Assessment. Is that part of  
11          Data Response 182, which we've identified as  
12          Exhibit 21?

13                      MS. GRUENEICH: Yes. I also had down  
14          that I think it's also part of Exhibit 4. Just  
15          because Exhibit 4 is Supplement B. So it may be  
16          in the record in two places as exhibits.

17                      HEARING OFFICER VALKOSKY: Okay.

18                      MS. GRUENEICH: My -- my understanding  
19          is that the two items that I've handed out from  
20          the AFC are already exhibits, and then the other  
21          items are laws, or under the LORS, which normally  
22          would not be an exhibit.

23                      HEARING OFFICER VALKOSKY: Right, that's  
24          correct. And if you could just clarify the items  
25          you've handed out, whether or not they are in fact

1 portions of exhibits that we've identified.

2 MS. GRUENEICH: Well, that's -- that's  
3 what I wanted to make sure, because my  
4 understanding is they --

5 HEARING OFFICER VALKOSKY: Okay. No, I  
6 -- I'm suggesting you do that off the record --

7 MS. GRUENEICH: Okay.

8 HEARING OFFICER VALKOSKY: -- and we  
9 take Mr. Harris' recess.

10 Okay. We'll take a recess until 25 of  
11 four. Off the record.

12 (Thereupon a recess was taken.)

13 MR. HARRIS: So with those caveats, I  
14 would like that the witness be granted  
15 considerable latitude to take time to look and  
16 make sure he knows what he's being asked.

17 And I'd reiterate my previous concerns  
18 about the lack of pre-filing of documents, and I  
19 think that has created the impression that the  
20 witness isn't prepared, when, in fact, the witness  
21 is being asked to prepare it on the spot, so.

22 HEARING OFFICER VALKOSKY: Okay. With  
23 that caveat, on behalf of the Committee, as far as  
24 the Committee's concerned, the law, including the  
25 general plan, will say whatever it is that they

1 say. That's retrievable.

2 Secondly, or, Ms. Grueneich, are any of  
3 these items in previously identified exhibits, and  
4 if so, could you please specify which, and the  
5 exhibit number?

6 MS. GRUENEICH: Yes. My understanding  
7 is that the document that I've passed out as  
8 Exhibit 3.5, Noise Impact Assessment, the response  
9 to Data Request 182, that that is -- was  
10 previously identified as Exhibit 21.

11 HEARING OFFICER VALKOSKY: Okay.

12 MS. GRUENEICH: And then I have also  
13 passed out a one page document. At the top it  
14 says Land Use Figure 6, and this came from the  
15 FSA, and in all honesty, I am not sure if the FSA  
16 has been entered into --

17 HEARING OFFICER VALKOSKY: Portions of  
18 the FSA have, for identification --

19 MS. GRUENEICH: I think -- I think it's  
20 Exhibit 7, says Final --

21 HEARING OFFICER VALKOSKY: That's --

22 MS. GRUENEICH: -- says FSA.

23 HEARING OFFICER VALKOSKY: -- that's  
24 correct.

25 MS. GRUENEICH: So this would be Exhibit

1 7, one page from Exhibit 7. And then the other  
2 document, which -- excuse me -- which is Section  
3 8.5 of the AFC. My understanding is that that is  
4 Exhibit 1.

5 HEARING OFFICER VALKOSKY: Okay.

6 Mr. Harris, does that comport with your  
7 understanding of those three exhibits, namely, 1,  
8 7, and 21, that Ms. Grueneich referred to?

9 MR. HARRIS: I think not, actually.  
10 Appendix 3.5 is part of -- even though the footer  
11 on the first page says Exhibit B, it's Exhibit C.  
12 So instead of Exhibit 21, that'd be Exhibit 5.

13 HEARING OFFICER VALKOSKY: Okay. So  
14 specifically, this is part of Supplement C to the  
15 AFC. Is that correct?

16 MR. HARRIS: Right.

17 MS. GRUENEICH: The -- the reason why,  
18 and this is where I think in fact we have the same  
19 documents that are probably in more than one  
20 exhibit, but I think it's fine. But when the  
21 witness went through in his testimony, under the  
22 prior filings, and I remember that under Bullet 3,  
23 we went through which exhibits they corresponded  
24 to, and I may be wrong but I put a note here that  
25 Bullet 3, which is responses to CEC Data Requests,

1 that my note was that the responses 181 -- 180,  
2 181, and 182, were marked as -- were Exhibit 21.  
3 Which isn't to say that it may not also be in the  
4 record as Exhibit 5.

5 HEARING OFFICER VALKOSKY: Okay. That  
6 comports with my understanding.

7 Mr. Harris, please help me here. Is  
8 this part of Exhibit 5, is it part of Exhibit 21,  
9 or is it part of both?

10 MR. CARRIER: Perhaps I can clarify.  
11 John Carrier.

12 Appendix 3.5 is Appendix 3.5 of  
13 Supplement C, which is -- which is Exhibit 5.  
14 Behind that is Data Response NO-182R, which means  
15 it's revised. The non-revised one would be 182,  
16 that would be part of Supplement 2C that she's  
17 referring to. So this is actually the revised  
18 version, the most current version, which is  
19 correct. It is part of Supplement C, and that  
20 would be Exhibit 5.

21 MS. GRUENEICH: Okay. So if I'm  
22 correct, if -- the document I handed out, if we  
23 ignore the first page, or even took it off and  
24 looked at the second page, that then is Exhibit 5?

25 MR. CARRIER: That is Exhibit 5.

1 MS. GRUENEICH: Okay.

2 MR. CARRIER: Part of Exhibit 5.

3 MS. GRUENEICH: Part of Exhibit 5.

4 HEARING OFFICER VALKOSKY: Okay. Well,  
5 let's discard the first page, then. We'll just  
6 refer to it as Exhibit 5.

7 Okay. Ms. Grueneich, your cross.

8 MS. GRUENEICH: Thank you.

9 CROSS EXAMINATION

10 BY MS. GRUENEICH:

11 Q Good afternoon. Just so we're clear, on  
12 a technical matter, am I correct that 49 dBa  
13 equals 55 DNL?

14 A Correct. A continuous level of 49 is  
15 equivalent to 55.

16 Q If I could ask you to turn to the Staff  
17 testimony on Noise, and specifically --

18 A Are you referring to FSA or PSA?

19 Q The FSA. I apologize. Why don't I get  
20 the exhibit number.

21 HEARING OFFICER VALKOSKY: It's Exhibit  
22 7.

23 BY MS. GRUENEICH:

24 Q Exhibit 7. If I could ask you to turn  
25 to Exhibit 7, Table 5.

1 MR. HARRIS: And what's the page number  
2 on that?

3 MS. GRUENEICH: Page 285.

4 MR. HARRIS: You said Table 5; is that  
5 correct?

6 MS. GRUENEICH: Yes, that's correct.

7 BY MS. GRUENEICH:

8 Q Do you have that before you?

9 A Table heading Preliminary Noise  
10 Mitigation Measures?

11 Q That's correct. And then if I could ask  
12 you to also turn to, within your Noise testimony,  
13 Table 1 on page 4.

14 A By my testimony, you mean the AFC?

15 Q No, I actually mean your --

16 A I don't believe I have any --

17 Q -- testimony --

18 A -- I don't have tables in my personal  
19 testimony.

20 HEARING OFFICER VALKOSKY: The testimony  
21 identified as a portion of Exhibit 8; is that  
22 correct? The prepared testimony that was filed in  
23 December, Ms. Grueneich, is that what you're  
24 talking about?

25 MS. GRUENEICH: Yes. That's correct.

1 HEARING OFFICER VALKOSKY: Okay.

2 MS. GRUENEICH: And I, at least, have as  
3 the last page of that testimony, Table 1. One  
4 second, let me --

5 (Pause.)

6 HEARING OFFICER VALKOSKY: Okay. Does  
7 the witness have those documents before him?

8 THE WITNESS: Yes. I -- I'm reviewing  
9 --

10 HEARING OFFICER VALKOSKY: Proceed,  
11 please.

12 BY MS. GRUENEICH:

13 Q Are there any significant differences  
14 between these two tables that we've identified, in  
15 terms of the possible noise control measures that  
16 are identified?

17 A I'll review those right now.

18 Q Thank you.

19 (Pause.)

20 THE WITNESS: I don't see any  
21 significant difference. One is specified in -- in  
22 metric, the other is in English units, but they're  
23 approximately equivalent.

24 BY MS. GRUENEICH:

25 Q Okay. Thank you. Looking at Table 1,

1       which is in your testimony, Exhibit 8, are these  
2       noise mitigation measures that the Applicant has  
3       agreed to implement for the project?

4           A     Yes.  That's what's stated both, I  
5       believe, in the -- the FSA, anticipated operation  
6       noise mitigation measures would also include the  
7       following, see Noise Table 5 below.

8           Q     Okay.  Excuse me, could you reference  
9       the page number you were just referring to?

10          A     284.  It's on -- I'm referring to the  
11       FSA.  My copy --

12          Q     I have -- I have page 284, and --

13          A     The last sentence I see starts with  
14       anticipated.

15          Q     Okay, I see that.

16          A     And then it refers to Table 5 below,  
17       which is on the top of page 285.

18          Q     I see.  Is -- are the noise mitigation  
19       measures that are set forth on the top of page  
20       285, are those then picked up through any specific  
21       condition of certification?

22          A     That's how we comply with the 49  
23       decibels.  Those are mitigation measures which  
24       must be implemented, or equivalent measures  
25       implemented to --

1           Q     Right. Let me re-ask the question. You  
2     are, I assume, of course, familiar with the seven  
3     Staff proposed Conditions of Certification for  
4     Noise.

5           A     I am.

6           Q     Okay. Could you point me to which, if  
7     any, of the certification of conditions specify  
8     that the specific noise control measures set forth  
9     in Table 5 of the Staff testimony shall be  
10    implemented by the Applicant?

11          A     I don't think the Staff is in a position  
12    to dictate design of a plant. I believe that  
13    these are preliminary noise mitigation measures  
14    which were included in the preliminary design in  
15    order to achieve the 49 decibel level at the  
16    Passantino level -- at the Passantino residence.

17          Q     So would your answer to my question be  
18    no, there is not a specific condition of  
19    certification that specifies these specific noise  
20    control measures shall be implemented?

21          A     No, negative, no, there's -- I am not  
22    aware of -- yeah, I guess the answer would be yes.

23          Q     Would the Applicant have any objection,  
24    if there were a condition of certification that  
25    stated specifically that the noise mitigation

1 measures specified in Table 5 of Exhibit 7 shall  
2 be used in the design --

3 A I think the Applicant --

4 PRESIDING MEMBER LAURIE: Before you  
5 answer that question. Mr. Valkosky, I would want  
6 to establish that this witness is -- is in a  
7 position to speak for and on behalf of the  
8 Applicant in response to the question.

9 HEARING OFFICER VALKOSKY: Are you, sir?

10 MR. HARRIS: Well, let me simplify  
11 things by objecting. I think she's asking --  
12 basically the list is a menu of anticipated means  
13 to meet the condition of certification. She's  
14 asking, if I'm understanding her, whether we would  
15 bind ourselves to that narrow list in meeting the  
16 condition of certification, and the answer to that  
17 from the Applicant, and I'm authorized to speak on  
18 their behalf, is no.

19 THE WITNESS: And if I could follow up,  
20 I would say that we would want the flexibility to  
21 incorporate new technologies, new technologies  
22 developed.

23 HEARING OFFICER VALKOSKY: All right.  
24 Well, you know, I think regardless of the form of  
25 the question, I think this is an appropriate area

1 of inquiry. And I guess my question would be,  
2 would the Applicant object to a condition of  
3 certification which specified these measures as  
4 specific measures to be considered in designing  
5 the project.

6 THE WITNESS: That's the way we see them  
7 now. They are -- this is the menu, the current  
8 menu, and I keep using the word menu --

9 HEARING OFFICER VALKOSKY: Right. And I  
10 believe --

11 THE WITNESS: -- that would allow --

12 HEARING OFFICER VALKOSKY: -- Ms.  
13 Grueneich's question was whether you would object  
14 to specifying these in a condition of  
15 certification. Is that correct, Ms. Grueneich?

16 MS. GRUENEICH: Yes, that's correct.

17 MR. HARRIS: And I think I stated we  
18 would object to specifying them in a condition of  
19 certification.

20 Then your next question, as I understood  
21 it, was would we object to having them referenced.  
22 Our view is that these are the tools that we have  
23 available to us to meet the 49 dBa condition of  
24 certification. I don't think we want to limit  
25 ourselves to only these, so if you wanted to add a

1 catch-all to this list that said other generally  
2 accepted industry standards, other new standards,  
3 because I'd hate to be in a situation where we'd  
4 have a -- a better way to insulate and be limited.

5 HEARING OFFICER VALKOSKY: I understand  
6 that, and basically, at least in my mind, the  
7 language I was contemplating was something that  
8 would list these specific conditions, as well as,  
9 you know, some language to the extent including,  
10 but not limited to, the following measures.

11 I think that gets to the --

12 MR. HARRIS: I think you also said in  
13 your initial summary was would be considered.

14 HEARING OFFICER VALKOSKY: Right. Yes,  
15 would be considered.

16 MR. HARRIS: Would be considered.

17 HEARING OFFICER VALKOSKY: Yes.

18 MR. HARRIS: If they were found -- if it  
19 was found that they were either --

20 HEARING OFFICER VALKOSKY: That's what I  
21 understand.

22 MR. HARRIS: -- not needed, or if they  
23 were -- or if more were needed, that we would have  
24 the design flexibility to modify.

25 HEARING OFFICER VALKOSKY: That -- that

1 is consistent with my understanding, yes.

2 So I think the question is, would you  
3 oppose a condition that was phrased along those  
4 general lines, but did specify these as measures  
5 to be considered --

6 MR. HARRIS: I think the language --

7 HEARING OFFICER VALKOSKY: -- among  
8 others.

9 MR. HARRIS: Sorry, I thought you were  
10 done. The language, as long as it's broad enough  
11 to allow us to include this, I mean, I don't have  
12 a problem with this, simply because from  
13 Applicant's point of view, the decision and the  
14 license is our frame of reference. And so the  
15 first things we're going to look at are the  
16 decision and the license, including the conditions  
17 and the other list. I mean, I think we would have  
18 to justify to the Compliance Project Manager if we  
19 eliminated some of these things in this table,  
20 because that's --

21 HEARING OFFICER VALKOSKY: I -- I  
22 understand that, and I really don't wish to  
23 belabor this point. I'm just suggesting that as I  
24 understand it, and please, Ms. Grueneich, correct  
25 me if I'm wrong, the concern is the absence of

1 these specific measures as items to be considered  
2 in one of the proposed conditions of  
3 certification.

4 MS. GRUENEICH: Yes. I specifically  
5 looked, and the way this arose was that at the  
6 bottom of page 284, in the Staff testimony the  
7 last sentence says, anticipated operation, noise  
8 mitigation measures would include, also include  
9 the following. And so, to me, that did indicate  
10 an expectation, an anticipation that they would be  
11 included, and I was simply concerned that I didn't  
12 track it through.

13 I think Mr. Harris raises a very  
14 appropriate point, which is if there are better  
15 means, or, you know, more advanced means, nobody  
16 wants to constrain the Applicant to proceeding on  
17 that level.

18 MR. HARRIS: Okay. I wanted to be  
19 clear, too, that in terms of what's in this  
20 laundry list, the expectation is we use a  
21 combination of these things and not that somebody  
22 can come back later and say well, you met the  
23 condition, but you didn't implement the third one  
24 in the list. So it may be one of these, it may be  
25 ten of these, it may be all of these, and

1 additional ones. As long as the language is clear  
2 that we have the flexibility to use some or all of  
3 these.

4 HEARING OFFICER VALKOSKY: Okay. I -- I  
5 think that's understood.

6 Is there anything further on this point?

7 MS. GRUENEICH: Not from me, Your Honor.

8 HEARING OFFICER VALKOSKY: Okay. If you  
9 could continue then, please.

10 MS. GRUENEICH: Okay. Thank you.

11 I do have some questions about the  
12 proposed new exception to Condition for Noise 7,  
13 and I guess as a preliminary matter, let me ask  
14 Mr. Harris. Would you anticipate that we would be  
15 seeing the specific proposed language for that  
16 exception in writing?

17 MR. HARRIS: I actually don't think it's  
18 -- I think I haven't given any specific language,  
19 but I think it would say except for those  
20 operations that require 24 hour -- 24 hour  
21 operation, including but not limited to HDD,  
22 comma. I just want to except that. You can put  
23 it at the beginning or the end. Just a clause,  
24 and the subordinate clause at the beginning or at  
25 the end, that excepts HDD or other operations that

1       require 24 hour operation, and that could be  
2       subject to approval of the CPM, as well.

3               And I apologize for not proposing  
4       specific language. This is something that really  
5       has come to our attention as a result of our  
6       recent experience with other projects. And I  
7       think it's -- we're probably calling this to the  
8       attention of the Staff for the first time, as  
9       well, and it's something on a going forward basis  
10      that'll be important.

11              HEARING OFFICER VALKOSKY: Understood.

12              PRESIDING MEMBER LAURIE: Clarification.  
13      Under those circumstances, what standards would  
14      have to be met?

15              MR. HARRIS: The -- as I understand it,  
16      the -- first off, the activity is a temporary --  
17      temporary noise impact, so that creates different  
18      mitigation issues. The proposals that I think  
19      have been used at Delta and other places, included  
20      silencers and acoustic enclosures, those kind of  
21      -- of mitigation measures.

22              PRESIDING MEMBER LAURIE: In order to  
23      meet which dBa standard?

24              MR. HARRIS: I'm not sure there is a  
25      LORS, a dBa standard for that kind of a temporary

1 impact.

2 PRESIDING MEMBER LAURIE: Well, my  
3 concern, unless I'm misunderstanding, we have  
4 different ambient noise levels, because we're  
5 operating during the night time hours. And so, if  
6 anything, greater care has to be taken. I  
7 understand your need that you may have to operate  
8 24 hours. But you're not going to keep the  
9 neighborhood awake, so there has to be  
10 specification of standards that has to be met, and  
11 if you don't want a dictate as to the engineering  
12 as to your mitigation.

13 MR. HARRIS: Okay. I don't want to put  
14 Mr. Baker on the spot, but maybe I'll ask Staff  
15 how they've dealt with this, because I know the  
16 HDD is a very common process that's being used  
17 currently on the three projects that are under  
18 construction in California.

19 We haven't had any problems in terms of  
20 our compliance in those three projects. We happen  
21 to be involved in all three of those projects.  
22 And so maybe Staff could help clarify how this  
23 works from a practical matter.

24 MS. GRUENEICH: I think that in order to  
25 keep this orderly, I would suggest one of two

1 things. That perhaps we could have a -- either a  
2 standard or mitigation measures from the  
3 Applicant, and then some way that folks could --  
4 could review this. But it does seem to me that we  
5 are in a situation where we have some surrounding  
6 uses here, and that there's got to be some  
7 understanding from the Applicant's proposal if  
8 there are specific mitigation measures, or if  
9 there are standards.

10 I -- I don't want to take up a lot of  
11 hearing time on this, and maybe we could all  
12 caucus at a break as to how to proceed. But I'm a  
13 little wary of just we're at the stage of hearing  
14 from the Applicant's counsel that there may be  
15 mitigation measures, and at the same time that the  
16 witness who has proposed this exception probably  
17 isn't at the stage where he could specify what  
18 will be the actual impacts from this exception, or  
19 what might be appropriate mitigation measures.

20 THE WITNESS: I would add -- if I can  
21 find the code -- that -- that does regulate  
22 construction noise. I believe the City of San  
23 Jose does not regulate construction noise. And I  
24 don't -- and I believe the Santa Clara County  
25 code, and please correct me if I'm wrong, I'm

1 still trying to find it --

2 HEARING OFFICER VALKOSKY: Sir, speak  
3 into the microphone, please.

4 THE WITNESS: Sure. I believe the --  
5 the San Jose code does not regulate construction  
6 noise, and that -- that it is the Santa Clara  
7 County code. I'm looking at 2.6, my version of --

8 PRESIDING MEMBER LAURIE: Okay. But the  
9 issue on the table is Applicant says 24 hours,  
10 there's going to be standards, or other  
11 mitigation, we need to know what they are so the  
12 parties can have questions about it. When you're  
13 prepared to put forth that language, sometime  
14 today, then we can have further discussion on  
15 this.

16 MR. HARRIS: The language that we have  
17 proposed would be -- said mitigation measures  
18 subject to approval by the CPM.

19 PRESIDING MEMBER LAURIE: In order to  
20 accomplish what?

21 MR. HARRIS: The noise reduction  
22 required. Again, I guess I would like to hear  
23 from Staff as to how the -- this is not a new  
24 issue for the project, so maybe they can help us  
25 figure out what those --

1           PRESIDING MEMBER LAURIE: Okay.

2           MR. HARRIS: -- things are.

3           PRESIDING MEMBER LAURIE: Ms. Grueneich.

4           MS. GRUENEICH: Thank you.

5           I have passed out an excerpt of a  
6 document that is -- on the front page it's called  
7 Focus on the Future, San Jose 2020 General Plan.  
8 And the portions that I have passed out are the  
9 table of contents, page -- pages 119 through 122.

10           BY MS. GRUENEICH:

11           Q     Are you familiar with the San Jose 2020  
12 General Plan, of which this is an excerpt, at  
13 least with regard to the pages that I've passed  
14 out.

15           A     Yes, I am. I believe I have -- are  
16 numbered different, but it looks to be similar. I  
17 -- I start at page 110, and -- I think you're  
18 going to refer to as page -- excuse me, page 111.  
19 So I don't know if these are the exact same  
20 versions of the document. My cover says adopted  
21 August 16th, 1994. So does yours. My document is  
22 amended November 22nd, 1994. So that might  
23 account for some of the page number differences.  
24 I think you have a -- a different version.

25           Q     Well, what I would suggest is, since the

1 document that you are familiar with is your  
2 document, please rely upon that, and if I am  
3 asking questions that are inconsistent with your  
4 document, please let me know, because I am only  
5 attempting to use a document that I believe you're  
6 already familiar with.

7 A Okay.

8 Q Thank you.

9 Turning to your testimony first, you  
10 state on page 2, under Section C, operational  
11 impacts, in the second sentence, in order to  
12 comply with the City of San Jose noise element,  
13 the plant will be designed to maintain a noise  
14 level of 55 DNL or less during full-time full load  
15 operation at the nearest residential receptor, M1,  
16 or equivalently a maximum continuous noise level  
17 of 49 dBa; correct?

18 A Correct. That's what's stated.

19 Q And when you are referring to the San  
20 Jose -- City of San Jose noise element, is it the  
21 San Jose 2020 General Plan that you're referring  
22 to?

23 A It is, and I am also referring to  
24 letters of conversations that we've had with the  
25 city, and I believe this has already been acted --

1 entered into the docket as a record of the  
2 conversation.

3 Q And could you please --

4 A This --

5 Q -- give me the exhibit number? Or your  
6 counsel.

7 A What I'm referring to is a December 5th  
8 letter written by Alan Rosen, in which he -- I'll  
9 go ahead and summarize it. I don't have the  
10 exhibit number printed on -- I'm reading off of a  
11 fax copy that was forwarded to me.

12 This letter summarizes a telephone  
13 conversation we had on 22 November of 2000, with  
14 Richard Ukema, a Planner 2 with the City of San  
15 Jose. The purpose of our conversation was to  
16 clarify the city's acoustical criteria for Metcalf  
17 Energy Center project.

18 In summary, he confirmed the following.  
19 Residential noise limit. The city's general plan  
20 criteria for residential land uses is a DNL of 55  
21 dB. This criteria is applied at a distance of 50  
22 feet from the residence when the parcel is large,  
23 with mixed uses other than residential. This 50  
24 foot distance is at the approximate location of a  
25 fence line just north of the outdoor use area of

1 the Passantino residence. Therefore, it is  
2 appropriate to apply the DNL of 55 dB goal at the  
3 fence line.

4 Second bullet. Industrial noise level  
5 limit. The city's general plan criteria for  
6 industrial use is a DNL of 72 dB. A portion of  
7 the Passantino property north of the Passantino  
8 residence is currently agricultural. In the  
9 future, the Passantino property will be part of  
10 the North Coyote Valley Campus industrial area.  
11 Therefore, the criterion to be applied at the  
12 property line separate -- separating the  
13 Passantino property and the Metcalf Energy Center  
14 is a DNL of 70 dB.

15 MS. GRUENEICH: And, Mr. Harris, if you  
16 could clarify for me what exhibit number is the  
17 document that was just read from?

18 THE WITNESS: And I'll conclude. This  
19 -- this concludes our discussion. We are sending  
20 a copy to Paul Richins so that it may be entered  
21 into the docket. If you have any questions,  
22 please call.

23 HEARING OFFICER VALKOSKY: Let me --

24 THE WITNESS: It's --

25 HEARING OFFICER VALKOSKY: -- let me ask

1 Staff. Is that -- it seems to me to be an  
2 exhibit, if at all, that would be sponsored by  
3 Staff. Is that something Staff has sponsored or  
4 intends to sponsor? Ms. Willis.

5 MS. WILLIS: Yes, we can sponsor that  
6 letter. We don't have copies for everybody at  
7 this time, but we can try to make them.

8 HEARING OFFICER VALKOSKY: But it is  
9 nothing that you have sponsored thus far?

10 MS. WILLIS: It's docketed, but we have  
11 not entered it as an exhibit.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. HARRIS: I have the docket number,  
14 if it helps. It's 17180.

15 HEARING OFFICER VALKOSKY: Okay. It's  
16 docketed, but it is not an exhibit, Ms. Grueneich.

17 MS. GRUENEICH: Okay. What I'd like to  
18 do is to, for now, ask you questions with regard  
19 to the printed and formal General Plan that we've  
20 identified.

21 BY MS. GRUENEICH:

22 Q Turning again to your testimony, you  
23 have looked at the nearest residential receptor,  
24 M1, and am I correct that that is what we refer to  
25 as the Passantino residence?

1           A     Correct.

2           Q     Okay.  And so we are all clear, for  
3     illustrative purposes -- and I guess we don't have  
4     a pointer, but -- am I correct that if we were to  
5     look at the document that I have passed out, the  
6     North Coyote Valley, for illustrative purposes  
7     only, and I'm just trying to make sure we're all  
8     aligned and understanding where the Passantino  
9     residence is.

10                  I'm going to ask Mr. Radis to indicate  
11     on our overhead where the residence is, and then  
12     whether you confirm that that's where it would be.

13           A     There's a hard copy printout, if you  
14     just want to refer to that.

15           Q     Okay.

16           A     Correct.  That -- that is the Passantino  
17     --

18           Q     Okay.

19           A     -- residence, or --

20           Q     And what is the approximate difference  
21     between the MEC property line and the Passantino  
22     residence?

23           A     As stated in the AFC, we're  
24     approximately 1200 feet.

25           Q     And since there are several different

1 property lines, the 1200 feet that you're  
2 referring to, as I understand it, is the property  
3 line that Mr. Radis is now, I believe, going to  
4 indicate, that line there over to the Passantino?  
5 Do we have the same -- do we have the same  
6 property line that you were referring to?

7 A If you're -- I'm not going to state that  
8 the property lines that you have here are  
9 accurately depicted, because I cannot.

10 Q I -- I understand that.

11 A Do you want to state that we're dealing  
12 with the southern property line of the Metcalf  
13 site, with the exception of the panhandle portion  
14 of it --

15 Q That -- that would be fine.

16 A -- that -- that's --

17 Q Okay. And your testimony is that the  
18 distance between that southern property line to  
19 the Passantino is on the order of about 1200 feet.

20 A On the order of, at least from the  
21 center of the modeling.

22 Q Okay. And as I further understand it,  
23 it's your testimony that the power plant will meet  
24 a noise level of 55 DNL at the Passantino  
25 residence.

1           A     Correct.  It's -- that's the design  
2     goal.

3           Q     And that by doing so, it is then in  
4     compliance with the San Jose noise element?

5           A     Correct.  Especially given the  
6     interpretation given by the planner, that I read  
7     to you.

8           Q     Let me step back from oral  
9     interpretations.  We can handle that separately.  
10    What I'd like to ask you about is the written  
11    general plan.  And let me repeat the question,  
12    which is, it is your understanding that by  
13    designing the power plant to meet a noise level of  
14    55 DNL at the Passantino residence, that that then  
15    complies with the San Jose noise element as set  
16    forth in the 2020 General Plan?

17          A     I'm going to review the general plan --

18          Q     Certainly.  Take your time.

19          A     -- because we've been dealing with the  
20    interpretation of the general plan.  And I'm  
21    reviewing my version of the general plan.

22          Q     That's fine.

23                     (Pause.)

24                     PRESIDING MEMBER LAURIE:  Well, perhaps  
25    there's some -- perhaps there's some confusion

1 over the question.

2 Sir, are you familiar with the noise  
3 standards as set forth in the noise element of the  
4 general plan?

5 THE WITNESS: Yeah. What I was -- what  
6 I was looking for is to see if there was a written  
7 exemption in the general plan for homes,  
8 residential uses and agriculturally zoned areas.  
9 There's -- and I did not see one. There is  
10 statement in the general plan that the DNL noise  
11 should be met at the property line, if that's what  
12 you're referring to.

13 BY MS. GRUENEICH:

14 Q Okay. Let me re-ask the question  
15 directly and see if that helps.

16 Which is, on page 119 of my version of  
17 the general plan, which may not be the same, I'd  
18 like to read from it and see if it corresponds, so  
19 we're all on the same version.

20 Residential and public, quasi public  
21 land uses, such as schools, libraries, and  
22 hospitals, are particularly sensitive to noise.  
23 Commercial, industrial and other non-residential  
24 uses located adjacent to such existing or planned  
25 noise sensitive uses should mitigate noise

1 generation to meet the 55 DNL noise level at the  
2 property line.

3 And my question is, it is correct, is it  
4 not, that this noise element as specified in the  
5 general plan has the 55 DNL noise level being  
6 specified at the property line, rather than at the  
7 nearest sensitive receptor?

8 A That is correct. It does not take into  
9 account residential homes in agriculturally zoned  
10 areas, or areas where there is large intervening  
11 land space.

12 Q And in your testimony, in interpreting  
13 the noise element, you looked at the 55 DNL noise  
14 level not at the Metcalf property line, but at the  
15 nearest sensitive noise receptor, the Passantino  
16 residence. Am I correct?

17 A As instructed by the city. Correct.

18 Q Your testimony on page 2 in that same  
19 section, operational impacts, further goes on to  
20 state that modeling -- modeling indicates that the  
21 plant will also be able to maintain a noise level  
22 of 70 DNL at the southern property line between  
23 MEC and the Passantino property.

24 For illustrative purposes, or -- could  
25 you please describe which -- where is the southern

1 property line that you were referring to for the  
2 70 DNL?

3 A It's the same property line I was  
4 referring to before.

5 Q The part that is not --

6 A Not the panhandle.

7 Q -- the panhandle?

8 A We did not intend to play any games.

9 Q I understand. So just to summarize that  
10 the modeling is that at the southern property  
11 line, the noise level would be 70 DNL, at the  
12 nearest sensitive receptor it would be  
13 approximately 55 DNL.

14 A Correct.

15 Q Are you familiar with what are the land  
16 uses that are in the area directly north of  
17 Monterey Road, above the proposed power plant  
18 site?

19 A Are you referring to the residential  
20 land use?

21 Q I'm sorry, I just asked a --

22 A I'm trying to find --

23 Q -- question.

24 A -- I'm trying to find --

25 Q I just asked if you are familiar with --

1           A     I'm trying to find what -- there's no  
2 north arrow on your figures, so I don't know what  
3 you're talking about.

4           Q     Oh, I'm -- you're right. I apologize.  
5 It's east. I'd forgotten that our table is turned  
6 around. So east --

7           MR. HARRIS: Can you indicate it on the  
8 map for the witness, so he --

9           MS. GRUENEICH: Certainly.

10          MR. HARRIS: -- doesn't have to guess.

11          BY MS. GRUENEICH:

12          Q     Okay. I'm talking about this area right  
13 up here.

14          HEARING OFFICER VALKOSKY: Ms.  
15 Grueneich --

16          MS. GRUENEICH: Right there.

17          THE WITNESS: Yes.

18          HEARING OFFICER VALKOSKY: Okay, never  
19 mind. Go ahead.

20          BY MS. GRUENEICH:

21          Q     And I would like you to look at the one  
22 page document that I've handed out, Land Use  
23 Figure 6, which I think we have identified, as it  
24 comes from the Staff FSA, which has been  
25 identified as Exhibit 7.

1           A     Yes.

2           Q     Okay.  Would you concur that for the  
3           area east of Monterey Road, these are areas that  
4           have been identified as public park, open space,  
5           public, quasi public?

6           A     That's what the figure says, yes.

7           Q     In your capacity of analyzing the  
8           potential impacts from the project, did you  
9           analyze the impact, or the potential noise impact  
10          from the project on the area that I've just  
11          described east of Monterey Road, that is  
12          designated on Figure 6 as public park open space,  
13          and public, quasi public?

14          A     The area that you're talking to would be  
15          acoustically similar to the area of the  
16          Passantinos.  Measurements at the Passantino's  
17          residence would be similar to that -- measurements  
18          conducted at Passantino's would be similar to  
19          measurements that would be conducted in that -- in  
20          that area, given the proximity to the existing  
21          noise sources, being Monterey Road, the UPRR  
22          railroad tracks.  The -- those areas would also be  
23          subject to more noise from U.S. 101.

24          Q     Okay.  You have testified that it's your  
25          understanding that the Passantino residence is

1 approximately 1200 feet from the Metcalf property  
2 line. Is that correct?

3 A Correct.

4 Q Are there any portions of the public,  
5 quasi public or public park open space area east  
6 of Monterey Road that would be closer to the  
7 Metcalf property line than 1200 feet?

8 A Yes, there would.

9 Q How close might those areas be, in your  
10 judgment, to the Metcalf property line?

11 A Without a -- a map that is to scale, I  
12 would not want to make an estimate.

13 Q Are you able to tell us -- let me step  
14 back -- that -- your testimony is that at the  
15 Passantino residence, which is approximately 1200  
16 feet from the property line, the plant will be  
17 designed to maintain a noise level of 55 DNL or  
18 less. You've also testified that there are  
19 portions of the public park open space and public,  
20 quasi public that are closer than the Passantino  
21 residence.

22 Are you able to tell us whether the  
23 noise level at those areas closer to the property  
24 line than the Passantino residence will experience  
25 potential noise impacts of 55 DNL or less?

1                   My question was, are you able to tell us  
2                   that?

3                   A     If you refer to Attachment 182R, there  
4                   is a contour diagram. I believe both Figures 1  
5                   and 2.

6                   Q     That -- let's turn then to Figure 1.  
7                   And for the record, that's the document we've now  
8                   identified as Exhibit 5, I believe.

9                   The way that I understand Exhibit --  
10                  starting with Figure 1 in Exhibit 5. The way that  
11                  I understand it is if you look at the first ring,  
12                  which is labeled DNL 60, that the -- the project  
13                  would be designed so that any receptors between  
14                  the ring labeled DNL 60, and DNL 55, would  
15                  experience noise impacts no greater than 60 DNL.  
16                  Am I correct?

17                  A     They were looking from the interior ring  
18                  to the first -- to the --

19                  Q     Right.

20                  A     -- the next ring. Yeah, that -- that's  
21                  a standard interpretation of a contour diagram.  
22                  Correct.

23                  Q     Okay. And then similarly, if we take  
24                  the next one out, that any receptors in the area  
25                  between the ring designated as DNL 55 and DNL 50

1 would experience noise impacts no greater than DNL  
2 50 -- 55.

3 A There's one thing that's not shown in  
4 this figure, and that is the existing ambient. So  
5 if you're talking about project related levels  
6 only, that is what this figure's referring to.  
7 It's not referring to project plus ambient.

8 Q Okay. But I'm -- what I'm asking you is  
9 an interpretation of -- and I think you -- you  
10 answered it for between the first and the second  
11 rings. And I just --

12 A It's the -- yeah, that's the same  
13 interpretation --

14 Q Okay.

15 A -- just making clarification.

16 Q Yes, I understand that. And then if we  
17 move in between the project site, which is  
18 designated as MEC, and the DNL 60 ring, is it  
19 correct that receptors within that area could  
20 experience noise impacts greater than DNL 60?

21 A Correct. They may also already be  
22 experiencing impacts greater than DNL 60. As  
23 indicated by measurements at the Passantinos, and  
24 as indicated by measures by CVRP's acoustical  
25 impact -- CVRP's EIR.

1 Q If I could also ask you, on the same  
2 exhibit, Exhibit 5, to turn to Table 3.

3 A Refer me to a page number?

4 Q Oh, it's Table 3, and I don't honestly  
5 know that it has a page number.

6 A There's the spreadsheet.

7 Q Yes. It's -- it's right after page 5.

8 A The table heading is Plant Noise  
9 Emission levels.

10 Q That's correct. Could you describe  
11 generally what this table shows us?

12 A This table is a spreadsheet model of the  
13 plant, and it summarizes in the bottom right-hand  
14 corner, in bold, what the expected sound pressure  
15 level is at position M1, which is the Passantinos.

16 Q Okay. And am I correct that if we look  
17 at the column that's designated as H, that this is  
18 basically the unabated noise impact?

19 A That is a sound power level, I believe.  
20 That is not equivalent to a sound pressure level.

21 Q Okay. But to put it in layperson's  
22 term, if you looked at -- let's take source number  
23 four, a GE generator. Could you please describe  
24 what the number in Column H for that line  
25 indicates?

1           A     I believe that indicates a -- unabated  
2     sound power level of that unit.

3           Q     Okay. And then if I follow out on this  
4     table to Column N, that's designated as noise  
5     abatement, could you describe what Column N is  
6     then identifying?

7           A     I believe that is abatement that will be  
8     included as part of the project to achieve an  
9     overall sound power -- sound pressure level at the  
10    receptor, that equivalates to 48. It's -- I  
11    believe it is basically a -- a mitigation, noise  
12    -- it's the decibel reduction in noise that will  
13    be accomplished by mitigation efforts, or  
14    attenuation efforts.

15          Q     The columns I, J, K, L, and M, as I  
16    understand it, are factors that could reduce sound  
17    levels. Is that correct?

18          A     I is the distance from that piece of  
19    equipment to the receptor. J is the estimated  
20    shielding. And the other column you were  
21    referring to was?

22          Q     Basically, I was -- I was looking at the  
23    columns between H and N; I, J, K, L, and M.

24          A     K would be the estimated directivity. L  
25    would be the estimated ground absorption. M would

1 be anomalous attenuation.

2 Q And --

3 A Which is based on neutral weather wind  
4 conditions.

5 Q And are all these factors that reduce  
6 sound levels?

7 A They can reduce or increase.

8 Q Does Table 3 show any aspect in which  
9 these factors increase sound levels?

10 A Noise is a function of distance, so when  
11 distance changes, noise changes. So when the --  
12 when the distance from the piece of equipment  
13 changes, the level will increase or decrease,  
14 respectively.

15 Q I don't think you understood my  
16 question. Let me try it again.

17 Which is, if we'd look at the columns I,  
18 J, K, L, and M, is there any indication of factors  
19 that increase sound levels, or are all the factors  
20 showing a decrease in sound -- in sound levels?

21 A They are all correct in Column H. So  
22 they're decreasing sound levels from Column H. Is  
23 that what you're requesting?

24 Q In preparing the -- let me step back.  
25 Was this chart prepared by you or under your

1 direction?

2 A It was prepared under my direction.

3 Q Okay. In asking that this chart be  
4 prepared, did you ask that factors that could  
5 increase sound levels as well as factors that  
6 could decrease sound levels be included in the  
7 chart?

8 A We asked that conservative assumptions  
9 be made.

10 Q Let me ask again. When giving direction  
11 for the preparation of the chart, did you ask that  
12 factors that could increase sound levels as well  
13 as decrease sound levels be included?

14 A No specific direction like that was  
15 given.

16 Q When you reviewed it, did you notice  
17 that the only factors included were ones that  
18 decreased sound levels?

19 A That would be my expected -- that would  
20 be what I would expect in reviewing that.

21 Q So you did notice it?

22 A That's what I would expect. It's not  
23 something I noticed or took note of.

24 Q Is it because -- it is your testimony  
25 that there are no atmospheric, meteorological or

1 other conditions that could cause an increase in  
2 sound levels?

3 A I don't believe I stated that in my  
4 testimony.

5 Q No, I'm asking you a question. You --  
6 you told me that the result came out of what you  
7 would expect, as I understand it. That all of the  
8 impacts of these factors were a reduction in  
9 noise.

10 A Correct.

11 Q And so my further question was, was this  
12 because it is your position that atmospheric,  
13 meteorological, or other conditions would only  
14 reduce sound level, and there are no conditions  
15 here that could cause an increase in sound levels?

16 A No, I don't think I would state that.

17 Q So it is possible that there are  
18 conditions that could cause an increase in sound  
19 levels?

20 A Correct.

21 Q Did you ask your staff who prepared this  
22 chart to go back and double-check that they had,  
23 in fact, captured any potential noise increases?

24 A Like I stated here -- like it states  
25 here, the model was -- was based on neutral

1 weather and wind conditions.

2 Q Again --

3 A Did I ask them to evaluate for other --  
4 other meteorological conditions?

5 Q For conditions that could increase noise  
6 impacts.

7 A No, that was not a direction.

8 Q If I look at this chart, to see if I'm  
9 understanding it correctly, does it show the  
10 calculations of two combustion turbine and heat  
11 recovery steam generator trains operating  
12 simultaneously?

13 A It shows what is -- it shows the  
14 conditions under steady state baseload operation.

15 Q And is that an assumption of a single  
16 gas turbine and single heat recovery -- heat  
17 recovery steam generator operating, or is it  
18 assuming two in operation?

19 A I believe that steady state baseload  
20 operation implies two.

21 Q Okay. The reason for my confusion is  
22 that when I look at Column C, source quantity, I  
23 only show one.

24 A Is it duplicated in a row?

25 Q I'm sorry, I didn't hear you.

1           A     Is it duplicated in a row?

2           Q     I -- were you asking me a question? I'm

3     -- I'm --

4           A     I'm reviewing it as we speak.

5           Q     Okay. Certainly.

6                     (Inaudible asides.)

7           THE WITNESS: I would like to ask a  
8     Facility Design question of our staff, if that's  
9     appropriate.

10           HEARING OFFICER VALKOSKY: Okay. Can we  
11     go off record for a couple of minutes until you  
12     get this squared away.

13                     (Off the record.)

14           THE WITNESS: We have both the west and  
15     east unit operating at -- simultaneously.

16           BY MS. GRUENEICH:

17           Q     Okay. Thank you.

18                     Am I correct in understanding that your  
19     analysis is that the plant will meet a noise  
20     standard of 49 dBa at receptor M1, if the  
21     equipment meets the levels specified in Table 3?

22           A     Correct.

23           Q     Is there, to your knowledge, any  
24     specification in the Staff's proposed Conditions  
25     of Certification that does require purchase of

1 equipment that meets these noise standards as set  
2 forth in Table 3?

3 MR. HARRIS: I'm going to object to the  
4 question. She's asking him whether a condition of  
5 certification incorporates these particular  
6 elements of our testimony, when in fact it's the  
7 standard of 49 dBa that we're attempting to meet.  
8 She's essentially asking the witness to agree to,  
9 again, a laundry list of certain measures, as  
10 opposed to staying with the 49 dBa. So she's  
11 asking him essentially to rewrite the conditions,  
12 and on that basis I'd object.

13 HEARING OFFICER VALKOSKY: Overrule that  
14 objection, Mr. Harris. As I interpret the  
15 question, it is -- and correct me if I'm wrong,  
16 Ms. Grueneich. As I read your testimony, you  
17 desire more specificity in the conditions. Is  
18 that correct?

19 MS. GRUENEICH: That's correct.

20 HEARING OFFICER VALKOSKY: Okay. I take  
21 it this is designed to see whether such a level of  
22 specificity would be appropriate. Is that  
23 correct?

24 MS. GRUENEICH: That's correct.

25 HEARING OFFICER VALKOSKY: Please

1 continue.

2 BY MS. GRUENEICH:

3 Q To repeat the question, it was a factual  
4 one, this question, which is, do the Staff's  
5 proposed Conditions of Certification require the  
6 Applicant to meet -- to purchase equipment for the  
7 plant that meets the specifications set forth in  
8 Table 3?

9 A No, it's similar to the question you  
10 asked earlier about proposed mitigation measures.

11 Q And I guess I'll ask the question  
12 knowing I'll get the objection. Which is, would  
13 the Applicant object to a condition that would  
14 require it to purchase equipment that does meet  
15 the noise level specified in Table 3?

16 MR. HARRIS: I'll object. And based --  
17 on the same basic objection we -- I am authorized  
18 to answer for the Applicant.

19 Ms. Grueneich is essentially asking that  
20 instead of allowing flexibility to meet the  
21 standard, which is a 49 dBa, that command and  
22 control specific mitigation measures be listed.  
23 We don't have any problem with them creating a  
24 laundry list of proposed measures that we should  
25 consider to hit that standard, but we do object to

1 specifying, again, a command and control sense of  
2 here's exactly the mitigation measures, no more,  
3 no less, that you can use.

4 HEARING OFFICER VALKOSKY: Okay. I  
5 understand Applicant's position, and again, Ms.  
6 Grueneich, I would preface it with what I said  
7 earlier, at the earlier condition, is what you  
8 mean a condition designed something on the order  
9 of the following measure, or the following  
10 equipment shall be procured, including but not  
11 limited to, and then a list of the specific  
12 equipment?

13 MS. GRUENEICH: What I had in mind was  
14 that in procuring equipment for the power plant,  
15 the Applicant shall ensure that the equipment is  
16 designed to meet the noise specification level set  
17 forth in Table 3.

18 HEARING OFFICER VALKOSKY: Okay. Thank  
19 you. Witness, you can answer that.

20 THE WITNESS: I'm sorry, I didn't hear  
21 the question.

22 BY MS. GRUENEICH:

23 Q Would the Applicant object to an  
24 additional condition of certification that would  
25 state that in purchasing the equipment set forth

1 in Table 3 for the power plant, it shall ensure  
2 that the equipment is designed to meet the noise  
3 levels stated on Table 3?

4 A Yes, Applicant would object. Again, we  
5 don't want to have the laundry list set forth, and  
6 I guess I would note as well that there is no such  
7 proposed language, unless I'm missing something in  
8 CVRP's testimony, suggesting such a new condition.  
9 And so once again, we're in a situation where  
10 being asked to react in real time to a new  
11 proposal, and --

12 Q And am I correct that in the testimony  
13 of the Applicant in which it is stating that it  
14 will be able to meet the noise standard at M1, the  
15 nearest sensitive receptor, it is assuming that  
16 the project will be designed to meet the noise  
17 impact level stated on Table 3?

18 MR. HARRIS: When you meet the  
19 conditions of certification --

20 MS. GRUENEICH: Excuse me --

21 HEARING OFFICER VALKOSKY: Okay. Mr. --

22 MR. HARRIS: -- I thought that --

23 HEARING OFFICER VALKOSKY: -- Mr. Harris

24 --

25 MR. HARRIS: -- was directed to me. I'm

1           sorry, was that not directed to me, Dian?

2                   MS. GRUENEICH:  No.  It was a question

3           --

4                   HEARING OFFICER VALKOSKY:  No, it was a  
5           question for the witness.

6                   MS. GRUENEICH:  -- for the witness.

7                   MR. HARRIS:  Okay.  Well, I don't think  
8           the witness --

9                   HEARING OFFICER VALKOSKY:  Let the  
10          witness decide whether or not he can answer the  
11          question.

12                   MR. HARRIS:  Well, he's not authorized  
13          --

14                   THE WITNESS:  There's a combination of  
15          noise abatement measures that can be -- that can  
16          achieve the 49 design level.

17                   BY MS. GRUENEICH:

18           Q        So the answer to my question is --

19           A        So --

20           Q        -- yes, no, or I don't know?

21           A        I can't -- I'm not authorized to answer  
22          on behalf of the Applicant on that question, I  
23          believe.

24           Q        Well, your testimony is that the project  
25          will be designed so that it will meet --

1           A     This isn't the only design that will  
2 meet that level.

3           Q     Pardon me?

4           A     This is not the only design that will  
5 meet that level.

6           Q     But you did an analysis that reached the  
7 conclusion that the project would be designed to  
8 meet that level. I understand that. And that in  
9 doing that analysis, isn't it correct that you  
10 used the information on Table 3.

11          A     Correct. Would you have wanted us to  
12 included all possible perturbations of equipment  
13 specifications that would meet that design level?

14          Q     Here's the sad part. You don't get to  
15 ask me the questions.

16                     (Laughter.)

17          MS. GRUENEICH: I mean, it probably  
18 would be a lot easier.

19          HEARING OFFICER VALKOSKY: Understand,  
20 but let's -- let's get to --

21          MS. GRUENEICH: And I am almost done,  
22 Your Honor.

23          HEARING OFFICER VALKOSKY: Okay.

24          MS. GRUENEICH: I apologize. I'm not  
25 clear from my notes before, and if I could ask, I

1       guess Mr. Harris or Mr. Valkosky, in the questions  
2       in which we started off this afternoon about what  
3       were the measures that were included within the  
4       \$5 million, did we agree that the Applicant will  
5       be getting back to us with information on those  
6       measures?

7                   HEARING OFFICER VALKOSKY: My  
8       understanding is that because of the time being  
9       consumed in attempting to locate those measures,  
10      which the witness specified did in fact exist, and  
11      I believe Applicant has been looking for, that Mr.  
12      Harris would bring that up and identify them on  
13      redirect.

14                   MS. GRUENEICH: Okay.

15                   HEARING OFFICER VALKOSKY: Does that  
16      comport with your understanding, Mr. Harris?

17                   MR. HARRIS: Yes. I'll probably ask Mr.  
18      Abreu to elaborate on that factual issue.

19                   HEARING OFFICER VALKOSKY: Okay. There.  
20      So, we just haven't -- don't have that right now.

21                   MS. GRUENEICH: That's fine. If I could  
22      just have one moment.

23                   (Pause.)

24                   BY MS. GRUENEICH:

25                   Q     Could I ask you to turn to the document

1 that I passed out, called Santa Clara County Noise  
2 Element.

3 A I've also got my own version of this,  
4 just so you know.

5 Q Correct. Thank you.

6 A Let me put the San Jose stuff back in  
7 here.

8 Q If I could ask you to turn to -- and my  
9 version doesn't have page numbers, but it's about  
10 four pages in, and it's labeled Table B11-192.

11 A I'm going to look in my document, but I  
12 believe it's the same table.

13 Q Please do.

14 A Okay.

15 Q Okay. Does your version show Table B11-  
16 192?

17 A It does.

18 Q And does it show residential public  
19 space under receding land use category?

20 A I have shown here one and two family  
21 residential. Multiple family dwelling and  
22 residential public space.

23 Q That's fine.

24 A With the timeframe of 7:00 a.m. to 10:00  
25 p.m.

1 Q Right. And moving out to the last  
2 column, noise level in dBa for residential public  
3 space. Do you show 55 as the number?

4 A I do.

5 Q Great.

6 A And that's dBa.

7 Q Yes. If we turn to the one page  
8 document, land use Figure 6, which is from the  
9 FSA, Exhibit 7, and we were to look at the area  
10 that is designated just east of Monterey Road for  
11 the public park open space and the public, quasi  
12 public, am I correct that under the county noise  
13 element, the levels not to be exceeded more than  
14 30 minutes in any hour is that specified as 55  
15 dBa?

16 A Are you saying that those areas are  
17 covered under residential public space?

18 Q That's my question.

19 A In interpreting this document I think  
20 it's also helpful to have the other documents that  
21 go along with it. I'll have to look through those  
22 to see how each residential public space is -- is  
23 identified.

24 Q Let me make this very direct. Which is,  
25 if we look at land use Figure 6, and look at the

1 land that is just east of Monterey Road that is  
2 designated on this figure as public park, open  
3 space, and public, quasi public, what is the noise  
4 level specified in Table B11-192 that applies?

5 MR. HARRIS: I'm going to object on the  
6 basis that there is nothing in table -- table  
7 reference related to the designations shown on the  
8 FSA document, Figure 6. So she's asking him to  
9 interpolate when there is no direct correlation.

10 HEARING OFFICER VALKOSKY: Then if that  
11 is the fact, the witness can answer that. If the  
12 witness knows which level --

13 THE WITNESS: That would be -- that  
14 would be the fact. I'd have to seek a legal  
15 opinion.

16 MR. HARRIS: Well, let me object on the  
17 basis that it calls for the witness to speculate.

18 HEARING OFFICER VALKOSKY: Okay.

19 Mr. Harris, I'm just going to have the  
20 witness answer the question to the best of his  
21 ability.

22 MR. HARRIS: Okay.

23 HEARING OFFICER VALKOSKY: I think the  
24 question is, do you know what noise level applies  
25 in those designated areas?

1 THE WITNESS: No, I do not.

2 HEARING OFFICER VALKOSKY: Thank you.

3 MS. GRUENEICH: If I could just have a  
4 minute to confer with Mr. Radis, I may be  
5 finished.

6 HEARING OFFICER VALKOSKY: Okay, Ms.  
7 Grueneich.

8 (Inaudible asides.)

9 MS. GRUENEICH: These are all the  
10 questions that I have.

11 HEARING OFFICER VALKOSKY: Okay. Thank  
12 you, Ms. Grueneich.

13 I have a list from the Prehearing  
14 Conference. We also have the City of San Jose  
15 designated as desiring to cross examine. Is there  
16 a representative from the City of San Jose here?

17 Ms. Dent.

18 MS. DENT: Yes, this -- yeah, this mic's  
19 on? Molli Dent, for the City of San Jose.

20 CROSS EXAMINATION

21 BY MS. DENT:

22 Q Mr. Bastasch, I have just a couple of  
23 questions, and I'm going to focus on your -- on  
24 your filed testimony.

25 And specifically, on page 2 of your

1 filed testimony, you cite the City of San Jose's  
2 noise element. And I believe Ms. Grueneich  
3 indicated on cross examination that you had  
4 reviewed the noise element for the city's general  
5 plan, and are familiar with it. Is that correct?

6 A Correct.

7 Q And your testimony indicates your belief  
8 that the plant needs --

9 MR. HARRIS: Excuse me. Can I  
10 interrupt? Which part of his testimony are we  
11 looking at? What section?

12 MS. DENT: I'm on page 2.

13 MR. HARRIS: B, C, middle of the page --

14 MS. DENT: C, Operational Impacts, the  
15 middle of the page.

16 MR. HARRIS: Towards-- first paragraph,  
17 or -- I'm sorry, I --

18 MS. DENT: It's under C. It's the  
19 middle of that paragraph.

20 MR. HARRIS: The middle of the first  
21 paragraph?

22 MS. DENT: Yes.

23 MR. HARRIS: Okay. I'm sorry, I  
24 couldn't find where you were.

25 ///

1 BY MS. DENT:

2 Q You indicate in your testimony there  
3 that you understand that the noise equivalent  
4 level under the city's general plan to be 55 DNL  
5 at the nearest residential receptor, M1. Is that  
6 accurate?

7 A Correct.

8 Q Did you look at the city's noise element  
9 from the standpoint of the limit at the -- at any  
10 other location, other than the nearest residence,  
11 the Passantino residence?

12 A The Passantino residence was the nearest  
13 sensitive receptor.

14 Q So did, in -- in your view, the park  
15 across Monterey Highway is not a sensitive  
16 receptor?

17 A That area was not specifically  
18 addressed.

19 Q Is it your -- you did not address it, or  
20 it's not addressed in the city's general plan  
21 noise element?

22 A It's not addressed. I did not address  
23 it.

24 Q So you didn't address whether or not the  
25 noise levels in the park were going to exceed the

1 noise element of the general plan?

2 A No.

3 Q Okay. Now, your testimony doesn't refer  
4 to the county general plan or the county zoning  
5 ordinance noise element, which were referred to  
6 here previously. Did you review the county zoning  
7 ordinance or the county general plan noise  
8 element?

9 A I did, and I believe that's summarized  
10 in Data Response 177.

11 HEARING OFFICER VALKOSKY: Again, could  
12 the witness direct me to what exhibit that is?

13 THE WITNESS: Is that -- I don't know  
14 exhibit numbers.

15 HEARING OFFICER VALKOSKY: Okay, I'll --

16 THE WITNESS: I'll have to --

17 HEARING OFFICER VALKOSKY: -- I'll ask  
18 Mr. Harris, then. Mr. Harris, is that -- my  
19 understanding is that's part of what we've  
20 identified as Exhibit 27?

21 MR. HARRIS: Twenty-seven.

22 HEARING OFFICER VALKOSKY: Is that  
23 correct?

24 MR. HARRIS: Correct, Set 2A, Exhibit  
25 27.

1 HEARING OFFICER VALKOSKY: Thank you.

2 MR. HARRIS: It was also addressed in  
3 other locations, but that is -- that is one.

4 BY MS. DENT:

5 Q Mr. Bastasch, just so that I can  
6 understand, could you tell me what your  
7 understanding was then of the applicable -- I  
8 think Ms. Grueneich asked you if you had an  
9 understanding of the applicable noise requirements  
10 under the county noise element and county zoning  
11 ordinance. And I -- maybe I just didn't  
12 understand your question. But it is not in your  
13 filed testimony, so -- and I don't have that data  
14 request.

15 So if you could tell me what your  
16 understanding, then, is of the applicable county  
17 standard for noise.

18 A Why don't I just read the data response?

19 Q Okay.

20 PRESIDING MEMBER LAURIE: Well, one  
21 minute. Is your response contained in that  
22 document?

23 THE WITNESS: It is.

24 MR. HARRIS: In several documents.

25 THE WITNESS: In several documents.

1                   PRESIDING MEMBER LAURIE:  If -- if his  
2                   answer is contained in the document, then -- then  
3                   I would appreciate not asking, but rather, if you  
4                   have specific questions about his answer, you're  
5                   certainly free to go into that.

6                   I don't want this witness reading two  
7                   pages of a document that's already exhibited.

8                   MS. DENT:  I'll ask the question  
9                   directly.  Thank you very much.

10                  BY MS. DENT:

11                  Q     I now have the data request in front of  
12                  me, and it appears on page 8, under Data Request  
13                  Number 77, the first sentence, that you're  
14                  confirming that the County of Santa Clara noise  
15                  ordinance limit is 45 dBa.  Is that accurate?

16                  A     I'm not confirming that, no.  What it  
17                  says is Calpine/Bechtel is not planning to use the  
18                  45 dBa L 50 at the property line.  If you read  
19                  further down.

20                  Q     So I'm -- I'm not asking -- I'm asking  
21                  you whether you understand the county requirement  
22                  to be 45 dBa.

23                  A     I don't believe the county requirement  
24                  requires 45 dBa.

25                  Q     So, now, have you reviewed the Staff,

1 the CEC Staff testimony on noise, particularly, in  
2 respect to the county noise requirement?

3 A I believe it has a summary table that we  
4 can refer to.

5 Q Correct. That's on page 276.

6 A I'm looking at it.

7 Q And would you, under the very first  
8 paragraph, under County of Santa Clara noise  
9 ordinance, does it indicate the noise level for  
10 one and two family residential at 45 dBa?

11 A It does, but you have to read the  
12 subsequent column, as well. Applying the  
13 ordinance to residential land use would require  
14 MEC to meet L 50 criteria of 50 dBa.

15 Q At the property line receiving the  
16 noise?

17 A Correct.

18 Q And, again, did you look at this -- did  
19 you look at the compliance with this noise  
20 ordinance from the standpoint of the county park  
21 across Monterey Highway?

22 A No.

23 Q And staying with this table on page 276,  
24 it appears that we have another noise standard  
25 that CEC Staff has identified, and that's the CEQA

1 noise standard for the CEC itself, which is the  
2 last line in the table. And it indicates no more  
3 than 5 dBa above existing measurements.

4 Did you look at the compliance of the  
5 project with that standard?

6 A At the nearest residence.

7 Q Only at the nearest residence. And so,  
8 then turning back to your testimony, your filed  
9 testimony, on page 2. The -- well, the last  
10 couple of paragraphs there on page 2.

11 This is where you discuss the 45 dBa  
12 noise level. Is that correct?

13 A I'm -- I'm sure what you're referring to  
14 is -- in my testimony that refers to a 45 level.

15 Q And that's derived from -- again, it's  
16 the second paragraph under operational impacts in  
17 your testimony -- that's derived from adding the  
18 5 dBa to the 39 average night time noise level,  
19 for a CEC standard of 44 dBa. Am I understanding  
20 your testimony correctly?

21 A If you're asking that's how the 44  
22 decibel level was derived by the CEC, you would be  
23 correct.

24 Q And did you look at whether or not the  
25 44 dBa noise level would be achieved on the county

1 park property across Monterey Highway?

2 A No.

3 Q And the latter part of your testimony  
4 there, on page 2, indicates that there will be  
5 some sound mitigation mechanisms, it looks like,  
6 for mitigating noise inside the Passantino  
7 residence. Those would not apply to mitigating  
8 noise to an outside use, like a park, would they?

9 A Correct.

10 MS. DENT: I have no further questions.

11 HEARING OFFICER VALKOSKY: Thank you.

12 Is there a representative from the City  
13 of Morgan Hill? I see none.

14 Ms. Cord. Do you have any cross?

15 MS. CORD: I do have a number of  
16 questions, but I'm just looking at Mr. Ajlouny's  
17 cross examination, and it's much more extensive  
18 than mine, so maybe to avoid repetition and  
19 redundancy, I'd rather let him go first and  
20 reserve mine until afterwards. Would that be  
21 okay?

22 HEARING OFFICER VALKOSKY: Certainly.

23 Let me check also. Is Mr. Wade here, and does he  
24 want to cross examine?

25 MS. CORD: He doesn't appear to be here

1 at this time.

2 HEARING OFFICER VALKOSKY: How about Mr.  
3 Williams?

4 MS. CORD: He's not here.

5 HEARING OFFICER VALKOSKY: Mr. Williams  
6 is not here. Okay.

7 Mr. Ajlouny.

8 MR. AJLOUNY: Yes. Issa Ajlouny.

9 HEARING OFFICER VALKOSKY: Could you  
10 spell your last name for the record, please.

11 MR. AJLOUNY: A-j-l-o-u-n-y.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. AJLOUNY: Okay. And I -- sorry, I  
14 don't know how to pronounce your last name.

15 THE WITNESS: Bastasch. That's all  
16 right.

17 CROSS EXAMINATION

18 BY MR. AJLOUNY:

19 Q Mr. Bastasch, have you ever been  
20 involved in any other AFC, other than Metcalf?

21 A I have.

22 Q And could you tell me which -- is it  
23 just a small list?

24 A I wouldn't want to enumerate them, but  
25 Delta would be one. There are -- there is TEC

1 would be another.

2 Q Any others?

3 A Pittsburg. Newark, I believe, as well.

4 Q Okay.

5 A I don't have the list in front of me.

6 Sorry.

7 Q So, well, let's -- you mentioned  
8 Pittsburg. When you do your ambient noise surveys  
9 and your sensitive receptors, did you do a 24 hour  
10 average, or an hourly average, or what kind of  
11 average did you do?

12 A I didn't conduct the measurements at  
13 Pittsburg. Is that what you're referring to?

14 Q Oh, I thought you just said -- I'm  
15 sorry. I thought you --

16 A I worked -- I -- I had some involvement  
17 in Pittsburg. I did not conduct the measurements  
18 at Pittsburg.

19 Q For the noise, you did not.

20 A Correct.

21 Q Okay. So maybe -- because of my lack of  
22 experience I didn't ask the question. Did you  
23 work in the AFC of any other power plant in the  
24 area of noise?

25 A Yes.

1 Q Is Pittsburg one of them?

2 A I reviewed Pittsburg.

3 Q Do you happen to remember if it was an  
4 average over 24 hours or an hour?

5 A I do not.

6 Q Okay. You mentioned that it was 49 dB  
7 average -- or, not an average, but it was -- if  
8 someone was there ten minutes or ten hours, they  
9 never would experience over 49 dB? Those are kind  
10 of -- is that pretty much --

11 A More or less. Correct.

12 Q Okay. So if I was sitting there for 24  
13 hours, for -- for 30 days straight, I would never  
14 hear, if I had a measuring, at the M1 location  
15 with -- which is the Passantino --

16 A I'm familiar with it.

17 Q Okay. It wouldn't be -- it would never  
18 go over 49?

19 A That's the design goal.

20 Q Okay. And so with start-ups, does  
21 start-up increase the dB level, the noise level?

22 A The start-ups have been designed to  
23 maintain the steady state noise level of 49  
24 decibels. That would also be achieved during  
25 start-ups.

1 Q And you feel that that's easily  
2 achievable?

3 A It is achievable.

4 Q Do you feel it's easily achievable?

5 A It will be achieved.

6 Q Okay. There's been quite a number of  
7 questions regarding to the land across -- east of  
8 Monterey Highway, which is the county park. But I  
9 haven't heard anything mentioned about Fisher  
10 Creek Trail. Has any analysis been done in  
11 regards to Fisher Creek Trail and the people using  
12 that trail?

13 MR. HARRIS: I'm going to object on the  
14 basis that there is no Fisher Creek Trail.

15 THE WITNESS: I guess I'm not clear on  
16 what portion you're talking about when you say  
17 Fisher Creek Trail. Can you show us on map?

18 MR. AJLOUNY: If I learn how to work  
19 this thing. Oh, there it is. Okay, just --

20 As I understand it, Fisher Creek Trail  
21 is pretty much this bend here, and it goes around  
22 the power plant and across.

23 Is that --

24 THE WITNESS: When I was up there I  
25 didn't see any evidence of a trail.

1 BY MR. AJLOUNY:

2 Q Okay. Are you aware of the plans of the  
3 City of San Jose, or county, about that trail and  
4 -- they call it the Fisher Creek Trail? I think  
5 I've seen it in the 2020 plan. And maybe this --  
6 yes. So in the 2020 plan, there's -- there's talk  
7 about Fisher Creek Trail, and so I understand,  
8 when I saw it in the plan, it went around there.

9 Are you familiar with that creek, that  
10 trail?

11 A I'm not familiar with the trail, but I'd  
12 say that the noise contours of the plant are  
13 included in attachment N0182R, and they would --  
14 they could be used, once the trail is designed or  
15 built, or if there's a document reviewing it to  
16 assess the impact.

17 Q Do you have any estimate of the distance  
18 between the power plant and that trail?

19 A Without having a map to scale that  
20 identifies the trail, I don't know how I can make  
21 an --

22 Q Okay. Well, that's okay. I -- that's  
23 fine. It's just something that I would think  
24 would be a sensitive receptor.

25 Let me ask you this. Would you -- I

1 don't know how to do this, but, I mean, so if you  
2 don't know where the trail is, then you never did  
3 analyze the trail.

4 A But the trail doesn't exist, does it?

5 Q Partly, it does. In the 2020 plan, and  
6 there's some parts of it that do exist.

7 A I don't know how I can evaluate a trail  
8 that doesn't exist.

9 PRESIDING MEMBER LAURIE: The witness  
10 has answered that he has not done an evaluation of  
11 the trail site.

12 BY MR. AJLOUNY:

13 Q Okay. You mentioned that the -- the  
14 train and the traffic was most of the noise during  
15 the day.

16 A Correct.

17 Q Correct? March 15th and 16th of 1999 I  
18 think is when you did the analysis.

19 A That sounds correct.

20 Q Okay. Do you remember if that was  
21 during the week or on a weekend?

22 A Those were weekdays.

23 Q Those were weekdays. Do you have any  
24 reason to believe that the noise might be  
25 different on a weekend?

1           A     It would, with -- if there is a decrease  
2     in traffic.

3           Q     So you didn't even take the time to find  
4     that out, if there's a difference on the weekend?

5           MR. HARRIS;   Objection.   It's  
6     argumentative.

7           PRESIDING MEMBER LAURIE:   Just -- the  
8     question has -- ask him whether or not he did, if  
9     his analysis would be same -- would be the same  
10    for the weekend.

11          Sir, would your analysis be the same for  
12    the weekend; do you know?

13          THE WITNESS:   I don't know, without  
14    conducting the measurements.

15          BY MR. AJLOUNY:

16          Q     You mean you don't -- the question the  
17    Commissioner asked is you don't know if the  
18    numbers would be the same on the weekend?  Is that  
19    what --

20          A     I don't know what the traffic would be  
21    on the weekend.

22          Q     Okay.  Are you aware of what the train  
23    is used for, you know, when the train -- what it's  
24    used for, if it's commercial, if it's transporting  
25    people?

1           A     My understanding that it's both freight  
2     and commuter rail.

3           Q     Okay. Do you have any percentages, any  
4     idea of the difference?

5           A     I do not.

6           Q     Okay. Knowing that -- would you suspect  
7     that maybe the train would not be used as much on  
8     the weekend because people usually don't work on  
9     weekends and it's not the commuter -- commuting  
10    days, Saturday and Sunday?

11           PRESIDING MEMBER LAURIE: Sir, do you  
12    have any knowledge as to the schedule of the  
13    train?

14           THE WITNESS: I do not have any  
15    knowledge to the schedule of the train.

16           BY MR. AJLOUNY:

17           Q     Do you feel that that would be  
18    important, to have knowledge of the schedule of  
19    the train, for noise impact?

20           A     Not necessarily.

21           Q     Okay. Are you aware that -- that people  
22    play in parks and everything, usually on weekends,  
23    and the nights?

24           A     Not at night.

25           Q     Well, in the evenings.

1           A     Evenings would be used --

2           Q     And weekends, during the day, into the  
3 evening?

4           A     Those are potential use times.

5           Q     I'm really not trying to be  
6 argumentative. I'm trying to understand the  
7 analysis so I can continue on with the FSA issues.

8                     You mentioned about the Condition of  
9 Certification Number 7, about the horizontal  
10 drilling and the, you know, it takes 24 hours and  
11 maybe two or three weeks, and if you stop, you  
12 know, it'd be a problem. You can't stop, and once  
13 you start you've got to keep on going or the bit  
14 would get stuck.

15                    What I'd like to know is do you know of  
16 any other procedure to accomplish the same -- the  
17 same results, other than what is planned?

18           MR. HARRIS: I'm going to object to the  
19 question as vague. I don't know what you mean by  
20 the same results.

21           PRESIDING MEMBER LAURIE: Overruled.

22                    Sir, there has been a -- the project  
23 proposes this horizontal drilling. Do you know of  
24 any alternative procedure to accomplish the  
25 construction as required?

1           THE WITNESS: I'm not -- from a Facility  
2 Design standpoint, I don't know the depth to which  
3 they are planning on burying the pipe. Other  
4 areas, other methods would include direct  
5 trenching, but it's a little difficult to direct  
6 trench.

7           PRESIDING MEMBER LAURIE: So is the  
8 answer no, you are not familiar with other  
9 techniques?

10          THE WITNESS: Correct.

11          BY MR. AJLOUNY:

12          Q     Okay. In the drilling aspect, has the  
13 issues of vibration been taken into consideration?

14          PRESIDING MEMBER LAURIE: From a noise  
15 perspective?

16          MR. AJLOUNY: I guess. I heard  
17 vibration talked about earlier.

18          PRESIDING MEMBER LAURIE: Well, okay.  
19 But this witness is talking about Noise. You have  
20 to equate vibration with Noise somehow, if you  
21 want to -- if you want to ask a relevant question.

22          BY MR. AJLOUNY:

23          Q     Okay. Well, in the same regards to the  
24 question that was asked earlier today about  
25 vibration, was vibration taken into consideration

1 when the drilling is going to take place? In --  
2 in regards to creatures around, and that kind of  
3 thing. Disturbing the habitat, disturbing, you  
4 know.

5 PRESIDING MEMBER LAURIE: I would  
6 sustain an objection. That's outside of this  
7 witness' expertise. This witness is solely  
8 testifying about Noise.

9 (Inaudible asides.)

10 BY MR. AJLOUNY:

11 Q To the best of your knowledge, you have  
12 no problem with the Passantino family home being  
13 insulated for the mitigation, and only that, for  
14 noise?

15 PRESIDING MEMBER LAURIE: I'll sustain  
16 an objection. That's speculative. If you can  
17 clarify by -- what you mean by have no problem  
18 with. Can you --

19 MR. AJLOUNY: Well --

20 PRESIDING MEMBER LAURIE: -- can you  
21 think of the point that you're trying to get to?

22 MR. AJLOUNY: Well, I guess the point I  
23 wanted to make is the Passantino family is going  
24 to be insulated, but that's the same family that's  
25 going to receive the moneys for the purchase of

1 the land. And I was leading up to that. But, so  
2 I just said it. So I just wanted to see if he was  
3 aware of that, that has any bearing on why a  
4 family would take insulation and disregard the  
5 other families around, and living nearby.

6 PRESIDING MEMBER LAURIE: If Mr. Harris  
7 wants to make a relevancy objection, I'll sustain  
8 it.

9 MR. HARRIS: I --

10 PRESIDING MEMBER LAURIE: That's not  
11 relevant, sir.

12 BY MR. AJLOUNY:

13 Q Okay. Are you aware of the families  
14 that are living right in those areas right there,  
15 those homes there?

16 A Immediately adjacent to Metcalf -- or,  
17 Monterey Road?

18 Q Yes. Just east of --

19 A I believe those are identified in the  
20 AFC as monitoring location M2.

21 Q Well, I think I looked at M2, I don't --  
22 I don't think it was that. M2 are those homes  
23 right there?

24 A Right -- right where?

25 Q Right here. There's -- there's three

1 homes that are right here. I happen to know one  
2 family that lives there has a big concern about  
3 the noise. Is that M2? I -- when I looked at M2  
4 it didn't look like that was it.

5 A Is that adjacent to the -- the grange?

6 Q No, it is not. I just asked the  
7 question if you're familiar with those homes. And  
8 --

9 A I'm familiar with --

10 Q -- if those three parcels --

11 A -- I'm familiar with homes along the  
12 area. I'm looking for the figure that we picked  
13 for the -- for the monitoring locations were taken  
14 into account. And if those homes are adjacent to  
15 the Monterey Road, I would expect that they'd have  
16 levels to -- well, I guess the answer to your  
17 question is I believe in the AFC we identify the  
18 nearest residence on the east side of Monterey  
19 Road, and address the impacts therein. Those  
20 residences that you're talking about would be  
21 farther than the nearest residence east, on the  
22 east side of Monterey Road. Therefore, their --  
23 their impacts would be less than M2.

24 It seemed to me like you were pointing -  
25 -

1 Q Just south of the grange.

2 A Yeah. We -- we analyzed -- do you have  
3 a copy of the AFC, or counsel can share it with  
4 you.

5 Q That's --

6 A Your 8.5-1.

7 Q Well, I don't want to ask the questions  
8 in the AFC and get objected to.

9 A Okay.

10 MR. AJLOUNY: The Commissioner has very  
11 great feelings towards me. That's apparent. I'm  
12 sorry I'm not as professional as others here.

13 Thank you. That's all my questioning.

14 HEARING OFFICER VALKOSKY: Okay. Next,  
15 Ms. Cord.

16 MS. CORD: Thank you. Is this on?

17 Thank you.

18 CROSS EXAMINATION

19 BY MS. CORD:

20 Q I had a question about the noise  
21 mitigation that was proposed for the Passantino  
22 home. I understand it's additional insulation  
23 that's proposed to be installed?

24 A Acoustical windows.

25 Q Windows, not insulation?

1           A     I believe our proposal, and what is  
2           stated in the FSA, is acoustical windows and/or  
3           insulation. I'll have to look at the FSA, but  
4           it's covered in the FSA.

5           Q     Okay. Can you describe how the  
6           acoustical windows and/or additional insulation  
7           installed on the Passantino home will mitigate the  
8           noise level along the adjacent public recreation  
9           areas?

10          A     It does not.

11          Q     Okay. Thank you. You talked about day,  
12          evening, and night noise levels.

13          A     Correct.

14          Q     Can you tell us the evening hours?

15          A     They're defined in the AFC.

16          Q     Okay. And you said you didn't expect  
17          recreational areas to be used at the night time?  
18          Was that your testimony a moment ago?

19          A     Correct.

20          Q     But did you -- maybe I missed it. Did  
21          you say that you did understand that people would  
22          be using recreational areas during the evening,  
23          after work hours?

24          A     Correct.

25          Q     You did say that.

1 A The daytime hours.

2 Q Pardon me?

3 A Daylight hours.

4 Q Okay, right. You stated that you were  
5 involved in the Delta case; is that correct?

6 A I reviewed.

7 Q Okay. Did you say that in regards to  
8 the horizontal directional drilling in the Delta  
9 case there were complaints that were received?

10 MR. HARRIS: Objection. He -- I don't  
11 think he said that.

12 MS. CORD: Well, I just asked him if he  
13 said that.

14 THE WITNESS: I did not --

15 MR. HARRIS: I just --

16 THE WITNESS: -- I did not say that. I  
17 don't --

18 MS. CORD: Okay.

19 HEARING OFFICER VALKOSKY: The question  
20 -- the question is, are you aware of any noise  
21 complaints which had been filed in the Delta case.

22 THE WITNESS: I am not aware of any  
23 complaints.

24 HEARING OFFICER VALKOSKY: Thank you.

25 ///

1 BY MS. CORD:

2 Q And -- and I'm just verifying, you did  
3 say that you do not know the noise level of the --  
4 that could be associated with the horizontal  
5 directional drilling?

6 A Correct. I'd want to evaluate the  
7 receptors, distance to the receptors, as well as  
8 mitigation -- applicable mitigation measures that  
9 could be implemented.

10 Q Well, since you're asking for a  
11 condition, or a change to a condition, when --  
12 when do you think you might be evaluating what the  
13 noise level might be, and what the impact to  
14 sensitive receptors might be?

15 MR. HARRIS: I'm going to object on the  
16 basis that I'm going to provide that during my  
17 redirect. This witness has already stated he's  
18 not authorized to provide that information.

19 HEARING OFFICER VALKOSKY: Okay.

20 Ms. Cord, we'll hold Mr. Harris to it.  
21 If he brings it out on his redirect, it'll be  
22 responsive to his answer. If not, you will have  
23 leave to re-ask it on your recross. Okay?

24 MS. CORD: Thank you.

25 ///

1 BY MS. CORD:

2 Q Okay. My final question. Did you --  
3 I'm trying to recall your testimony about start-up  
4 noise. Did you give us an expected noise level  
5 for start-ups?

6 A It'll be the same as the continuous  
7 level.

8 Q So there's no additional sound  
9 associated with start-up?

10 A Correct. We're designing to maintain  
11 the steady state noise level.

12 MS. CORD: Good. Thank you.

13 HEARING OFFICER VALKOSKY: Thank you,  
14 Ms. Cord.

15 Mr. Scholz.

16 CROSS EXAMINATION

17 BY MR. SCHOLZ:

18 Q Did you -- did you do background noise  
19 surveys of the project area at other times, other  
20 than what was submitted in the AFC, which I  
21 believe were March 16th and 17th, 1999?

22 A Yes.

23 Q When did you do those surveys?

24 A I don't have the list of those in front  
25 of me.

1 Q Did you provide that in any docketed  
2 material, those survey results?

3 A No. Not that I'm aware of.

4 Q Of the noise surveys that you did  
5 provide in the AFC, and which is documented in  
6 this case, do those represent the most  
7 conservative noise figures?

8 A They were substantially the same. Could  
9 you elaborate on that?

10 Q Did you find that -- I want to use the  
11 correct number, I think it's L90 -- lower than 37,  
12 which is submitted in the AFC table, in your  
13 additional surveys?

14 A I would -- I would -- I don't recall. I  
15 don't have that information here. I don't know if  
16 that -- that was evaluated -- I don't know if that  
17 was evaluated.

18 Q Is that information available still?

19 A I'd have to check the records. I can  
20 assure you that they were taken approximately the  
21 same -- in the same manner, and that we did not  
22 submit the -- we didn't take a whole bunch of  
23 measurements and then submit the lowest. We  
24 submitted -- we filed what we measured, and then  
25 subsequently we re-measured. So we wouldn't have

1       been able to include measurements after the fact  
2       that were included in the AFC. Measurements dated  
3       after the AFC was submitted.

4           Q     Is the CEC Staff aware of any additional  
5       work you've done in this area?

6           A     I can't answer that. I'd have to ask --  
7       you'd have to ask the CEC Staff.

8           Q     I will.

9           HEARING OFFICER VALKOSKY: Okay. Let me  
10      -- let me rephrase that question to the witness.

11                  Have you submitted any additional  
12      information regarding noise measurements to CEC  
13      Staff, which are not contained in your testimony  
14      or otherwise docketed materials?

15                  THE WITNESS: I don't believe so.

16                  HEARING OFFICER VALKOSKY: Thank you.

17                  Proceed, Mr. Scholz.

18                  BY MR. SCHOLZ:

19           Q     Are you aware of any LORS, whether they  
20      be city, county, CEC standards, that are not being  
21      met in regards to noise for this project?

22           A     I believe we already stated that in our  
23      written testimony.

24                  HEARING OFFICER VALKOSKY: Sir, if you  
25      could just answer -- answer the question.

1                   MR. HARRIS: I'm going to object on the  
2 basis he already answered that during our direct.  
3 I asked him --

4                   HEARING OFFICER VALKOSKY: I understand  
5 that, and just for clarification and in deference  
6 to Mr. Scholz, I think the question -- and correct  
7 me if I'm wrong, Mr. Scholz -- is that is it your  
8 testimony that the noise elements of the project  
9 will comply with all applicable federal, state,  
10 local, including city and county, laws,  
11 ordinances, regulations and/or standards?

12                   THE WITNESS: I believe so. I would  
13 have to evaluate the recreational area that --  
14 that they've raised as a concern.

15                   HEARING OFFICER VALKOSKY: Thank you.

16                   MR. SCHOLZ: That's it for me. Thank  
17 you.

18                   HEARING OFFICER VALKOSKY: Thank you,  
19 Mr. Scholz.

20                   Are you prepared to proceed with  
21 redirect on this witness, Mr. Harris?

22                   MR. HARRIS: Yes, we are. I think I owe  
23 you a couple items before I go back to the  
24 witness.

25                   You had asked for specific language on

1 the horizontal directional drilling, and you'd  
2 asked about a list of mitigation measures related  
3 to the noise and the \$5 million.

4 As to the second item, the list of  
5 documents, we do reference the \$5 million figure  
6 in the Exhibit 30, which is Set 9. It is my  
7 understanding, after checking it out, that we have  
8 not filed and served a list, the -- we've talked  
9 about it in the workshops, but it wasn't part of  
10 the documents, and so we haven't put that in as  
11 part of our case. Which explains why I couldn't  
12 find it.

13 HEARING OFFICER VALKOSKY: Okay. So  
14 that -- that list does not in fact exist. It is  
15 only the \$5 million figure.

16 MR. HARRIS: Right. Our testimony on  
17 that's contained within Set 9 of the -- of the FSA  
18 -- PSA comments, excuse me. Which is Exhibit 30.

19 HEARING OFFICER VALKOSKY: And -- which  
20 is Exhibit 30. Okay, thank you.

21 MR. HARRIS: On the HDD language, we've  
22 crafted some suggested language, and I'd like to  
23 actually have Mr. Abreu read that into the record  
24 for your consideration.

25 HEARING OFFICER VALKOSKY: Mr. Abreu.

1                   MR. ABREU: Okay. We would propose to  
2 add to NOISE-7 another sentence. It says, The  
3 only exception will be horizontal directional  
4 drilling activity.

5                   And then in the verification for NOISE-  
6 7, we would add additional sentences that say,  
7 Applicant shall use mitigation on horizontal  
8 directional drilling that is typical for HDD  
9 operations, so as to reasonably minimize the off  
10 site annoyance from HDD, period.

11                   The next sentence would be, The HDD  
12 noise mitigation plan would be approved by the  
13 CPM.

14                   MS. GRUENEICH: Could I ask that be read  
15 back one time?

16                   HEARING OFFICER VALKOSKY: Certainly.  
17 Why don't we just ask Mr. Abreu to read it again,  
18 and we'll do this off the record. If you could  
19 just take a minute and provide that to Ms.  
20 Grueneich.

21                   (Off the record.)

22                   HEARING OFFICER VALKOSKY: Back on the  
23 record.

24                   Mr. Harris, continue.

25                   MR. HARRIS: Thank you. Let's go back

1 to Mr. Bastasch.

2 REDIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q Mark, we were talking about the parks  
5 and trails situation. I want to clarify again.  
6 The expected use of those are during daylight  
7 hours; is that correct?

8 A Correct.

9 Q And during daylight hours, are the major  
10 noise sources within the Coyote Valley the train  
11 and the anticipated traffic?

12 A Correct.

13 Q So both in the existing condition and in  
14 the -- and I'll refer to the for illustration only  
15 purposes map, the build-out, if you will, of the  
16 CVRP facility. That'll include traffic from both  
17 -- from -- I guess, let me back up.

18 Which -- from which thoroughfares would  
19 you expect increased traffic noise under that CVRP  
20 build-out scenario?

21 A Monterey Road, Santa Teresa Boulevard,  
22 and then they've got a bunch of new interchanges,  
23 as well, and they've got proposed roads, as well.

24 Q So the likely sources, then, would be  
25 the Monterey Highway, correct, Highway 101, and

1 the off-ramps for Highway 101, the new off-ramps?

2 A Those'll be the new sources, or  
3 additional --

4 Q Additional sources.

5 A -- continuing sources. Some are new,  
6 some are --

7 Q I understand that you haven't been asked  
8 to do an analysis in that area of the parks and  
9 recreation trail. But in your professional  
10 judgment, would you expect that the ambient noise  
11 in that area would be affected by both existing  
12 and anticipated road noise?

13 A Yes.

14 Q And what about existing and future train  
15 noise?

16 A Yes.

17 Q So in that scenario, would the noise  
18 from the Metcalf Energy Center be the dominant  
19 noise source for those using those recreational  
20 facilities?

21 A A complete analysis of -- of traffic  
22 volumes proposed and measured, and what-not, would  
23 have to be conducted. But existing levels at  
24 Passantino's would approximate existing levels at  
25 the same distance from the roadway, and the -- the

1 railyard.

2 Q Okay.

3 A If that's --

4 Q Going to the horizontal directional  
5 drilling, the HDD. Is it your understanding  
6 that's a fairly common practice used in power  
7 plant siting cases?

8 A Power plants and other -- and other  
9 uses, as well. It's not solely a power plant  
10 technology.

11 Q What other -- what other typical uses of  
12 HDD are there?

13 A Anytime you're dealing with underground  
14 utilities. It's also used in environmental  
15 applications when you need to install an  
16 environmental recovery well over an extremely long  
17 distance or under an area that is -- that is hard  
18 to access. If there's a structure, or in one case  
19 where we're considering it, a military  
20 installation where they park aircraft.

21 Q So the HDD is not unique to power  
22 plants?

23 A Correct.

24 Q And that activity likely occurs within  
25 the city and the county right now?

1           A     Correct.  Telecom uses it a lot, as  
2           well, anytime you're laying fiber or any linear  
3           facility, and you've got to cross a structure or  
4           structures.

5           Q     And there's generally accepted  
6           mitigation measures.  You mentioned silencers; is  
7           that correct?

8           A     Correct.

9           Q     What other kind of mitigation --

10          A     Acoustical enclosures.

11          Q     Okay.  And is the alternative to the HDD  
12          a cut and trench facility?

13          A     Well, I -- I would -- that's the only  
14          alternative that I would be aware of, and I'm not  
15          even sure that that's a feasible alternative  
16          because I don't think you're allowed to cut and  
17          trench underneath the railroad tracks.

18          Q     Okay.  Thank you.

19                    As to the Passantino property.  We  
20          talked a little bit about the insulation that's  
21          required by the Conditions of Certification.  Is  
22          it correct that that insulation will improve the  
23          Passantino's existing noise profile within their  
24          home?

25          A     Existing and future from all sources.

1           Q     So the -- the insulation that will be  
2           added to the homes that we're talking about will  
3           have an immediate effect in terms of the internal  
4           noise levels for those homes.  Is that correct?

5           A     Correct.

6           Q     And that effect is that those noises  
7           will be lower; is that correct?

8           A     Correct.

9           Q     So that insulation will block existing  
10          train noise?

11          A     It will reduce existing train noise.  
12          Correct.

13          Q     And will reduce existing traffic noise,  
14          as well?

15          A     Correct.

16          Q     Thanks.  Focusing again on this public,  
17          quasi public land that's described in -- I believe  
18          it's Ms. Grueneich's -- it's Figure 6 from the  
19          AFC.  The public, quasi public and the open space.  
20          Those areas begin -- you would expect the major  
21          noise sources for those areas -- again, realizing  
22          you haven't done the analysis in those areas --  
23          but the major noise sources would be the Monterey  
24          Highway.  Is that correct?

25          A     Correct.

1 Q And what other major sources in that  
2 existing area?

3 A We've got U.S. 101. You've got -- well,  
4 basically, all linear transportation corridors, as  
5 well as any other neighboring facilities. And I  
6 want to say correct me if I'm wrong, but the wide  
7 area that's labeled public, quasi public, is the  
8 Metcalf Substation.

9 Q Which might have some -- would that have  
10 some noise associated with it, as well?

11 A There would be some noise.

12 Q Okay.

13 A And there's no need to protect it from  
14 noise, either.

15 Q There are no sensitive receptors there,  
16 so --

17 A Correct.

18 Q Did I hear you say that the noise level  
19 in that area would be similar to the noise level  
20 at the Passantino property?

21 A Currently, correct.

22 Q Okay. So, and you've said the noise  
23 level at the Passantino property would not be  
24 significant; is that correct?

25 A The -- the current noise level at the

1 Passantino property, measurements at the current  
2 -- measurements at the Passantino property would  
3 be applicable at -- at other locations  
4 equidistance from the transportation corridors.

5 Q Focusing on the impacts associated with  
6 Metcalf, not -- not the other ambient sources,  
7 would those impacts be similar based upon the --  
8 the DNL lines that you have previously produced as  
9 part of one -- I think it's 182.

10 A The impacts that are stated in 182 would  
11 -- are correct, I guess. Clarification, I'm not  
12 quite sure what --

13 HEARING OFFICER VALKOSKY: You're  
14 referring to Exhibit 5, Figure 1, is that correct?

15 THE WITNESS: I've got Figure 1 or  
16 Figure 2. Right. There are two documents that  
17 show the DNL, the various contours, noise  
18 contours. There are some portions of the - the  
19 recreational area identified that are -- that are  
20 closer to the Passantino -- that are closer to the  
21 project than the Passantino's level. But those  
22 areas may -- may have existing ambients that are  
23 -- that are higher, as well, because some of those  
24 areas are closer to the -- the linear facilities  
25 --

1 MR. HARRIS: Thank you. I want to go on

2 --

3 THE WITNESS: -- than the other -- the  
4 linear transportation corridors.

5 BY MR. HARRIS:

6 Q Thanks. I want to go on the highway; is  
7 that correct?

8 A Excuse me?

9 Q Linear transportation corridor is  
10 highway?

11 A Highway, and railway -- and railways,  
12 and roads.

13 Q Okay. I want to move on to -- now, Ms.  
14 Grueneich spent a lot of time with Appendix 3.5,  
15 which is Exhibit -- I think 15 -- 5, I'm sorry.  
16 Exhibit 5. Focusing on Table 3, where we've  
17 figured out whether there was one or two turbines  
18 there. Can you go to that document now. Table 3.

19 A Correct.

20 Q I want to talk about what's the purpose  
21 of that table. Specifically, is that table set  
22 forth to show that the project can be designed to  
23 meet the 49 dBa standard?

24 A Correct. This is one perturbation of  
25 many possible perturbations that -- that will meet

1 the design level.

2 Q For those of us who aren't engineers,  
3 perturbations?

4 A Arrangements.

5 Q Okay. So you've basically taken the  
6 various variables that are available for noise  
7 mitigation, combined them with this particular  
8 arrangement, to show that the plant has the  
9 ability to meet the 49 dBa standard. Is that  
10 correct?

11 A Correct.

12 Q And this is only one of the possible --  
13 I want to say permutations, but -- combinations of  
14 design elements to reach 49?

15 A Correct.

16 Q And the purpose, again, is to show you  
17 can reach 49, not that you would use this specific  
18 design to reach 49. Is that correct?

19 A Correct.

20 MR. HARRIS: I think that's all I have.

21 Thank you.

22 HEARING OFFICER VALKOSKY: Thank you,

23 Mr. Harris.

24 Staff, any recross?

25 MS. WILLIS: We have no further

1 questions.

2 HEARING OFFICER VALKOSKY: Ms. Dent, any  
3 recross on behalf of the City?

4 MS. DENT: Just one question.

5 RECROSS EXAMINATION

6 BY MS. DENT:

7 Q Mr. Bastasch, did you look at the City's  
8 riparian corridor policy as an element of the  
9 general plan, in terms of the noise requirements  
10 for the riparian corridor policy specifically?

11 A Yes, and I believe that's addressed in  
12 Biological.

13 Q But from a noise standpoint, did you  
14 look at whether or not the noise aspect of the  
15 riparian corridor policy would lower the dBa level  
16 that would be required in the two riparian  
17 corridors?

18 A The riparian corridor --

19 MR. HARRIS: I'm going to object on the  
20 basis that that's a question for the Biological  
21 witness.

22 HEARING OFFICER VALKOSKY: Well, Mr.  
23 Harris, the witness can answer it yes or no.

24 MR. HARRIS: Okay. Well, I'd ask that  
25 the question then be restated, because I'm not

1 sure I heard a yes or no question.

2 BY MS. DENT:

3 Q Did you look at whether or not the  
4 riparian corridor policy in the City's general  
5 plan would indicate a dBa level for riparian  
6 corridors that should be lower than the 55 that  
7 you considered as standard for the general plan?

8 A The riparian corridor policy addresses  
9 existing ambient at that -- and in order to -- to  
10 evaluate and determine a design level we would be  
11 looking at existing ambient levels.

12 MS. DENT: I'm going to go ahead and  
13 accept the answer, even though I don't think it  
14 was responsive. But I'll wait for your Biologist.

15 HEARING OFFICER VALKOSKY: Thank you,  
16 Ms. Dent.

17 Ms. Grueneich.

18 MS. GRUENEICH: Thank you.

19 RECROSS EXAMINATION

20 BY MS. GRUENEICH:

21 Q With regard to the exception for NOISE-7  
22 that we have been provided, the words that are  
23 proposed is that the Applicant would use  
24 mitigation typical for HDD operation, I believe,  
25 so as to reasonably minimize annoyance.

1                   Would you agree that the standard,  
2                   reasonably minimize annoyance, is a subjective and  
3                   not objective standard?

4                   A     Annoyance would be based on complaints,  
5                   I believe.

6                   Q     Let me ask the question again.  Again,  
7                   it can be yes, no, or I don't know.  Which is,  
8                   would you agree that the standard, reasonably  
9                   minimize annoyance, is a subjective and not  
10                  objective standard?

11                  A     Yes.

12                  MS. GRUENEICH:  Thank you.  Those are  
13                  all the questions I have.

14                  HEARING OFFICER VALKOSKY:  Thank you,  
15                  Ms. Grueneich.

16                  Ms. Cord.

17                  MS. CORD:  I just had a couple  
18                  questions.

19                  REDIRECT EXAMINATION

20                  BY MS. CORD:

21                  Q     There's this distinction between  
22                  daylight hours, evening hours, daytime hours, and  
23                  night hours.  Let me ask you this.  You -- you did  
24                  state that daylight hours, daylight hours, are  
25                  when you would expect use of public park areas?

1           A     Correct.

2           Q     Okay.  And you said that at that time  
3           the dominant noise source would not be the Metcalf  
4           Energy Center?

5           A     In most circumstances, correct.

6           Q     Okay.  Would a -- would that be because  
7           of traffic, for instance?

8           A     Correct.

9           Q     Okay.  Since I live here and I know that  
10          it's light as late at 9:00 o'clock in the summer,  
11          would you expect there to be rush hour traffic at  
12          9:00 o'clock in the evening?

13          A     I would refer to our measurements, and  
14          we had some significant noise even at night.

15          Q     Okay.  At night -- at 9:00 o'clock at  
16          night, on a weekend, would you expect rush hour  
17          traffic?

18          A     I wouldn't expect rush hour traffic, but  
19          I'd expect traffic.  I would also expect some --  
20          some potential rail traffic, as well.

21          Q     So that would be classified as a  
22          daylight hour, because it would still be light?

23          A     Yes.

24          Q     Okay.  You also talked about dominant  
25          noise sources at various times of day.

1 A Correct.

2 Q Is dominant noise source, is that  
3 different from -- well, let me -- let me start  
4 over again.

5 If the Metcalf Energy Center at certain  
6 times of the day is not the dominant noise source,  
7 would it in fact contribute to a cumulative noise  
8 source?

9 A It would --

10 Q Noise level.

11 A -- and it's been evaluated.

12 Q Okay. So the Metcalf Energy Center  
13 would add to the cumulative noise level?

14 A Any development would add cumulative  
15 noise level.

16 Q Okay. I believe you stated that you  
17 would expect that with the build-out of CVRP there  
18 would be increased traffic noise along Santa  
19 Teresa and Monterey? Santa Teresa Boulevard and  
20 the Monterey Highway?

21 A Correct.

22 Q Okay. Are you aware of the widening of  
23 101 that's proposed to begin in -- this summer?

24 A I am not.

25 Q Okay. If -- if you knew that 101 would

1 be widened, in fact would be doubled, in the area  
2 adjacent to the CVRP area, which is farther away  
3 from these public park areas that we're talking  
4 about, would you -- would you expect that the  
5 traffic on Santa Teresa and Monterey might not be  
6 increased; might, in fact, be decreased because  
7 the freeway would be doubling in size?

8 A That would require speculation on my  
9 part.

10 Q Well, you're speculating that Santa  
11 Teresa and Monterey would experience increased  
12 traffic with the build-out of CVRP.

13 MR. HARRIS: I'm going to object on the  
14 basis --

15 THE WITNESS: Based on the CVRP --

16 MR. HARRIS: -- I'm going to object --  
17 hang on. I'm going to object on the basis that  
18 she's asking him to testify for Traffic and  
19 Transportation related issues, which will be later  
20 this week.

21 MS. CORD: Well, I think I'm asking him  
22 something that he just brought up in the redirect,  
23 that he would expect the CVRP build-out would  
24 cause increased traffic on Santa Teresa and  
25 Monterey.

1                   MR. HARRIS: And I believe that's what  
2 he -- he did answer that question.

3                   HEARING OFFICER VALKOSKY: Okay. Let --  
4 let the witness specify his answer again so that  
5 we're clear.

6                   THE WITNESS: I believe that's specified  
7 in the CVRP EIR. That is an anticipated impact  
8 from the build-out of CVRP.

9                   BY MS. CORD:

10                  Q     And -- and you didn't take into account  
11 when you were preparing that statement that 101 in  
12 the same area would be doubled in size?

13                  A     I already said I was unaware that 101  
14 would be doubled in size. And I can't tell you  
15 what impact that has, and I would hope that CVRP's  
16 transportation consultant knew that and took that  
17 into account in their transportation analysis.

18                  Q     Well, if you're referring to the EIR,  
19 I'm not sure if it was known at that time. I  
20 think we're talking about what we know now.

21                  HEARING OFFICER VALKOSKY: Okay. I  
22 think -- I think it's time to move off this, Ms.  
23 Cord. As I understand the witness' testimony, he  
24 has no knowledge of any future expansion of  
25 Highway 101, and correct me if I'm wrong, you have

1 not done an analysis of any hypothetical --  
2 hypothetically lessened levels of traffic and the  
3 attendant noise impacts on Monterey Road. Is that  
4 correct?

5 THE WITNESS: Correct.

6 HEARING OFFICER VALKOSKY: Okay.

7 Continue.

8 MS. CORD: Thank you. Nothing further.

9 HEARING OFFICER VALKOSKY: Mr. Scholz.

10 I'm just going down my list. Mr.

11 Scholz.

12 RE CROSS EXAMINATION

13 BY MR. SCHOLZ:

14 Q Just a follow-up on the last line of  
15 questioning, since you brought it up. Are you  
16 speculating that noise will go up on Monterey  
17 Highway due to CVRP?

18 A I believe that's a finding in their EIR.  
19 It's not speculation on my part.

20 Q So you're using their finding. Thank  
21 you.

22 Were you aware of the noise standard in  
23 the riparian corridor policy document for the City  
24 of San Jose, when I asked you about any LORS that  
25 are not being met by the project?

1                   MR. HARRIS: I'm going to object again  
2 on the basis that this is a question for the  
3 Biology witness.

4                   MR. SCHOLZ: It's a noise standard.

5                   HEARING OFFICER VALKOSKY: I think the  
6 -- let me try to get this question to the witness,  
7 as I understand it.

8                   Is, in your analysis did you assess  
9 compliance with any applicable noise standard in  
10 the riparian corridor? Yes or no.

11                  THE WITNESS: No. The riparian corridor  
12 policy was a -- is a biological issue.

13                  HEARING OFFICER VALKOSKY: Thank you.

14                  BY MR. SCHOLZ:

15                  Q     Since it has a noise component, are you  
16 saying you -- you just left it to the biologists,  
17 or you didn't, in your -- in your analysis whether  
18 it complies with LORS, you didn't look at it, you  
19 were unaware of it?

20                  MR. HARRIS: Objection. It's been asked  
21 and answered.

22                  HEARING OFFICER VALKOSKY: Okay. And  
23 this is the last time now. Yes or no answer from  
24 the witness, and then we'll move on.

25                  THE WITNESS: To which question?

1 HEARING OFFICER VALKOSKY: Did you do a  
2 noise analysis for that portion of the project  
3 area contained within the riparian corridor?

4 THE WITNESS: I did not conduct a noise  
5 analysis with respect to the riparian corridor.

6 HEARING OFFICER VALKOSKY: Thank you.  
7 Next question, Mr. Scholz.

8 BY MR. SCHOLZ:

9 Q Don't your contour lines on your  
10 diagrams, and I think they were referencing 182,  
11 show what the noise is expected to be in the  
12 riparian corridor?

13 A Correct.

14 Q So isn't that, in fact, analysis for the  
15 riparian corridor?

16 A I -- I would interpret that as analysis  
17 for the riparian corridor.

18 Q So when you did that analysis, did you  
19 apply that analysis to the riparian corridor  
20 standard, LOR, however you want to classify it, or  
21 did you ignore -- were you unaware --

22 A That analysis was left --

23 MR. HARRIS: Mark --

24 THE WITNESS: -- to the biological  
25 section.

1                   MR. HARRIS:  -- Mark, please -- he's  
2                   going back to the same question.  I think we've --  
3                   already had answered.

4                   MR. SCHOLZ:  The answer is you're just  
5                   going to wait and give it in biological.  This is  
6                   the noise witness.

7                   THE WITNESS:  Yeah.  That -- that is the  
8                   answer.

9                   HEARING OFFICER VALKOSKY:  Okay.

10                  MR. HARRIS:  I'd reiterate my objection  
11                  --

12                  HEARING OFFICER VALKOSKY:  And the last  
13                  -- the last time on this, to the witness.  In your  
14                  opinion, was it necessary to perform a separate  
15                  noise analysis for that portion of the area within  
16                  the riparian corridor?

17                  THE WITNESS:  That was not my expertise.  
18                  That would -- I left that up to the biologist.  I  
19                  provided them the information they needed --

20                  HEARING OFFICER VALKOSKY:  Okay.

21                  THE WITNESS:  -- to conduct the  
22                  analysis.

23                  HEARING OFFICER VALKOSKY:  Thank you.

24                  Mr. Scholz, that's I think the final  
25                  answer.

1 MR. SCHOLZ: Thank you.

2 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

3 RE CROSS EXAMINATION

4 BY MR. AJLOUNY:

5 Q Yes. Are you aware of the opposition to  
6 CVRP?

7 A From numerous letters to the editor, and  
8 from other counties, I am.

9 Q So would that, do you see that there  
10 would be a chance with all this opposition and  
11 lawsuits that maybe CVRP might not come in?

12 A I believe they already broke ground.

13 Q No, that's not true.

14 MR. HARRIS: I'm going to object --

15 HEARING OFFICER VALKOSKY: Sustained.

16 Mr. Ajlouny, this is not contained in the witness'  
17 testimony.

18 MR. AJLOUNY: Well --

19 HEARING OFFICER VALKOSKY: It's not  
20 contained within his redirect, and frankly --

21 MR. AJLOUNY: Well, I disagree.

22 HEARING OFFICER VALKOSKY: -- it appears  
23 irrelevant.

24 MR. AJLOUNY: It is contained with the  
25 redirect, because Mr. Harris brought up --

1                   PRESIDING MEMBER LAURIE: Sir, do -- do  
2 not argue with order of the Committee. You're  
3 overruled. Move on.

4                   BY MR. AJLOUNY:

5                   Q     CVRP, when it was mentioned, and all  
6 these impacts, would you consider that a  
7 cumulative impact?

8                   A     Cumulative impacts were addressed.

9                   Q     But when you -- when you were  
10 redirected, or -- from Jeff Harris, whatever words  
11 you want to call it, would -- would that be in the  
12 -- in the area of cumulative?

13                   HEARING OFFICER VALKOSKY: Okay. Let --  
14 let me try the question.

15                             Were the noise impacts of the Met  
16 project evaluated in conjunction with those  
17 projected by the Cisco project?

18                   THE WITNESS: They were.

19                   HEARING OFFICER VALKOSKY: Is that part  
20 of your cumulative impact analysis?

21                   THE WITNESS: That is.

22                   HEARING OFFICER VALKOSKY: Thank you.

23                   BY MR. AJLOUNY:

24                   Q     Then one last thing is you mentioned  
25 previous that parks -- that the idea of the parks

1 was a new finding to you. You know, the project.

2 HEARING OFFICER VALKOSKY: Mr. -- Mr.  
3 Ajlouny, you're going to have to pose that in the  
4 form of a question.

5 BY MR. AJLOUNY:

6 Q Was the idea of the park being east of  
7 Monterey Highway a new finding to you? That's my  
8 last question.

9 HEARING OFFICER VALKOSKY: Okay. Let me  
10 try it. When you -- sir, when you performed your  
11 noise analysis, were you aware of the park east of  
12 the Monterey Highway?

13 THE WITNESS: Yes.

14 HEARING OFFICER VALKOSKY: Okay. What  
15 was the specific reason that you did not perform a  
16 separate noise analysis for that area?

17 THE WITNESS: I believe we focused our  
18 attention on the nearest residential receptor.

19 HEARING OFFICER VALKOSKY: And is it  
20 your testimony that that park area is further in  
21 distance than the nearest residential receptor?

22 THE WITNESS: No.

23 HEARING OFFICER VALKOSKY: It is not?

24 THE WITNESS: It's -- portions of it --  
25 well, I can't tell the exact boundaries of the

1 park area on the figure provided, but it appears  
2 that portions of it are closer than the Passantino  
3 residence.

4 HEARING OFFICER VALKOSKY: Okay. So is  
5 it -- is it your testimony that the existing  
6 ambient noise level in that closer portion of the  
7 park area would be higher or lower than that  
8 currently at the Passantino residence?

9 THE WITNESS: My professional judgment  
10 would lead me to believe that it is higher when it  
11 is closer to -- when it is closer to Monterey Road  
12 and/or the -- the railroad tracks.

13 HEARING OFFICER VALKOSKY: Thank you.  
14 Okay. Is there anything else for this  
15 witness?

16 Mr. Garbett, you did not indicate your  
17 desire to cross examine. How long do you have?

18 MR. GARBETT: Just a couple questions.

19 HEARING OFFICER VALKOSKY: Okay. A  
20 couple minutes.

21 CROSS EXAMINATION

22 BY MR. GARBETT:

23 Q Mr. Bastasch, what standard did you use  
24 as far as LORS for your evaluation of noise? Was  
25 that the Santa Clara County standard?

1           A     All those are summarized in the --  
2           summarized in numerous locations.  The most recent  
3           summary is in the FSA.

4           Q     Okay.  Did you use any weighting of  
5           noise such as the ANSI scale?

6           A     I'm not sure what you're referring to by  
7           the ANSI scale.

8           Q     The American National Standard  
9           Institute.  For instance, the A weighted sound  
10          curve?

11          A     Yes.  Everything was done in A weighted.

12          Q     Okay.  Are you aware that the LORS for  
13          the City of San Jose, in Chapter 20 of the  
14          Municipal Code, only include the C weighted ANSI  
15          code weighting?

16          A     You'd have to show me something in the  
17          city code.  I was unaware of any city code.

18          Q     I understand the LORS are outside the  
19          record, so I can't show that to you at the present  
20          time.  But it is, in fact, to the best of my  
21          knowledge, these are in --

22                   PRESIDING MEMBER LAURIE:  Just ask your  
23          question, sir.

24                   BY MR. GARBETT:

25          Q     At what time will you do the ANSI C

1 weighted measurements to be in accordance with the  
2 LORS such as the City of San Jose?

3 A I don't believe that is a LOR.

4 MR. HARRIS: And I'm going to object on  
5 the basis that it seems to be assuming facts that  
6 I'm not sure are established.

7 HEARING OFFICER VALKOSKY: Okay.  
8 Sustained.

9 BY MR. GARBETT:

10 Q Without this ANSI C weighted code, can  
11 the power plant be overridden for noise  
12 measurements? Can the CEC make a judgment of  
13 overriding LORS without these measurements in  
14 evidence?

15 MR. HARRIS: I'm going to object on the  
16 basis that it calls for a legal conclusion.

17 HEARING OFFICER VALKOSKY: Sustained.

18 BY MR. GARBETT:

19 Q For a turbine power plant to accurately  
20 measure noise for the noise spectrum, which is the  
21 most applicable, the A weighted scale or the C  
22 weighted scale?

23 A Community noise response is usually  
24 measured by the A weighted scale.

25 Q Okay. Is that because it basically

1 blocks off all frequencies essentially above 3,000  
2 Hertz?

3 A It's because it's the best scale that  
4 represents the -- the frequencies which are heard.  
5 The audible frequencies.

6 Q Do you hear above 3,000 Hertz?

7 A I don't know what I hear.

8 MR. HARRIS: I'm going to object on --

9 HEARING OFFICER VALKOSKY: Sustained.

10 BY MR. GARBETT:

11 Q For the horizontal boring that you have  
12 no noise measurements in the record for, you have  
13 stated that the bit must be run continuously so --  
14 so at any time it stops it seizes or freezes up.  
15 Is this going to be a continuous bore that you're  
16 going to make?

17 A That is my understanding.

18 Q Is that going to be from the east  
19 foothills under 101, Monterey Road, and the  
20 railroad tracks, or is it going to be the other  
21 direction going upwards on the slope?

22 A That's a Facility Design question that I  
23 cannot answer.

24 PRESIDING MEMBER LAURIE: You have one  
25 more question, sir.

1 BY MR. GARBETT:

2 Q When will you be making the C weighted  
3 noise measurements?

4 A When and if I'm directed to by the CEC.

5 MR. GARBETT: Thank you.

6 HEARING OFFICER VALKOSKY: Thank you.

7 Is there anything else for this witness?

8 MR. KRAEMER: Oliver Kraemer.

9 HEARING OFFICER VALKOSKY: Sir, you --  
10 you don't get to cross examine the witness. You  
11 can -- we've gone through this before. You can  
12 make comment.

13 MR. KRAEMER: Can I address the issue  
14 and the --

15 HEARING OFFICER VALKOSKY: Not insofar  
16 as cross examining a witness. We'll provide you a  
17 chance for comment in a minute.

18 All right. Anything else?

19 Thank you, sir. You're excused.

20 All right. Mr. Kraemer, out of  
21 accommodation to you, we'll take your comment now.

22 MR. KRAEMER: Thank you very much.

23 HEARING OFFICER VALKOSKY: But please, I  
24 would just caution you to keep it as brief as  
25 possible.

1 MR. KRAEMER: Thank you.

2 HEARING OFFICER VALKOSKY: And identify  
3 yourself for the record.

4 MR. KRAEMER: I'm Oliver Kraemer, a  
5 property owner adjacent to the site, and former  
6 site property owner.

7 My understanding is that noise amplitude  
8 is not as represented, that it is dependent upon  
9 distance. The recent experience, surprisingly,  
10 from the installation of sound walls along  
11 freeways has found that it produces a decline in  
12 -- in noise amplitude adjacent to the sound wall,  
13 but actually does cause a skip effect and gets an  
14 unintended concentration of noise at a distance.

15 Also, there are configurations which  
16 increase it, such as the old futurama bowl, where  
17 one can whisper in a corner and hear it at the  
18 other. So the -- the testimony that it is  
19 dependent upon distance is inaccurate.

20 Also, there is a sensitive site right  
21 adjacent to the Calpine property. North of that  
22 site is a strip of PG&E power line land, and which  
23 has -- however, directly to the north of that is a  
24 38 acre parcel, and I have been talking with Mr.  
25 Mendoza, Mr. Linder, and Mr. Freitas, regarding

1 the city's interest in taking -- in obtaining this  
2 as park land, which I understand is a noise  
3 sensitive area.

4 This will affect -- impact the value of  
5 that land, and that land has changed because the  
6 general plan is changing.

7 So thank you very much for this brief --  
8 ability to make this brief comment.

9 PRESIDING MEMBER LAURIE: Thank you,  
10 sir.

11 HEARING OFFICER VALKOSKY: Thank you,  
12 sir. Appreciate your comments.

13 Okay. At this time we'll recess for  
14 dinner. We'll reconvene at 7:20.

15 Once again, I'd like to advise anyone  
16 who's parked in the civic lot, you've got to get  
17 your car out by 7:00. I'm also informed it's okay  
18 to park out here.

19 PRESIDING MEMBER LAURIE: Before you  
20 leave, I want to advise all parties, especially  
21 counsel, I expect you to have such conversations  
22 with your witnesses as necessary to be fully  
23 prepared. I expect your questions to be direct  
24 and focused. I think the Committee has been very  
25 patient for the last four hours in getting to the

1 point where we've gotten. I expect the process to  
2 be improved from here on out.

3 So to the extent that you have to meet  
4 with your witnesses, to the extent that you have  
5 to look at your own questions and prioritize them  
6 and focus them from your questions, do so.  
7 Because the Committee will be most interested in  
8 getting to the point.

9 Thank you.

10 (Thereupon the dinner break  
11 was taken.)

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1 DIRECT EXAMINATION

2 BY MS. WILLIS:

3 Q Could you -- well, you've already stated  
4 your name for the record. Was a statement of your  
5 qualifications attached to the testimony?

6 A Yes, it's part of the FSA.

7 Q And could you briefly state your  
8 education experience as it pertains to noise  
9 analysis?

10 A I have a Bachelor's degree in Mechanical  
11 Engineering, and I've been through a training  
12 course at the Commission on noise. And I've done  
13 substantial reading in the subject area.

14 Q Did you prepare or oversee or assist in  
15 preparing the testimony entitled Noise in the  
16 Final Staff Assessment that's been marked as  
17 Exhibit 7?

18 A I oversaw its preparation.

19 Q Thank you. Do the opinions contained in  
20 that testimony represent your best professional  
21 judgment?

22 A Yes, they do.

23 Q Mr. Rosen, was a statement of your  
24 qualifications attached to the testimony?

25 A Yes, it was.

1           Q     And could you briefly state your  
2           education and experience as it pertains to noise  
3           analysis?

4           A     I have a Bachelor of Science degree in  
5           Electrical Engineering, and I've been working with  
6           the firm of Charles Salter Associates in the  
7           acoustics field for the past 16 years.

8           Q     Did you prepare the testimony entitled  
9           Noise in the Final Staff Assessment, marked  
10          Exhibit 8 -- I mean, Exhibit 7?

11          A     Yes.

12          Q     Do you have any corrections to the  
13          testimony, the written part of the testimony in  
14          the FSA that you're proposing today?

15          A     No.

16          Q     Do the opinions contained in that  
17          testimony represent your best professional  
18          judgment?

19          A     Yes, they do.

20          Q     I'm going to lead you through a series  
21          of questions, instead of providing a summary.  
22          Could you please describe the LORS, the laws,  
23          ordinances, regulations and standards you applied  
24          in analyzing possible noise impacts in the Metcalf  
25          -- proposed Metcalf project?

1           A     We looked at the -- the guidelines  
2           contained in the City of San Jose's noise element,  
3           as well as the County of Santa Clara's noise  
4           element and noise ordinance. We also looked at  
5           the -- for CEQA purposes, looked at the potential  
6           for the project to significantly increase noise  
7           levels.

8           Q     So you applied both city and county  
9           LORS?

10          A     That's correct.

11          Q     Does the project meet the county LORS?

12          A     Yes.

13          Q     At the property line?

14          A     No.

15          Q     Where would it meet the --

16          A     Meet -- it would meet the LORS at the  
17          residential receiver, Passantino residence.

18          Q     And did this project meet the City of  
19          San Jose's LORS?

20          A     Yes.

21          Q     How do you determine what a sensitive  
22          receptor is when analyzing noise impacts?

23          A     Typically we look at sensitive receivers  
24          as residences, schools, hospitals, libraries,  
25          where people spend a good amount of time, and

1 where noise interference has a potential for an  
2 impact.

3 Q Now, is that based on your professional  
4 experience?

5 A Yes.

6 Q Did you analyze the direct impacts to  
7 the proposed Cisco facility?

8 A Not -- not in the FSA, no.

9 Q Did you address the cumulative impacts  
10 in the FSA?

11 A Yes.

12 Q Why was there not an analysis of direct  
13 impacts to the Cisco facility, the proposed  
14 facility?

15 A The Cisco project was proposed and not  
16 approved. Therefore, we didn't look at the  
17 impacts on the Cisco project.

18 Q And what is -- what authority is that  
19 based on?

20 A That's my understanding of the normal  
21 procedure for evaluating impacts in this  
22 procedure.

23 Q Is that in accordance with CEQA?

24 A Not --

25 Q In other words, did you look at the

1 existing environment at the time of your analysis?

2 A Yes, we did.

3 Q And was -- and was the Cisco facility in  
4 existence at the time that you began your  
5 analysis?

6 A No.

7 Q Was it -- was it approved by the City  
8 Council at the time that you did your analysis?

9 A No.

10 PRESIDING MEMBER LAURIE: Ms. Willis,  
11 let me ask a question of clarification.

12 When you say the Cisco project was not  
13 approved, you don't mean it was disapproved. You  
14 mean it hadn't been heard yet.

15 MR. ROSEN: That's correct.

16 PRESIDING MEMBER LAURIE: Was it -- was  
17 there an application process in place during the  
18 time that you were doing your analysis, to your  
19 knowledge?

20 MR. ROSEN: I believe so, but I'm not  
21 positive.

22 PRESIDING MEMBER LAURIE: Thank you.

23 BY MS. WILLIS:

24 Q Is -- in your professional opinion, will  
25 there be any significant adverse noise impacts to

1       either the workers at the -- at the proposed Cisco  
2       facility or proposed daycare facility?

3             A     No.

4             Q     And can you explain why?

5             A     The Cisco campus in its closest location  
6       to the Metcalf site would be exposed to a DNL of  
7       55 dB, or less than 55 dB. That is the noise  
8       level that the City of San Jose considers  
9       acceptable for sensitive uses, and that would not  
10      be exceeded anywhere on the Cisco site.

11            Q     And is that based on the distance from  
12      the -- the project to the Cisco facility site?

13            A     It's -- it's based on the distance to  
14      the site, and relying on the noise contour  
15      information contained in the supplement to the  
16      AFC.

17            Q     Did you evaluate the noise impacts to  
18      the parkways that were discussed earlier across  
19      Monterey Highway? Or, excuse me. Let me rephrase  
20      that.

21                    Was that included -- was an evaluation  
22      of noise impacts on parkways across Monterey  
23      Highway included in the Final Staff Assessment?

24            A     No.

25            Q     Have you since measured those noise

1 levels?

2 A Yes.

3 Q And can you explain what they are, what  
4 you -- what you determined them to be?

5 A We visited the site on a Saturday to see  
6 how the existing noise environment was opposite  
7 the Metcalf site. We made a couple measurements  
8 on the -- adjacent to the trail, the bike path,  
9 and found that the noise level ranged from 57 to  
10 61 dB. Those were 15 minute averages, but most of  
11 the noise was coming from Monterey Road, distant  
12 Highway 101. There was aircraft flyovers, general  
13 aviation flyovers. The freeway you could hear in  
14 the distance, and then there was some recreational  
15 activity across the highway, some off road  
16 vehicles that were audible.

17 This -- in order to determine the  
18 potential impact, we looked at the county noise  
19 element for guidance, which states that the noise  
20 level of 55 DNL or less is acceptable, and  
21 anything greater than 55 is considered cautionary.

22 We concluded that the existing noise  
23 level is already, in my estimation, based on the  
24 measurements, in the cautionary level. The  
25 cautionary zone of the general plan.

1           The noise level from Cisco -- excuse me,  
2           from the Metcalf Center would range from about 49  
3           to 59 decibels on the trail. This means that the  
4           levels from the Metcalf Center would be comparable  
5           to the average noise levels that are already out  
6           there. And we would estimate that would result in  
7           about a three decibel increase of noise levels on  
8           the trail.

9           This would be considered just barely  
10          noticeable, and for -- in addition, to help me  
11          make a determination, I looked at, you know, how  
12          loud -- what is 49 to 59 decibels meet -- mean for  
13          a user on the bike path. And according to the  
14          county's general plan, that level would not  
15          interfere with normal speech at a distance of  
16          three meters.

17          Based on the fact that it wasn't going  
18          to significantly increase noise levels, not  
19          interfere with speech, and because people would be  
20          using it for a short duration, there's only a  
21          couple thousand feet of the trail that would  
22          actually be exposed to these levels, I concluded  
23          that it would not be a significant impact on the  
24          trails.

25          Q     Did you include an analysis -- a noise

1 analysis of the Fisher Creek in your Final Staff  
2 Assessment?

3 A No.

4 Q And can you -- can you explain why?

5 A The Fisher Creek is not a current trail.  
6 It's a planned trail. And we -- it was not  
7 analyzed because it was not an existing use.

8 Q Did you estimate any noise levels that  
9 -- that would've been -- there was -- there was  
10 issues earlier about the riparian corridor and  
11 noise levels that might have been included in the  
12 -- from the Biologist's analysis. Can you  
13 explain, if you --

14 A Sure.

15 Q -- did any analysis?

16 A I was asked to estimate noise levels at  
17 the Fisher Creek to help the Biologists in their  
18 determination of whether the noise would be an  
19 impact. So I just provided some noise level  
20 information to the Biologists.

21 Q Thank you.

22 This question is for either one of you.  
23 Did you consider vibrations from construction or  
24 operation?

25 MR. BAKER: No, we did not.

1 BY MS. WILLIS:

2 Q Is it -- in your opinion, would you  
3 expect a vibration impact from pile driving?

4 A Not at the distances we're talking to  
5 the nearest potential receptors.

6 Q How about from steam blows?

7 A Steam blows put out noise, but you --  
8 you do not expect any ground borne vibration at  
9 all from -- from a steam blow.

10 Q And how about from operation?

11 A Absolutely none.

12 Q Mr. Baker, I'm going to ask you, did you  
13 review CVRP's testimony in regards to their  
14 proposed changes of the Conditions of  
15 Certification?

16 A Yes, I did.

17 Q Could you please address their changes?  
18 And I don't know if you need to turn to that, or  
19 -- I'd like you to start with NOISE-2, Condition  
20 2. I believe it's a change from -- it was on page  
21 7 of their testimony --

22 A Yes.

23 Q -- and it's number 2.

24 A Right. CVRP suggests that the project  
25 owner be required to contact anyone making a noise

1 complaint within one hour, rather than the 24  
2 hours that's in our standard condition of  
3 certification. And my response to that is this is  
4 impractical, and I believe it's unnecessary.

5 Q What has been your experience with noise  
6 complaints and the response time?

7 A My experience on all the projects that  
8 we've been dealing with in the last 13 years is  
9 that the process has worked very well, and I -- I  
10 know of no instances where the process failed to  
11 satisfy the -- the aggrieved persons.

12 Q If we can turn to NOISE-5, and that is  
13 on page 10. Can you address the proposed changes  
14 in -- in that condition?

15 A Yes. CVRP suggests that once the plant  
16 is operating, that noise surveys be taken when the  
17 plant is at 80 percent, 90 percent, and 100  
18 percent of capacity, and under start-up and shut-  
19 down conditions. They suggest that averaging  
20 times on the noise monitoring be 30 minutes, in  
21 order to prevent averaging of peak noise levels.

22 They suggest that the noise level at the  
23 nearest residence should not exceed 44 decibels,  
24 as opposed to the 49 written in the condition.

25 Q Before you go on, can you go back to the

1 first one and -- and please tell us what your  
2 opinion is on that --

3 A I believe --

4 Q -- proposed change?

5 A I believe it's unnecessary. The purpose  
6 of this noise monitoring once the project is  
7 operational is to find out how much noise the  
8 project is capable of making. What's the worst  
9 it's going to get. Okay. A secondary purpose is  
10 to do this as soon as practicable so that if there  
11 is a problem anybody getting, you know, bombarded  
12 with too much noise will not have to listen to it  
13 for very long.

14 So we could say once the project is 100  
15 percent operational, take the noise measurement.  
16 But sometimes a project will go for quite a while  
17 after start-up before it can actually be run at  
18 full throttle. Various little problems may occur  
19 that -- that will keep you from reaching full  
20 output. So asking that it be done at 100 percent  
21 would delay it unnecessarily. Maybe days, maybe  
22 weeks, perhaps even longer.

23 On the other hand, if the project were  
24 -- noise were measured, say, under 50 percent  
25 load, this is an output that could be achieved

1 with some of the equipment non-operational. For  
2 instance, one of the gas turbines might not even  
3 be running. So 50 percent wouldn't do the trick.  
4 We want the maximum noise.

5 By the time the Metcalf project is  
6 generating 80 percent of its output, everything  
7 will be running. It'll be putting out all the  
8 noise it's going to put out. Therefore, the 80  
9 percent figure I believe is -- is reasonable, and  
10 -- and gives us all the benefits we need for this  
11 monitoring. Doing the measuring again at 90 and  
12 100 percent will give no different results, and  
13 would just be a waste of time.

14 Q Thank you. Can you move on to the next  
15 point you were making?

16 A As far as averaging times, 30 minutes in  
17 duration. Whether you average 30 minutes or an  
18 hour or 15 minutes, with a steady state noise  
19 source like a power plant it will make no  
20 difference at all.

21 Q And how about the change from 49 to 44  
22 dBa?

23 A We have recommended in our testimony  
24 that if the project gives no more than 40 decibels  
25 at the Passantino residence, and if the Passantino

1 residence is insulated as proposed by the  
2 Applicant, then that should be an acceptable  
3 situation, and we still believe that.

4 Q Did you hear the cross examination  
5 questions from Ms. Grueneich earlier today  
6 regarding the inclusion of a possible condition  
7 that might include measures to achieve those  
8 levels?

9 A Specifically what are you referring to?

10 Q The -- the list of equipment, and there  
11 were -- there were two different --

12 A Right. It's exceedingly difficult for a  
13 regulator to know how to do something. A  
14 regulator's job is to set the limits. You know,  
15 what is acceptable, what must be achieved. It  
16 should be left up to the engineers to determine  
17 how to go about that.

18 If we recommend to the Commission 49  
19 decibels, or 10 decibels, or whatever, if the  
20 Commission says it should be no noisier than this,  
21 then leave it up to the engineers, Calpine's  
22 engineers, to determine the best way to achieve  
23 that. As long as the -- the noise limits are not  
24 exceeded it's not for us to tell them how to go  
25 about it.

1           Q     Can you turn to Condition NOISE-8.  It  
2     had to -- there was an additional condition  
3     regarding vibration.  Could you please state your  
4     opinion on that change, proposed change?

5           A     Combined cycle power plants produce no  
6     measurable vibration.  Any vibration strong enough  
7     to be felt offsite would instantly destroy the  
8     machinery and ruin the power plant.  These  
9     machines are balanced very well, they don't  
10    vibrate, so there's -- there's absolutely no need  
11    for NOISE-8.

12          Q     Now I'm going to turn to the proposed  
13    change in Condition NOISE-7 that was proposed  
14    earlier by the Applicant.  I understand that you  
15    don't have -- haven't had any time to go back to  
16    the office and review materials.  But do you have  
17    some comments you'd like to make tonight regarding  
18    that proposed change?

19          A     Since we haven't studied the subject, I  
20    don't know how much noise is actually produced by  
21    the horizontal directional drilling.  Therefore,  
22    I'd have no way of calculating how much noise the  
23    nearest receptors would receive.  Without the --  
24    the chance to gather that information and analyze  
25    it, I can't make a proposal.  The only fallback I

1           could offer would be to require that they be in  
2           compliance with the applicable LORS.

3           Q       Does that conclude both of your  
4           testimony at this time?

5                     MR. BAKER:  Yes.

6                     MR. ROSEN:  Yes.

7                     MS. WILLIS:  At this time I'd like to  
8           move the section of the FSA on Noise into the  
9           record as part of Exhibit 7.

10                    HEARING OFFICER VALKOSKY:  Is there  
11           objection?

12                    There's no objection.  It'll be admitted  
13           into the record.

14                    (Thereupon the Noise section of  
15           Exhibit 7 was received into evidence.)

16                    MS. WILLIS:  And these witnesses are now  
17           available for cross examination.

18                    HEARING OFFICER VALKOSKY:  And I've got  
19           a couple of questions for the witnesses, but --  
20           although it's slightly out of order.

21                    Mr. Harris.  Mr. Harris, did you move --

22                    MR. HARRIS:  I'm sorry.

23                    HEARING OFFICER VALKOSKY:  Did you move  
24           any of your evidence -- your exhibits into  
25           evidence?

1           MR. HARRIS: No. Other witnesses will  
2 be relying on those same documents.

3           HEARING OFFICER VALKOSKY: Okay, fine.

4           MR. HARRIS: So I didn't want to move  
5 them in. Thank you.

6           HEARING OFFICER VALKOSKY: Thank you.  
7 Just wanted to make sure we didn't miss anything.

8           MR. HARRIS: Appreciate it. Thank you.

9           HEARING OFFICER VALKOSKY: Mr. Rosen,  
10 you testified that the project does not meet the  
11 county noise standard at the property line; is  
12 that correct?

13          MR. ROSEN: That's correct.

14          HEARING OFFICER VALKOSKY: Does the  
15 applicable county standard require that it meet a  
16 certain level at the property line?

17          MR. ROSEN: The county standard's a  
18 little unclear as to the exact location of the  
19 measurement for the noise. It says on the land  
20 use. But under strict interpretation, if you  
21 chose the property line, then it would be over  
22 that level at the property line.

23          HEARING OFFICER VALKOSKY: By about how  
24 much? Can you -- can you quantify that? For  
25 example, just give me the -- the level that the

1 county standard could be read as requiring at the  
2 property line, and the -- the noise levels due to  
3 the plant at the property line.

4 MR. ROSEN: Okay. The night time -- the  
5 level for compliance at night would be 45. They  
6 do offer a five dB adjustment if there's differing  
7 land uses adjacent, so it'd be 50 decibels. The  
8 plant, I believe, at that property line generates  
9 a level about 64 decibels at the property line, so  
10 that could be up to 14 decibels in excess of the  
11 ordinance at the property line.

12 I have not included any adjustments for  
13 ambient noise. That may adjust the level up  
14 slightly, but that would be, you know, the worst  
15 case, 14 decibels.

16 HEARING OFFICER VALKOSKY: On the order  
17 of 14 decibels. Okay.

18 In your testimony, and I'm specifically  
19 referring to pages 276, and again on page 279,  
20 essentially make a statement that since the land  
21 surrounding the Metcalf Energy Center will  
22 officially be annexed by the city, this analysis  
23 uses the city's criteria for assessing impact.  
24 That's from page 279.

25 And on page 276, in the third column

1       entitled "Comments", the second block, you  
2       indicate that the MEC, quote, has accepted  
3       annexation into the City of San Jose. Therefore,  
4       although county impacts are mitigated, city  
5       criteria will ultimately apply.

6                Is this -- are these statements still  
7       true in light of the city's recent actions in  
8       November, approving -- disapproving the annexation  
9       of the plant as -- or the annexation of the  
10       property as sought by the project?

11               MR. ROSEN: I don't know.

12               HEARING OFFICER VALKOSKY: Okay. Let me  
13       -- let me try. Are these statements key to the --  
14       to the validity of your analysis? In other words,  
15       do you see a need to re-analyze because of the  
16       city's action? And I'm talking about the -- the  
17       action that I'm sure Applicant views as  
18       unfavorable.

19               MR. ROSEN: No, not if the ordinance is  
20       applied at the residence.

21               HEARING OFFICER VALKOSKY: Okay. In  
22       light of the city's action approving the Cisco  
23       project, do you see the need for a supplemental or  
24       revised noise analysis on your part?

25               MR. ROSEN: No.

1 HEARING OFFICER VALKOSKY: Okay. Could  
2 you explain briefly why not?

3 MR. ROSEN: If I understand your  
4 statement, if Cisco is approved, and --

5 HEARING OFFICER VALKOSKY: Cisco has --  
6 Cisco has been approved by the city.

7 MR. ROSEN: Okay. Can you repeat that  
8 statement? I'm --

9 HEARING OFFICER VALKOSKY: Okay. In  
10 light of -- Cisco has been approved by the city.  
11 In light of that action by the city, is there any  
12 need to reevaluate any of the analysis contained  
13 in your testimony?

14 MR. ROSEN: No.

15 HEARING OFFICER VALKOSKY: Or to perform  
16 supplemental analysis?

17 MR. ROSEN: I don't believe so.

18 HEARING OFFICER VALKOSKY: Okay. Could  
19 you briefly explain the reasons for that?

20 MR. ROSEN: The project is projected to  
21 generate levels at the boundary with Cisco no  
22 greater than a DNL of 55 dB. That would comply  
23 with the city's normally acceptable noise level  
24 for that use.

25 HEARING OFFICER VALKOSKY: Okay. So --

1                   MR. ROSEN: Let -- let me correct that.  
2                   The noise level would be 55 dB at the property  
3                   line. However, it's my understanding that for  
4                   Cisco the applicable standard is for an industrial  
5                   use, which would be a DNL of 70 dB. That would be  
6                   certainly met by the Metcalf Center.

7                   HEARING OFFICER VALKOSKY: Okay. So am  
8                   I correct in assuming, then, that you have  
9                   analyzed the power plant's projected noise impacts  
10                  upon the Cisco project?

11                  MR. ROSEN: We now have.

12                  HEARING OFFICER VALKOSKY: You now have.  
13                  Okay. And that is not in the -- the FSA; is that  
14                  correct?

15                  MR. ROSEN: That's correct.

16                  HEARING OFFICER VALKOSKY: Thank you.

17                  On page 281, and, again, you indicate  
18                  that -- concerning pile driving. What is the --  
19                  what is the duration of pile driving activities  
20                  during project construction?

21                  MR. BAKER: Pile driving can take  
22                  several weeks, it can take a couple of months. It  
23                  depends how many piles are required. Please note  
24                  that pile driving, as a noisy construction  
25                  operation, would be limited to daytime hours only.

1 HEARING OFFICER VALKOSKY: Okay. But  
2 the -- now, you say a duration a couple days,  
3 couple weeks. Is that continuous, or is that  
4 sporadic? Day on, day off, or --

5 MR. BAKER: It depends how much money  
6 the developer wants to spend on -- on rigs. You  
7 could have several machines in there if you're in  
8 a hurry, and they could be operating nearly  
9 continuously. Or if you only had one machine,  
10 then there would be noise and then quiet, noise,  
11 and quiet.

12 HEARING OFFICER VALKOSKY: But in either  
13 case, is it your opinion that that would be a -- a  
14 temporary measure which is appropriately  
15 mitigated?

16 MR. BAKER: Certainly. All construction  
17 noise is temporary.

18 HEARING OFFICER VALKOSKY: Okay. Now to  
19 the bottom, the last bullet on page 283. This is  
20 a question I raised with the Applicant's witness.

21 You've got the statement, the additional  
22 cost for mitigation at the source is \$5 million,  
23 and given the few affected property owners, the  
24 additional cost is considered excessive.

25 Could you educate me on -- as to the

1 nature of those additional source mitigations?

2 MR. BAKER: As the Applicant's witness  
3 detailed earlier, you can do things like  
4 installing quieter fans and fan motors in the  
5 cooling tower. You can add muffling to the gas  
6 turbine inlets and the exhausts. You can put more  
7 pieces of equipment either behind noise barriers  
8 or inside noise insulated buildings. You could  
9 erect a berm around certain parts of the project  
10 to redirect noise. All of the above. You can  
11 purchase equipment that's designed to be quieter  
12 at the outset. These are all practical measures.

13 HEARING OFFICER VALKOSKY: Okay. And is  
14 it also -- am I reading your testimony correctly,  
15 that you are not recommending the -- the  
16 imposition of any of these additional measures?

17 MR. BAKER: We're recommending that the  
18 project not be allowed to produce more than 49 dB  
19 at the nearest sensitive receptor. How they go  
20 about achieving that really doesn't matter.

21 HEARING OFFICER VALKOSKY: Okay. Thank  
22 you.

23 Okay. Concerning Condition of  
24 Certification 5. There is -- okay. That --  
25 actually, that may not be the right condition, and

1 if not, I'm -- I apologize. But I, as I recall  
2 reading the conditions, it talked to the  
3 investigation of a legitimate complaint. Is that  
4 --

5 MR. BAKER: That appears in NOISE-5.

6 HEARING OFFICER VALKOSKY: Okay.

7 MR. BAKER: In the -- at the end of the  
8 first paragraph, for example.

9 HEARING OFFICER VALKOSKY: Okay, thank  
10 you. I wonder if you could explain to me a little  
11 bit what is your interpretation of a legitimate  
12 complaint.

13 MR. BAKER: In our experience with  
14 previous projects, we found that when the project  
15 is in construction or initial operation, there  
16 will be occasional complaints from neighbors that  
17 the power plant's too loud. And quite often,  
18 investigation shows that the noise they heard  
19 didn't come from the power plant. For example,  
20 the Crockett project drew a -- a spate of bitter  
21 complaints, and every single one of them turned  
22 out to be caused by some source absolutely  
23 separate from the power plant.

24 So by putting the word "legitimate" in  
25 there, we say that -- what we're saying is, you

1 know, we recommend that the Applicant deal with  
2 any noises problems that they are causing, but  
3 they shouldn't be held responsible for noise  
4 problems someone else is causing. Nor should they  
5 be held responsible for responding to nuisance  
6 complaints.

7 HEARING OFFICER VALKOSKY: Okay. Thank  
8 you for that clarification.

9 And last question. Does the county  
10 ordinance set standards for require analysis of  
11 the vibration?

12 MR. ROSEN: I believe the county  
13 ordinance that addressed vibration was discussed  
14 earlier. I'm looking for the language used. Yes.  
15 It does address vibration, the statement,  
16 operating or approving the operation of any -- the  
17 answer is yes.

18 (Laughter.)

19 HEARING OFFICER VALKOSKY: Thank you.  
20 Have you performed an analysis of any vibration  
21 impacts due to the project, pursuant to that  
22 county ordinance? Or in order to assess  
23 compliance with the county ordinance?

24 MR. ROSEN: No.

25 HEARING OFFICER VALKOSKY: Do you

1 believe that you should? Is one needed, in other  
2 words.

3 MR. ROSEN: I don't believe so.

4 HEARING OFFICER VALKOSKY: And why is  
5 that?

6 MR. ROSEN: As -- as Steve mentioned  
7 about the -- we're referring to operations?

8 HEARING OFFICER VALKOSKY: Yes.  
9 Primarily, yeah.

10 MR. ROSEN: Okay. The -- again, the  
11 equipment needs to run smoothly. I've been,  
12 myself, working in the field for about 16 years on  
13 noise problems, vibration problems. I've -- I've  
14 not had any projects or have been involved in any  
15 situations where vibrations from the power plant  
16 were the problem. I -- I talked to my colleagues  
17 with even more experience. All had the same  
18 conclusion that that was not a problem.

19 HEARING OFFICER VALKOSKY: Okay. Thank  
20 you, sir.

21 PRESIDING MEMBER LAURIE: Mr. Rosen,  
22 Cisco. Are you familiar with the noise impacts  
23 emanating from the Cisco project, as identified in  
24 Cisco's Environmental Impact Report?

25 MR. ROSEN: Somewhat.

1                   PRESIDING MEMBER LAURIE: Are you  
2 familiar with the mitigation measures relating to  
3 Cisco's project as identified in Cisco's  
4 Environmental Impact Report?

5                   MR. ROSEN: No.

6                   PRESIDING MEMBER LAURIE: Do you have  
7 any knowledge regarding the compatibility or  
8 consistency between the proposed mitigation  
9 measures for this project and the mitigation  
10 measures as imposed on the Cisco project?

11                  MR. ROSEN: No.

12                  PRESIDING MEMBER LAURIE: Do you have  
13 knowledge as to where -- whether the impacts on  
14 the Cisco project were fully mitigated or remain  
15 in part unmitigated?

16                  MR. ROSEN: For clarification, impacts  
17 from Metcalf on Cisco?

18                  PRESIDING MEMBER LAURIE: No. Strike  
19 that. The impacts on Cisco as denoted in -- the  
20 impacts created by Cisco as denoted in Cisco's  
21 Environmental Impact Report. Do you know if those  
22 impacts have been fully mitigated, or remain in  
23 part unmitigated? And this is unrelated to the  
24 Metcalf project.

25                  MR. ROSEN: I understand.

1                   PRESIDING MEMBER LAURIE:  And -- and the  
2 question is, do you know?

3                   MR. ROSEN:  No.

4                   PRESIDING MEMBER LAURIE:  Thank you.  
5 That's all I have, Mr. Valkosky.

6                   HEARING OFFICER VALKOSKY:  Thank you.

7                   Mr. Harris, cross?

8                   MR. HARRIS:  No questions.  Thank you.

9                   HEARING OFFICER VALKOSKY:  Ms. Dent,  
10 does the city have any questions for these  
11 witnesses?

12                   MS. DENT:  Thank you.  I'm going to be  
13 referring to the Final Staff Assessment that I  
14 pulled off the Web site, so I hope my pages match  
15 up with your pages.

16                   CROSS EXAMINATION

17                   MS. DENT:  My first question relates to  
18 the definition of the nearest sensitive receptor.  
19 And on page 277 of the Final Staff Assessment, and  
20 in other locations throughout the Staff  
21 Assessment, I believe you've defined the nearest  
22 sensitive receptor as the Passantino residence.  
23 Is that correct?

24                   MR. ROSEN:  That's correct.

25                   MS. DENT:  And we heard some testimony

1           today that was new testimony that's not in the  
2           Final Staff Assessment, concerning measurements of  
3           ambient noise levels in the park that is across  
4           Monterey Road from the project site.

5                       Do you have any opinion on whether or  
6           not that may, indeed, be the nearest sensitive  
7           receptor to the project?

8                       MR. ROSEN:  Yes.  It would be a near --  
9           closer receptor to the site than the Passantino  
10          residence.

11                      MS. DENT:  And --

12                      MR. ROSEN:  I haven't scaled the  
13          distance, but I believe from looking at it it  
14          would be.

15                      MS. DENT:  It's -- it's closer distance  
16          to the site.

17                      MR. ROSEN:  Yes.

18                      MS. DENT:  And do you -- is it your  
19          understanding, at least of the county and city  
20          ordinances and general plan, that it is defined as  
21          a sensitive receptor because it's a quasi public  
22          use, a recreational use?

23                      MR. ROSEN:  It's not clear to me that  
24          it's defined as a sensitive receptor.

25                      MS.DENT:  And have you reviewed the

1 city's general plan which defines sensitive  
2 receptors as including quasi -- as including  
3 public uses?

4 MR. ROSEN: I've not seen that.

5 MS. DENT: Now, what about Fisher Creek,  
6 which is located just immediately to the south of  
7 Metcalf Energy Center. That's closer than --  
8 closer than the park, it's closer --

9 MR. ROSEN: Yeah.

10 MS. DENT: -- than the Passantino  
11 residence. It's very -- it's right on the  
12 property line.

13 MR. ROSEN: Right.

14 MS. DENT: Is that correct?

15 MR. ROSEN: That's correct.

16 MS. DENT: And is it your understanding  
17 that Fisher Creek is considered a riparian  
18 corridor under the city's riparian corridor  
19 policy, even though it doesn't have an existing  
20 public trail on it?

21 MR. ROSEN: Yes.

22 MS. DENT: So -- and are you aware that  
23 there are noise standards in the city's general  
24 plan for riparian corridors?

25 MR. ROSEN: Yes.

1 MS. DENT: And did you make any -- did  
2 you make any measurements of the impacts of the  
3 project on Fisher Creek, specifically?

4 MS. WILLIS: I'm going to object. We --  
5 the witness has already indicated that that will  
6 be addressed in the issue -- area of Biology.

7 MS. DENT: Oh, I'm sorry. I didn't  
8 understand that that -- this witness --

9 HEARING OFFICER VALKOSKY: No, I -- I  
10 think just -- let's just make it crystal clear.  
11 Please answer the city's question.

12 MR. ROSEN: Again, the question is?

13 MS. DENT: The question was whether you  
14 made any analysis of the noise impacts from the  
15 Metcalf project on the Fisher Creek area.

16 MR. ROSEN: I provided -- no.

17 MS. DENT: No. Okay. But you -- you  
18 did do some additional measurement, you indicated,  
19 yourself, or on behalf of the Commission, in the  
20 creek and park area across Monterey Road.

21 MR. ROSEN: That's correct.

22 MS. DENT: And I believe you indicated  
23 in your verbal testimony -- and I'm sorry, this  
24 was just a few minutes ago that this information  
25 came out.

1 MR. ROSEN: Sure.

2 MS. DENT: I believe that you -- you did  
3 one measurement on one Saturday. Is that --

4 MR. ROSEN: That -- that's correct.

5 MS. DENT: Okay. And you had noise  
6 levels in the 57 to 61 dBa --

7 MR. ROSEN: You're referring --

8 MS. DENT: -- range?

9 MR. ROSEN: That was at the Coyote  
10 Creek.

11 MS. DENT: Right, at the park, the  
12 Coyote Creek --

13 MR. ROSEN: At the park.

14 MS. DENT: -- right across Monterey  
15 Road.

16 MR. ROSEN: Right.

17 MS. DENT: Okay. Now, other than that  
18 recent measurement that you did on a Saturday, at  
19 Coyote Creek across Monterey Road, were the only  
20 other ambient noise measurements, the ambient  
21 noise measurements that are reflected in the Final  
22 Staff Assessment, were there any other ambient  
23 noise measurements that you know of?

24 MR. ROSEN: I'm -- not -- the only other  
25 measurement that I know of is I did also, when I

1 was out at the site to make a measurement near  
2 Fisher Creek.

3 MS. DENT: And that was on the --

4 MR. ROSEN: The same Saturday.

5 MS. DENT: Okay. Now, the ambient noise  
6 measurements that are reflected in the Final Staff  
7 Assessment, they're in a table on pages 278 and  
8 279. Did you -- I looked at the calendar in my  
9 checkbook, so all of these ambient level  
10 assessments were -- none of them were done on the  
11 weekend; am I correct about that?

12 MR. ROSEN: The -- I don't know.

13 MS. DENT: So if I told you that a  
14 calendar said that March 15th, 16th, and 17th were  
15 Monday, Tuesday, and Wednesday, do -- do you know  
16 whether you made any effort to do ambient noise  
17 level assessments on the weekend?

18 MR. ROSEN: I don't believe there were  
19 any made on the weekends.

20 MS. DENT: Okay. Now, I have -- I have  
21 a question about the table that's included in the  
22 cumulative impacts section of your testimony on  
23 page 288. It's at the top of page 288. And I'm  
24 just trying to understand where -- I'm trying to  
25 understand the information on the existing noise

1 levels, and how they relate to the ambient noise  
2 levels that are reflected back on the table at  
3 page 278. Because the existing noise levels at  
4 63.3 are much higher than most of the ambient  
5 noise levels that are reflected at 278 and 279.

6 And since that's the way you measured  
7 cumulative impact, I'm just wondering where that  
8 existing noise level number came from.

9 MR. ROSEN: The -- on Table 6, on page  
10 288, the metric we're using is DNL, day/night  
11 average sound level. That's the 24 hour average  
12 noise level. So that's the calculated DNL, I  
13 believe, that was measured at the nearest  
14 residence.

15 MS. DENT: So this is the measurement at  
16 the nearest residence that is calculated, based on  
17 the numbers that are in Table 2?

18 MR. ROSEN: That's correct.

19 MS. DENT: Okay. It's an extrapolation  
20 from those numbers.

21 MR. ROSEN: I -- I believe it's a direct  
22 calculation. Yeah, it's a direct calculation.

23 MS. DENT: And it's an average, you  
24 said?

25 MR. ROSEN: Yes. The DNL is a 24 hour

1 average with a penalty added to night time noise  
2 between 10:00 p.m. and 7:00 a.m., to account for  
3 people's sensitivity. So it weights night time  
4 noise more heavily.

5 MS. DENT: Okay. Thank you.

6 Now, the other area of your testimony  
7 that I wanted a little clarification on was the  
8 CEC standard that I think is cited at page 279,  
9 the significant criteria, which is to essentially  
10 -- essentially look -- looks at whether or not  
11 ambient levels are increased by more than five  
12 dBa. Is that -- am I accurately stating the  
13 standard?

14 MR. ROSEN: That -- that's it in a  
15 nutshell, yeah.

16 MS. DENT: So did you look at whether  
17 ambient levels were going to be increased by more  
18 than five dBa on the park property on the other  
19 side of Monterey Road?

20 MR. ROSEN: Yes.

21 MS. DENT: And did you look at whether  
22 ambient noise levels were going to be increased by  
23 more than five dBa at Fisher Creek?

24 MR. ROSEN: Yes. Well, let me -- not in  
25 the FSA for those locations, but in the --

1 MS. DENT: I'm going to ask you to take  
2 a look at -- I believe it's marked as Exhibit 5.  
3 It's --

4 MS. WILLIS: I don't believe he has a  
5 copy of that.

6 MS. DENT: I'm going to --

7 MR. ROSEN: The noise contour --

8 HEARING OFFICER VALKOSKY: Ms. Dent,  
9 which document are you referring to?

10 MR. ROSEN: I have a copy of that.

11 MS. DENT: Well, I have a noise contour.

12 HEARING OFFICER VALKOSKY: Okay. That's  
13 the same one we've previously discussed with --

14 MS. DENT: Correct.

15 MR. ROSEN: The DNL contours?

16 MS. DENT: Right.

17 MR. ROSEN: Okay.

18 MS. DENT: Figure 1.

19 MR. ROSEN: Right. I have that.

20 MS. DENT: Okay. Just so that I can  
21 understand the contour, noise contour levels.  
22 Where it indicates a DNL of 60 and there's a  
23 circle, I understand this -- this contour map as  
24 indicating that inside that DNL 60 circle, the  
25 noise level -- the noise levels from Metcalf will

1 be above 60. Is that correct?

2 MR. ROSEN: Yes.

3 MS. DENT: So this map, then, indicates  
4 that the noise levels along the creek on the  
5 opposite side of Monterey Highway and along the  
6 trail on the opposite side of Monterey Highway  
7 will be above 60.

8 MR. ROSEN: DNL.

9 MS. DENT: DNL.

10 MR. ROSEN: That's correct.

11 MS. DENT: And, of course, at Fisher  
12 Creek they will be above 60. That's right  
13 adjacent to the plant.

14 MR. ROSEN: That's correct.

15 MS. DENT: Okay. And even -- I don't  
16 know what -- even beyond the 60 DNL level up into  
17 the 55 DNL level, there appears to be some sort of  
18 industrial use that would be in that area. Is  
19 that correct?

20 MR. ROSEN: Yes.

21 MS. DENT: And you don't -- you do not  
22 have any other information, other than the  
23 information presented to you by the Applicant,  
24 concerning the noise that will be generated by the  
25 project, do you?

1 MR. ROSEN: That's correct.

2 MS. DENT: You didn't do any independent  
3 analysis on that?

4 MR. ROSEN: No, didn't do --

5 MS. DENT: I have one last series of  
6 questions to ask about achieving the 45, the 44  
7 dBa. The reasons cited in the Final Staff  
8 Assessment for not requiring the -- for not  
9 imposing additional mitigation measures, or not  
10 imposing a 45 -- 44 dBa condition are the cost  
11 associated with that condition.

12 Is there any technologic -- any  
13 technical infeasibility of achieving 44 dBa?

14 MR. BAKER: No, it's technically  
15 achievable.

16 MS. DENT: So the only reason not to  
17 establish a 44 dBa versus a 49 dBa is cost?

18 MR. BAKER: Yes.

19 MS. DENT: Thank you. I don't have any  
20 further questions.

21 HEARING OFFICER VALKOSKY: Thank you,  
22 Ms. Dent.

23 The City of Morgan Hill? No.

24 Ms. Grueneich.

25 MS. GRUENEICH: Thank you.

1                   If I could clarify, is it Mr. Rosen or  
2                   Mr. Baker who is responsible for the section of  
3                   the Staff testimony, Community Noise Impacts  
4                   Operation, which is on pages, as I understand it,  
5                   282 over to page 284.

6                   MR. ROSEN: I authored the section.  
7                   Steve was the supervisor.

8                   MS. GRUENEICH: Okay.

9                   CROSS EXAMINATION

10                  MS. GRUENEICH: In drafting the section,  
11                  did you actually review the mitigation measures  
12                  that Applicant has testified would amount to \$5  
13                  million?

14                  MR. BAKER: What do you mean by  
15                  reviewed? We -- we've heard what they have  
16                  proposed, if necessary, and that seems reasonable  
17                  to me.

18                  MS. GRUENEICH: My -- my question was to  
19                  Mr. Rosen, that in authoring this -- in drafting  
20                  the section, prior to drafting it, did he have  
21                  available from the Applicant a list of the  
22                  specific measures that would add up to \$5 million.

23                  MR. ROSEN: No.

24                  MS. GRUENEICH: On what basis did you  
25                  include in the section that you drafted, the

1 number \$5 million?

2 MR. ROSEN: There was a -- I believe it  
3 was the PSA comments, Set 9, which included that  
4 figure. Just double-checking --

5 MS. GRUENEICH: Sure.

6 MR. ROSEN: Yes. It's PSA comments, Set  
7 9.

8 MS. GRUENEICH: Could you point me to  
9 the specific page?

10 MR. ROSEN: Page -- page 2, second  
11 paragraph talks about cost. Under Section 2.1,  
12 proposed noise mitigation. Do you see that? It's  
13 about the fifth line down, there's a statement,  
14 designing the plant to -- excuse me. Second  
15 sentence, lowering the design criteria to 44 would  
16 require at least an additional \$5 million to be  
17 spent.

18 MS. GRUENEICH: Did you do any  
19 independent analysis or study to determine that  
20 lowering the impact to meet the 44 dBa would, in  
21 fact, cost \$5 million?

22 MR. ROSEN: No.

23 MR. BAKER: May I add that based on my  
24 experience with dealing with quite a few projects  
25 in the past, even before I saw the figure, that

1 when I saw the proposed noise reduction, the  
2 figure five to \$6 million came to my mind.

3 MS. GRUENEICH: Those are all the  
4 questions I have.

5 HEARING OFFICER VALKOSKY: Thank you,  
6 Ms. Grueneich.

7 Ms. Cord.

8 MS. CORD: Yeah, I just have one --  
9 well, a couple questions.

10 CROSS EXAMINATION

11 MS. CORD: First of all, you said you  
12 came down and measured the noise at Coyote Creek  
13 recently. Did you say that was this past  
14 Saturday?

15 MR. ROSEN: That's correct.

16 MS. CORD: Okay. And that's not  
17 docketed or provided to anyone?

18 MR. ROSEN: I don't believe so, no.

19 MS. CORD: Okay. You mentioned that  
20 there was noise at that time in Coyote Creek from  
21 off road vehicles?

22 MR. ROSEN: I believe I heard across the  
23 highway noise from off road vehicles. Just --  
24 just a noise; not significant, but audible.

25 MS. CORD: You mean on the other side of

1 101?

2 MR. ROSEN: That's correct.

3 MS. CORD: Okay. Could you characterize  
4 the kind of off road vehicles we're discussing?  
5 The kind of vehicles you thought you heard?

6 MR. ROSEN: I thought I heard something  
7 like a unmuffled dirt bike.

8 MS. CORD: Okay. I think you mentioned  
9 earlier that the noise analysis, ambient noise  
10 levels in the FSA are from weekdays?

11 MR. ROSEN: that's correct.

12 MS. CORD: Okay. Is there a reason why  
13 weekends weren't used?

14 MR. ROSEN: Not that I know of.

15 MS. CORD: Would you expect that weekend  
16 noise along transportation corridors might be  
17 different from weekday noise?

18 MR. BAKER: When we evaluate the project  
19 for potential significant adverse impacts due to  
20 an increase over ambient of five decibels or more,  
21 we look at the night time noise levels.  
22 Typically, the night time noise levels aren't that  
23 different from weekday to weekend.

24 MS. CORD: Did you list noise levels for  
25 daytime hours as well, in that table?

1 MR. BAKER: Yes.

2 MS. CORD: Okay. And was there a reason  
3 why weekend daytime noise levels were not used?

4 MR. BAKER: Not that I know of.

5 MS. CORD: Okay. And maybe I didn't  
6 hear the answer to this. Did you answer whether  
7 you would expect to find a difference between  
8 weekend noise levels and weekday noise levels in  
9 transportation corridors?

10 MR. ROSEN: Possibly.

11 MS. CORD: Possibly. Would you -- would  
12 you expect that weekend noise levels might be  
13 lower or higher than weekday?

14 MR. ROSEN: I would -- if they were  
15 different, I would expect them to be lower.

16 MS. CORD: Weekend would be lower than  
17 weekday? Is that what you meant?

18 MR. ROSEN: That's correct.

19 MS. CORD: Thank you. Nothing further.

20 HEARING OFFICER VALKOSKY: Thank you.

21 Mr. Wade.

22 CROSS EXAMINATION

23 MR. WADE: Yes. I wanted to follow up on  
24 one of the statements, some of the assertions made  
25 by Mr. Baker regarding the -- the monitoring of

1 noise at --

2 HEARING OFFICER VALKOSKY: A little bit  
3 closer to the microphone, sir.

4 MR. WADE: Regarding the --

5 HEARING OFFICER VALKOSKY: Thank you.

6 MR. WADE: -- monitoring of noise at  
7 partial load. I believe the statement was made  
8 that you would prefer to measure the noise at  
9 around 80 percent; 50 would be too low, you might  
10 not get the -- capture the -- the noise sources,  
11 but you said, I believe, measuring loads at 100  
12 percent would not provide any additional  
13 information. Is that -- was that essentially your  
14 testimony?

15 MR. BAKER: Yes.

16 MS. WILLIS: Excuse me, Mr. Wade. I'm  
17 having a hard time hearing you. If you could  
18 speak a little louder.

19 MR. WADE: I'll do my best.

20 Is it your belief that noise is not  
21 dependent on the speed of the -- the turbines?

22 MR. BAKER: No. But please understand  
23 that when a plant is operating, when it's  
24 generating power and synchronized to the grid, all  
25 three turbines are turning at synchronous speed,

1 one single, constant speed. They cannot be  
2 allowed to go faster or slower. If so, the unit  
3 will trip offline.

4 MR. WADE: So that at 80 percent load  
5 and at 100 percent load, the speed of the turbines  
6 is the same?

7 MR. BAKER: It has to be.

8 MR. WADE: Okay. Thank you.

9 Another question I have for you is  
10 regarding the terms of compliance in NOISE-2 on  
11 page 289. This is the section wherein the  
12 resolution of noise complaints is described. And  
13 I note that you have specified that the Applicant  
14 must take feasible measures to resolve noise  
15 complaints.

16 MR. BAKER: Yes.

17 MR. WADE: And I was wondering if you  
18 could be more specific, for the record, as to what  
19 you consider to be a feasible resolution.

20 MR. BAKER: The term "feasible" appears  
21 in CEQA. It means measures that are economically  
22 achievable. Something that is technically  
23 possible but unaffordable is not considered  
24 feasible.

25 MR. WADE: Okay. So obviously we --

1 we've seen your estimate that \$5 million  
2 activities would be infeasible. Is there any kind  
3 of a dollar amount that you would care to offer?

4 MR. BAKER: We did not say that \$5  
5 million is infeasible. What we're saying is that  
6 we don't believe that the benefits would be worth  
7 the \$5 million when, in fact, the same benefit can  
8 be achieved by insulating the Passantino home.

9 MR. WADE: So you would not care to  
10 offer a financial value to the -- to the word  
11 "feasible"; is that right?

12 MR. BAKER: No.

13 MR. WADE: Okay. Thank you.

14 HEARING OFFICER VALKOSKY: Mr. Baker,  
15 I've got one point of clarification, when you  
16 responded to Mr. Wade that all three turbines  
17 would be spinning at the same speed. Okay, I  
18 think there may be some confusion.

19 Is that at the same speed relative to  
20 one another, or is that at the same speed, for  
21 example, in terms of RPMs at 80 percent load, 90  
22 percent load, or 100 percent load? There are two  
23 ways of looking at that.

24 MR. BAKER: The generators all have to  
25 put out power at exactly system frequency, 60

1 cycles per second. A four pole generator turns at  
2 1800 revolutions per minute; an eight pole  
3 generator turns at 900. So whatever the  
4 configuration of the generator, it has to be spun  
5 at exactly that speed.

6 And in these plants, the turbines are --  
7 are coupled directly to the generators. It's  
8 common with gas turbines to run them at 3600 RPM,  
9 with a two pole generator. And that's the way the  
10 General Electric machines are built. Whether  
11 their steam turbine generator runs at 3600 or  
12 1800, or some other speed, I don't know. But the  
13 -- the point is, the machines will all run at  
14 exactly the same RPM regardless of the load. As  
15 long as they are online and generating, they will  
16 be at a constant speed.

17 HEARING OFFICER VALKOSKY: Thank you.

18 Mr. Ajlouny.

19 MR. AJLOUNY: Maybe for future we can  
20 add another table or something.

21 CROSS EXAMINATION

22 MR. AJLOUNY: I first want to start my  
23 questioning in the area of being consistent with  
24 other power plants that maybe Mr. Baker has been  
25 involved with, just to see in what other power

1 plants and conclusions he came up with. So those  
2 are where my questions are coming from.

3 Mr. Baker, are you familiar with the  
4 Sutter project?

5 MR. BAKER: Yes.

6 MR. AJLOUNY: You know what, I take it  
7 back. It's -- I should say the Pittsburgh.

8 MR. BAKER: Yes.

9 MR. AJLOUNY: Okay. And in the -- and,  
10 by the way, I have the section of noise, if you  
11 want to use this as verifying this, but you might  
12 just probably know this already.

13 MR. HARRIS: Can I -- can I ask a  
14 clarifying question? Which Pittsburgh project are  
15 you talking about?

16 MR. AJLOUNY: The one -- the FSA dated  
17 March 10th, 1999.

18 MR. HARRIS: What's the name of the  
19 project?

20 MR. AJLOUNY: It's called PDEF,  
21 Pittsburgh District Energy Facility.

22 MR. HARRIS: Thank you.

23 MR. AJLOUNY: I think that's one you  
24 guys were -- okay.

25 Okay. In the analysis the Applicant

1 did, originally in the PSA they did a 24 hour  
2 average of the noise. Is that correct? Do you  
3 remember?

4 MR. BAKER: I don't recall. I'd have to  
5 study the document once again.

6 MR. AJLOUNY: Okay. All right. Do you  
7 recall a document coming out from Staff asking  
8 that the Applicant would do a one hour average, or  
9 less, for the final FSA?

10 MR. BAKER: I'm sorry. You're testing  
11 my memory, and I'm coming up short.

12 MR. AJLOUNY: Okay. Well, I have the  
13 documents here.

14 MR. BAKER: I'd have to have time to  
15 study them. I'm sorry.

16 MR. AJLOUNY: So you don't -- okay. Do  
17 you feel that it's normal, or what you've used to  
18 do as far as analysis, that you do an hour average  
19 versus a 24 hour, or versus a ten to seven  
20 o'clock, or ten -- ten at night to five in the  
21 morning average? Does that help you?

22 MR. BAKER: It depends the purpose.  
23 When you monitor noise you can set the meter to  
24 average at different intervals. You record all  
25 the numbers and then you calculate what you want

1 from them. If you're looking for a DNL or a CNEL  
2 figure, then you can calculate it from the numbers  
3 you've gathered. If you're looking, as we often  
4 are, at the night time ambient background noise  
5 levels, you can calculate that, also.

6 MR. AJLOUNY: I'm referring to trying to  
7 be, you know, consistent with the other projects  
8 you've been involved with, Mr. Baker.

9 HEARING OFFICER VALKOSKY: Just one  
10 second. Mr. Baker, is the noise analysis  
11 performed for this project similar to and  
12 consistent with a noise analysis performed with  
13 other similar projects with which you're familiar?

14 MR. BAKER: Yes.

15 MR. AJLOUNY: Since I can't give  
16 testimony I can just ask questions. So maybe what  
17 I can do is show him the document that says, on  
18 page 8 of this document, requesting an hourly  
19 average versus a 24 hour average. Can I do that?

20 HEARING OFFICER VALKOSKY: Sure.

21 MR. BAKER: Can I ask again what -- what  
22 the document is?

23 MS. WILLIS: Yeah, I --

24 HEARING OFFICER VALKOSKY: Identify the  
25 document, please.

1                   MR. AJLOUNY: This is Data Request from  
2 Staff for that same project.

3                   HEARING OFFICER VALKOSKY: For --

4                   MS. WILLIS: Is this for Pittsburg?

5                   HEARING OFFICER VALKOSKY: -- what's  
6 that same project?

7                   MR. AJLOUNY: The one -- Pittsburg --

8                   HEARING OFFICER VALKOSKY: the PDEF  
9 project.

10                  MR. AJLOUNY: Yeah. Yes.

11                  HEARING OFFICER VALKOSKY: Okay. And  
12 what's the data request number there?

13                  MR. BAKER: This is Staff's -- Pittsburg  
14 District Energy Facility Data Request addressed to  
15 Samuel Wehn, dated August 24th, 1998. And we're  
16 referring to Data Request -- issue area of noise.

17                  HEARING OFFICER VALKOSKY: Thank you.  
18 Your question again, sir.

19                  MR. AJLOUNY: Okay. Well, have you got  
20 that read so I can -- in the data request that I  
21 see here, it says please provide ambient noise  
22 monitoring results at noise monitoring location  
23 10, which is the closest receptor, in terms of  
24 short-term hourly or shorter interval  
25 measurements, including night time, IEG and I-90

1 figures as a minimum.

2 MR. BAKER: Right.

3 MR. AJLOUNY: Do you remember that?

4 MR. BAKER: Yes, sir.

5 MR. AJLOUNY: Okay. So the question was  
6 asked by Mr. Valkosky just recently that is this  
7 project being handled in the same manner, being  
8 consistent as other projects? And I thought I  
9 heard you say that it was.

10 MR. BAKER: Yes.

11 MR. AJLOUNY: Is this project in the --  
12 in the noise levels between 10:00 p.m. and 5:00  
13 a.m. being -- is that 39 dB an average, or are you  
14 taking the lowest average, hourly average?

15 MR. BAKER: What we've done in this  
16 project, as we did in the Delta project, is we've  
17 taken an average ambient background noise level  
18 over the quietest period of the night, rather than  
19 a single hour. The reason for that is it's  
20 customary where the ambient noise environment is  
21 -- is dominated by traffic noise, it's common to  
22 take an average rather than the single lowest  
23 figure.

24 MR. AJLOUNY: Okay. But, again, in  
25 Pittsburg, do you remember the atmosphere of

1           Pittsburg and --

2                   MR. BAKER:  As I recall, in Pittsburg we  
3           did not average because we did not believe that  
4           the night time ambient noise regime was dominated  
5           by traffic.  That was not the case in Delta.  And  
6           that is not the case here.

7                   MR. AJLOUNY:  Okay.  Well, now I've got  
8           to find my notes to -- okay.  Pittsburg is an  
9           industrial neighborhood, the one we're talking  
10          about here.

11                  MR. BAKER:  There are residences fairly  
12          close to the project.

13                  MR. AJLOUNY:  But -- but it is an  
14          industrial area, where there's other -- I think  
15          another power plant, or other industrial?

16                  MR. BAKER:  Yes, there's a lot of  
17          industry, and there's also residences.

18                  MR. AJLOUNY:  Okay.  That's great.  But  
19          being an industrial, and correct me if wrong, is  
20          there another power plant nearby or right next to  
21          it?

22                  MR. BAKER:  As I understand, there are  
23          several cogeneration plants nearby.

24                  MR. AJLOUNY:  Yeah.  So we have in  
25          Pittsburg a proposed power plant called PDF --

1 PDEF, along with other power plants in the area,  
2 in a heavy industrial area, and you do a one hour  
3 average for that power plant. But then you're in  
4 a -- in a place where there might be some cars,  
5 and you want to take a -- I guess that comes out  
6 to a seven hour average, and especially when this  
7 is, as you're aware, a highly opposed --

8 MS. WILLIS: I'm going to object on --  
9 on the line of questioning, that the document  
10 you're using, I don't have a copy of in front of  
11 me, but apparently it's a data request. I don't  
12 believe it's our Staff analysis.

13 MR. AJLOUNY: I am, you know, I opened  
14 up with the statement that I'm just trying to show  
15 consistency.

16 HEARING OFFICER VALKOSKY: Not -- not  
17 the Staff analysis. I think the -- the basic area  
18 being explored is whether or not the noise  
19 analysis for the Metcalf case has been performed  
20 similar to that in other cases.

21 MR. AJLOUNY: I think that's what I --

22 HEARING OFFICER VALKOSKY: And I think  
23 that's about as far as we want to -- as far as we  
24 want to go.

25 So Mr. Baker, if you could address that

1 question, and Mr. Ajlouny is interested in the  
2 differences specifically between the analysis  
3 performed in this case and the analysis performed  
4 in the PDEF case. If you are able to address  
5 those differences, please do. I think we can --

6 MR. BAKER: Certainly. Okay. Where the  
7 night time background noise regime is relatively  
8 steady, as in Pittsburg, there's -- there's little  
9 traffic near the residences that are closest to  
10 the project, most of the noise is from industrial  
11 facilities that run at steady noise levels, day  
12 and night. So taking the lowest night time  
13 reading, whether it's an hour or 15 minutes, or  
14 whatever, that's reasonable.

15 Where you have a lot of traffic, as we  
16 did in the Delta case, where the nearest  
17 residential receptor, the nearest sensitive  
18 receptor was right on a highway, it was right on a  
19 railroad line, and it was close to a freeway, the  
20 night time background noise level is provided by  
21 traffic. Traffic is intermittent. A vehicle goes  
22 by and then there's quiet, and then another  
23 vehicle goes by. And so taking a very short  
24 average can give you a very misleading  
25 representation of the background noise level.

1                   Where you have traffic as the dominant  
2                   noise source, it's customary to average it over a  
3                   longer period of time, often the entire night.  
4                   Note that in the Metcalf AFC, the -- the night  
5                   time noise level was averaged by the Applicant  
6                   over the entire night time period from 10:00 p.m.  
7                   to 7:00 a.m. When we analyzed it, we threw away  
8                   the period from 5:00 a.m. to 7:00 a.m. because it  
9                   clearly showed morning traffic. We thought that  
10                  was irrelevant, and it was forcing the numbers  
11                  upwards, so we threw that out and we re-averaged  
12                  just using the quietest hours of the night.

13                  MR. AJLOUNY: Okay. I understand your  
14                  explanation, and did you just come up with this  
15                  idea like in Delta, or was this something that's  
16                  been years gone by, or is this something fairly  
17                  recent?

18                  MR. BAKER: It's my understanding that  
19                  this is common in the noise industry.

20                  MR. AJLOUNY: Okay. I spent -- I spent  
21                  some time researching other FSAs. I -- I guess I  
22                  didn't find that.

23                  I'll move on to the Sutter FSA that you  
24                  were involved with also. And in that FSA -- let  
25                  me read some things here. Are you familiar with

1 enclosing the turbine generators in acoustic  
2 enclosures equipped with ventilation silencers,  
3 installing air inlet silencers on combustion  
4 turbines and providing a shroud around the  
5 combustion turbine exhaust expansion joints?

6 MR. BAKER: Yes.

7 MR. AJLOUNY: Okay. There's a number of  
8 bullets here, and I don't want to prolong this, so  
9 I'll short term it and then you can probably  
10 agree.

11 Lagging outside of an HRSG, encasing the  
12 condensers, employing low speed cooling tower  
13 fans, purchasing quieter electrical transformers,  
14 and installing acoustic shrouds, and so forth.

15 You're familiar with those?

16 MR. BAKER: Yes.

17 MR. AJLOUNY: Okay. Do you -- are you  
18 so familiar with it that it's a very common  
19 practice to use those in power plants?

20 MR. BAKER: They're used whenever  
21 necessary to achieve a required noise level.

22 MR. AJLOUNY: Okay. And I'll just state  
23 this -- by the way, I asked you if you're familiar  
24 with the noise of Sutter. Was that your testimony  
25 in Sutter?

1 MR. BAKER: Yes.

2 MR. AJLOUNY: Okay. And on a certain  
3 page, and I'll just read it, and I'm sure you  
4 probably won't have any problem acknowledging it.  
5 It says, these sorts of noise attenuation measures  
6 have been employed for years on similar  
7 facilities, and their noise control abilities are  
8 well known. Calpine's estimates of the extent of  
9 noise controls possible appear easily achievable  
10 and should allow the project to be rendered  
11 sufficiently quiet to meet the applicable noise  
12 limit of 45 dBa at the property line nearest the  
13 residence.

14 Does that sound familiar to you?

15 MR. BAKER: It sounds familiar.

16 MR. AJLOUNY: Okay. And the closest  
17 residence there, do you happen to remember that?

18 MR. BAKER: No, I don't.

19 MR. AJLOUNY: Does around 1500 feet,  
20 just a little over --

21 MR. BAKER: I'm sorry, I don't remember.

22 MR. AJLOUNY: The page before that,  
23 Calpine commits to incorporating noise mitigation  
24 measures into the design of the project that will  
25 ensure that the noise levels at the nearest

1 receptor at the residence at 4879 South Township  
2 Road will not exceed 45 dBa. Since 45 dBa is such  
3 a low noise level, and in fact is quieter than the  
4 natural frog, insect and bird and man-made  
5 vehicular traffic and agricultural operations,  
6 noises typically encountered in the neighborhood  
7 of the project, Staff agrees that this is a  
8 feasible approach to assuring project noise  
9 impacts do not exceed legal limits, and would  
10 likely not present a significant adverse impact  
11 upon sensitive receptors.

12 The potential noise mitigation measures  
13 described by Calpine are typical for such an  
14 application. And then they -- they include all  
15 those things that we went through.

16 Do you -- pretty much sound familiar  
17 with that, and 45 dB being an easy achievable --

18 MR. BAKER: I trust that you're reading  
19 my testimony.

20 MR. AJLOUNY: Yes. Okay.

21 MS. WILLIS: It -- excuse me, just for

22 --

23 HEARING OFFICER VALKOSKY: Is there a --

24 MR. AJLOUNY: Yeah. There's a point to  
25 this.

1 HEARING OFFICER VALKOSKY: -- is there a  
2 question? Okay. If --

3 MR. AJLOUNY: Well, the question is,  
4 it's easily achievable at the -- at the Sutter,  
5 and I'm wondering why Staff is taking the approach  
6 of -- with all the different surroundings of this  
7 location, it's easily achievable, why Staff would  
8 take approach to quiet one home when there's so  
9 many other impacts in the surrounding areas.

10 MR. BAKER: At Sutter there were  
11 numerous homes at about the same distance from the  
12 project. So if -- if they had exceeded noise at  
13 one, they may have exceeded noise, permissible  
14 noise limits at several.

15 In the Metcalf case, we only identified  
16 one nearby residence that was really impacted.

17 MR. AJLOUNY: Okay. And I'm going to  
18 find it. Apparently, there's only one home in the  
19 Sutter area that's -- that's only around 1500 or  
20 1800 feet. There weren't many homes. Just -- do  
21 you remember more than one home?

22 MR. BAKER: I recall looking at quite a  
23 few.

24 MR. AJLOUNY: Well, in your testimony  
25 you mention only the -- the one, the closest

1 receptor. I -- I guess what I'm hearing you say  
2 now, the closest receptor being that one address I  
3 read, you're saying there's other homes around  
4 that?

5 MR. BAKER: Yes. I concentrated on the  
6 nearest.

7 MR. AJLOUNY: Okay. Well, again, I was  
8 just trying to go through the consistency, and I  
9 looked at other FSAs and I -- and I was just  
10 curious of why the results apply in that one home  
11 versus the plant.

12 Are you --

13 HEARING OFFICER VALKOSKY: Excuse me.  
14 Mr. Baker, does Staff do its noise analysis and  
15 assess the need for mitigation based on an  
16 individual case by case basis?

17 MR. BAKER: We operate as consistently  
18 as possible from case to case.

19 HEARING OFFICER VALKOSKY: Okay. But is  
20 it not true that the mitigation you recommend or  
21 attempt to require is essentially based upon the  
22 particular situation at a given project?

23 MR. BAKER: Yes. Every project is  
24 different, so every one has to be looked at  
25 differently. And the end results are often

1 slightly different from project to project. But  
2 the -- the thought process behind it is  
3 consistent.

4 HEARING OFFICER VALKOSKY: Thank you.

5 MR. AJLOUNY: Okay. Are you aware of  
6 the --

7 HEARING OFFICER VALKOSKY: Mr. Ajlouny,  
8 how long -- how much longer do you --

9 MR. AJLOUNY: Well, I think I asked for  
10 15 minutes in my prehearing statement.

11 HEARING OFFICER VALKOSKY: And I -- and  
12 I think you've just about used it up.

13 MR. AJLOUNY: Well, excuse me, Mr.  
14 Valkosky. I'm -- I remember in the Prehearing  
15 Conference trying to estimate, and --

16 HEARING OFFICER VALKOSKY: I understand.  
17 But as I say, it doesn't seem that you're getting  
18 anywhere.

19 MR. AJLOUNY: Well, I -- I think I'm  
20 making some points of the Staff's --

21 HEARING OFFICER VALKOSKY: Go ahead, ask  
22 a couple more questions.

23 MR. AJLOUNY: Okay. Well, I think I  
24 have more than a couple others.

25 Are you aware of the general plan, the

1 general 2020 plan of the City of San Jose?

2 MR. BAKER: I'd like to direct that  
3 question to Mr. Rosen.

4 MR. ROSEN: Yes.

5 MR. AJLOUNY: Okay. Are you aware of  
6 the -- the -- I've got to remember -- the trail  
7 along the back side of the power plant --

8 MR. ROSEN: Fisher Creek.

9 MR. AJLOUNY: Fisher Creek Trail, thank  
10 you.

11 MS. WILLIS: Objection. There's -- it's  
12 not testimony that there is a trail at Fisher  
13 Creek.

14 HEARING OFFICER VALKOSKY: Sustained.

15 MR. AJLOUNY: What's that?

16 MS. WILLIS: Is the question regarding a  
17 trail at Fisher Creek?

18 MR. AJLOUNY: I'm hoping I'm saying the  
19 right thing, guys. Help me out. In the 2020  
20 plan, I think I'm using the correct words, the  
21 Fisher Creek Trail.

22 MS. WILLIS: Okay. The -- we want to  
23 clarify there's --

24 HEARING OFFICER VALKOSKY: There is not  
25 a trail existing --

1 MS. WILLIS: -- no trail in existence at  
2 this point in time.

3 HEARING OFFICER VALKOSKY: -- there is  
4 no trail --

5 MR. AJLOUNY: That's why I referred to  
6 the general plan 2020.

7 HEARING OFFICER VALKOSKY: Just move on.

8 MR. AJLOUNY: I'm trying.

9 Back to my question. You're aware of  
10 the plan. Are you aware of the Fisher Creek Trail  
11 in the plan?

12 MR. ROSEN: I've not seen it in the  
13 plan.

14 MR. AJLOUNY: Okay. So you -- you don't  
15 remember, never seen the -- the general plan  
16 talking about the Fisher Creek Trail?

17 MR. ROSEN: No.

18 MR. AJLOUNY: I guess I'm not going to  
19 get any help here.

20 Stan, can I ask you a technical  
21 question. If -- if in the 2020 it talks about the  
22 Fisher Creek Trail, how does one present that? I  
23 guess I assumed that the --

24 HEARING OFFICER VALKOSKY: It's a  
25 proposed plan -- off the record, please.

1 (Off the record.)

2 MR. AJLOUNY: Are you aware of any areas  
3 for small picnics on the trail across 101, just  
4 east of 101, that you mentioned you went on  
5 Saturday and did some noise analysis?

6 MR. BAKER: No.

7 MR. AJLOUNY: Okay. Normally, does the  
8 Applicant do the noise analysis, or is it the  
9 Staff?

10 MR. BAKER: The Applicant always  
11 presents a noise analysis in their AFC. If Staff,  
12 after viewing the site and studying the AFC, feels  
13 that additional work is necessary, then we've  
14 performed additional work. If we feel that the  
15 Applicant did an adequate job, then we accept what  
16 was in the application.

17 MR. AJLOUNY: Okay. So do you feel that  
18 the Applicant is an expert in doing these noise  
19 analysis, in your opinion?

20 MR. BAKER: Yes.

21 MR. AJLOUNY: Okay. So did you feel  
22 that there was an inadequate analysis in this  
23 case?

24 MR. ROSEN: No.

25 MR. AJLOUNY: Then why would you go just

1 this past Saturday and do your own analysis?

2 MR. ROSEN: The -- the question, the  
3 issue of the trails came up as a result of some  
4 supplemental testimony that I became aware of last  
5 week. And that's why I decided to go.

6 MR. AJLOUNY: So some testimony came in  
7 from CVRP?

8 MR. ROSEN: Yes.

9 MR. AJLOUNY: Okay. So the question is,  
10 did you feel that the Applicant did an adequate  
11 analysis of this project, and I thought I just  
12 heard yes. Is that true?

13 MR. ROSEN: Yes.

14 MR. AJLOUNY: Okay. So if they did an  
15 adequate analysis of this project, there was  
16 probably no need for you to go on Saturday. I'm  
17 just -- I feel like I'm getting conflicts, so I'm  
18 trying to figure this out.

19 MS. WILLIS: I'm going to object. The  
20 witness has answered why he went.

21 HEARING OFFICER VALKOSKY: Sustained.

22 MR. AJLOUNY: Have you ever done a sound  
23 -- a noise analysis before?

24 MR. ROSEN: Yes, I have.

25 MR. AJLOUNY: Very many times?

1 MR. ROSEN: Yes.

2 MR. AJLOUNY: Did you use the same  
3 equipment that the Applicant used?

4 MR. ROSEN: I don't know.

5 MR. AJLOUNY: Do you feel it would be  
6 worthwhile to maybe do a long term analysis of  
7 those trails that you mentioned that you did on  
8 Saturday?

9 MR. ROSEN: I don't believe so, no.

10 MR. AJLOUNY: Do you feel it would be  
11 necessary or worthwhile or beneficial to the  
12 community if you did an analysis at the future  
13 Fisher Creek Trail?

14 MR. ROSEN: No.

15 MR. AJLOUNY: Just for clarification,  
16 you mentioned the property line and I imagine it's  
17 the south property line, not counting what we call  
18 the panhandle, as where a 64 dB level would be  
19 from the power plant.

20 MR. ROSEN: Yes, I did.

21 MR. AJLOUNY: Okay. Did you hear the  
22 testimony of the Applicant's witness that the park  
23 would be probably louder than the -- the  
24 Passantino home, or M1 receptor?

25 MR. ROSEN: Yes.

1                   MR. AJLOUNY: Okay. Do you have any --  
2                   you mentioned that you -- and you can help remind  
3                   me. You mentioned that you did the analysis last  
4                   Saturday. And what were those numbers you came  
5                   out with?

6                   MR. ROSEN: Fifty-seven decibels and 61  
7                   decibels on the trail.

8                   MR. AJLOUNY: And approximately what  
9                   time was that?

10                  MR. ROSEN: That was between 2:00 and  
11                  4:00 p.m.

12                  MR. AJLOUNY: And then afterwards, did  
13                  you go to the Fisher Creek area and do your  
14                  analysis? I think I heard you say you went there  
15                  --

16                  MR. ROSEN: That's correct.

17                  MR. AJLOUNY: And about what time was  
18                  that? Was that before or after?

19                  MR. ROSEN: That was after the  
20                  measurements on the trail, around -- it was around  
21                  4:00 p.m. I was on the --

22                  MR. AJLOUNY: Okay. Are we going to be  
23                  -- have that analysis that you did, is it going to  
24                  be available to us at all?

25                  MR. ROSEN: No.

1                   MR. AJLOUNY: Do you have a reason why  
2 the public, or -- would not have that analysis  
3 provided?

4                   MS. WILLIS: Mr. Rosen went out on  
5 Saturday. We don't have any written analysis at  
6 this point. I mean, he's just testifying to those  
7 numbers in response to one of the Intervenors'  
8 questions.

9                   MR. AJLOUNY: Well, it just seems to me  
10 that, you know, if -- if you did it, we should  
11 have it to look at, but --

12                   MS. WILLIS: Well, he's stating the  
13 numbers that he found today.

14                   MR. AJLOUNY: So does that mean his  
15 testimony today stands, that he had 57 to 61 dB on  
16 that Saturday, just this past Saturday, from 2:00  
17 to 4:00 p.m., and that's like the truth, just like  
18 he did a written testimony FSA stamped?

19                   MS. WILLIS: I'm going to object to  
20 that.

21                   HEARING OFFICER VALKOSKY: That's --

22                   MS. WILLIS: He's been sworn, and he's  
23 under oath.

24                   HEARING OFFICER VALKOSKY: Sustained.

25                   MR. AJLOUNY: So --

1 HEARING OFFICER VALKOSKY: That is -- is  
2 his testimony. It will be reflected in the  
3 transcript.

4 MR. AJLOUNY: So it's equal to the FSA  
5 like testimony, you know what I mean? It's like  
6 if someone --

7 HEARING OFFICER VALKOSKY: That's  
8 correct. He's sworn to it under oath.

9 MR. AJLOUNY: Okay. Okay.

10 HEARING OFFICER VALKOSKY: Yes. Now,  
11 move on.

12 MR. AJLOUNY: I didn't -- well, I'd just  
13 appreciate some -- some compassion here.

14 HEARING OFFICER VALKOSKY: Move on.  
15 It's irrelevant. Go ahead.

16 MR. AJLOUNY: Okay. Are you familiar  
17 with the PSA, Alan?

18 MR. ROSEN: Yes.

19 MR. AJLOUNY: Have you read through it?

20 MR. ROSEN: Yes.

21 MR. AJLOUNY: Okay. Are you aware of  
22 the changes from the PSA to the FSA?

23 MR. ROSEN: Yes.

24 MR. AJLOUNY: Okay. What changed in the  
25 FSA that -- or what changed from the PSA that --

1 that all of a sudden it's acceptable to have 49 dB  
2 versus 44? Did something trigger that change?

3 MR. ROSEN: Yes. After we questioned  
4 the applicability of 44 versus 49 decibels at the  
5 Passantino residence, the Applicant came forth  
6 with a proposal to mitigate the noise at the  
7 residence itself.

8 MR. AJLOUNY: Okay. And -- and when did  
9 you question that? Was that in a public workshop?

10 MR. ROSEN: I don't recall.

11 MR. AJLOUNY: You don't recall because  
12 you weren't there, or --

13 MR. ROSEN: I don't recall.

14 MR. AJLOUNY: Okay. Alan, do you recall  
15 any workshop conversations about padding the home  
16 versus making the power plant quieter?

17 MR. ROSEN: No.

18 MR. AJLOUNY: Okay. And I'm only  
19 bringing this up because I've been at all the  
20 workshops, and I never remembered that until I saw  
21 the FSA. So I'm just wondering when those  
22 conversations, or conference calls -- was there a  
23 conference call, maybe, with the Applicant and  
24 yourself, Mr. Baker and Mr. Kisabuli and the  
25 Applicant's consultants, regarding this?

1                   MR. ROSEN: I don't recall. I'd have to  
2 go through the project record to answer that  
3 question.

4                   MR. AJLOUNY: Well, I would --

5                   MS. WILLIS: I'm going to -- I object.  
6 There were workshops and public workshops that  
7 this topic was discussed. Mr. Rosen may not have  
8 been in attendance, and Mr. Baker may or may not  
9 have been in attendance. Obviously, that -- there  
10 has been discussion, and we did hold public  
11 workshops on this topic.

12                   HEARING OFFICER VALKOSKY: Thank you.  
13 The question has been asked and answered.

14                   MR. AJLOUNY: Okay. Mr. Baker, you  
15 mentioned that you don't remember any conference  
16 call that I just mentioned. Is that true?

17                   PRESIDING MEMBER LAURIE: He's already  
18 testified. It is assumed true.

19                   MR. AJLOUNY: Do you recall Mr. Kisabuli  
20 not agreeing with padding the home versus the  
21 power plant?

22                   MS. WILLIS: I'm going to object. Mr.  
23 Kisabuli is not present and not --

24                   MR. AJLOUNY: Well, I'm just --

25                   MS. WILLIS: -- not the author of this

1 testimony.

2 MR. AJLOUNY: That's fine. I'm just  
3 asking Mr. Baker if he's aware that Kisabuli  
4 disagreed. Because I have -- I have evidence to  
5 show that he did, and he's under testimony --

6 MS. WILLIS: I'm gong to object on  
7 relevance.

8 HEARING OFFICER VALKOSKY: Sustained.  
9 It is irrelevant at this time. I do not see that  
10 Kisabuli is the author of this testimony. These  
11 are the gentlemen that are the authors of this  
12 testimony.

13 MR. AJLOUNY: Okay. In the PSA versus  
14 the FSA, would you say 90 percent of -- or 95  
15 percent of it is pretty much the same?

16 MR. ROSEN: Yes.

17 MR. AJLOUNY: Okay. Who is the author  
18 of the PSA?

19 MR. ROSEN: It was authored by Mr.  
20 Kisabuli under my supervision.

21 MR. AJLOUNY: Okay. So, Mr. Valkosky,  
22 with that in mind, could you reconsider your --  
23 your -- whatever the words are?

24 HEARING OFFICER VALKOSKY: What you're  
25 looking for, I believe, is the change. And Mr.

1 Baker, Mr. Rosen, one of the two, testified that  
2 there was a change from 44 to 49 decibels. Is --

3 MR. AJLOUNY: I -- I guess --

4 HEARING OFFICER VALKOSKY: -- is that  
5 not correct?

6 MR. AJLOUNY: From 44 to 49, and also  
7 the change --

8 HEARING OFFICER VALKOSKY: Right.

9 MR. AJLOUNY: -- from the PSA to the  
10 FSA.

11 HEARING OFFICER VALKOSKY: Right. And  
12 they've testified to that. Mr. Baker explained  
13 the reason for that change.

14 MR. AJLOUNY: Mr. Valkosky, we're here  
15 to find the truth, and I think this is relevant.

16 HEARING OFFICER VALKOSKY: We're here to  
17 establish -- determine facts.

18 MR. AJLOUNY: Yeah, and -- and the fact  
19 is one of the Staff members did not want to pad  
20 the home. And now he's not on the FSA.

21 HEARING OFFICER VALKOSKY: That is your  
22 interpretation of the facts.

23 MR. AJLOUNY: Well, Mr. Valkosky, I've  
24 had conversations with Mr. Kisabuli --

25 MR. BAKER: Can we be off the record for

1 a moment, please?

2 HEARING OFFICER VALKOSKY: Okay.

3 (Off the record.)

4 HEARING OFFICER VALKOSKY: Thank you,  
5 sir.

6 Mr. Scholz.

7 CROSS EXAMINATION

8 MR. SCHOLZ: The PSA stated that  
9 Applicant's proposed design does not meet the CEC  
10 standard of not more than five dBa above the night  
11 time ambient. What has changed in the Applicant's  
12 proposed design, other than the mitigation of one  
13 receptor, to now meet the CEC standard?

14 MR. BAKER: Can you restate the  
15 question, please?

16 MR. SCHOLZ: Certainly. The PSA stated  
17 that the Applicant's proposed design does not meet  
18 the CEC standard of not more than five dBa above  
19 the night time ambient. What has changed in the  
20 Applicant's proposed design, other than mitigating  
21 one receptor, to now meet the CEC standard?

22 MR. BAKER: I think we've already  
23 answered that. To give any more detailed answer  
24 we'd have to have the PSA in front of us and have  
25 some time to compare. Other than that, you're

1 just putting us to a memory test, and as I said,  
2 I'm failing the memory test.

3 MR. SCHOLZ: You can't -- you recall the  
4 number of things, or nothing, or -- it was a  
5 simple question, I thought, just --

6 HEARING OFFICER VALKOSKY: If you could  
7 --

8 MR. SCHOLZ: -- to start off --

9 HEARING OFFICER VALKOSKY: -- Mr. Baker,  
10 although I believe you have answered it, could you  
11 give Mr. Scholz just a brief summary of the  
12 reasons, without relying on the PSA? And  
13 hopefully this'll be the last time we address it.

14 MR. BAKER: To the best of my  
15 recollection, and Mr. Rosen's recollection, the  
16 only change was the Applicant's proposal to sound  
17 insulate the Passantino residence.

18 MR. SCHOLZ: Thank you. That's the  
19 answer I expected.

20 HEARING OFFICER VALKOSKY: Okay.  
21 Anything further, Mr. Scholz?

22 MR. SCHOLZ: Yes, yes. I'm just getting  
23 organized here.

24 Five million is estimated for the -- to  
25 achieve 44 dBa. That represents less than one

1 percent of the \$400 million project, yet you  
2 consider that too costly to implement on this  
3 project. Could you quantify what you -- what the  
4 cutoff is --

5 MS. WILLIS: I'm going to object.

6 MR. SCHOLZ: -- for too costly?

7 MS. WILLIS: That question was asked  
8 earlier.

9 MR. SCHOLZ: Just --

10 HEARING OFFICER VALKOSKY: Overruled. I  
11 think --

12 MS. WILLIS: And answered.

13 HEARING OFFICER VALKOSKY: -- the  
14 witness can address it briefly.

15 MR. BAKER: Could you repeat the  
16 question, please.

17 MR. SCHOLZ: Five million is estimated  
18 to achieve a 44 dBa for the project, which  
19 represents less than one percent of the 400  
20 million project in total. But you consider that  
21 too costly for this project. What dollar amount  
22 can you quantify would not be too costly?

23 MR. BAKER: I believe that dollar  
24 figures are -- are the area of the Applicant.  
25 It's up to them to suggest whether or not they can

1       afford mitigations.  It's up to us to decide  
2       whether or not we agree with them and pass our  
3       recommendations on to the Commission.

4               MR. SCHOLZ:  I believe it was your  
5       testimony that five million was too expensive, so  
6       that's why I asked you what you felt was too  
7       expensive.  Or was it too expensive.  Is that the  
8       only answer you're going to give?

9               MR. BAKER:  I didn't hear a question.

10              PRESIDING MEMBER LAURIE:  The --

11              HEARING OFFICER VALKOSKY:  Okay, the --

12              PRESIDING MEMBER LAURIE:  Go ahead,  
13       Stan.

14              HEARING OFFICER VALKOSKY:  -- question  
15       is, and referring to page 283 of your testimony,  
16       where you have the statement that the costs,  
17       additional costs for mitigation at the source is  
18       \$5 million, and given the affected property  
19       owners, the additional cost is considered  
20       excessive.

21              I realize that you have answered this  
22       question at least once.  If you could now give a  
23       brief summary of the factors that you used to  
24       determine how that cost was too excessive.

25              MR. BAKER:  In the case of this project,

1 we identified only one sensitive receptor that  
2 would be adversely impacted by the project. Given  
3 that the Applicant balked at spending \$5 million  
4 or so to make the whole project quieter just for  
5 the benefit of one applicant, and given that the  
6 Applicant proposed alternative mitigation that we  
7 felt was -- was appropriate and satisfactory, we  
8 agreed with the Applicant that in this case, the  
9 \$5 million estimate was too high.

10 MR. SCHOLZ: Why do you -- why have you  
11 ignored and seemed to continue to ignore or  
12 overlook noise generated from the proposed project  
13 on those recreating in the area, for example,  
14 those walking, jogging, hiking, cycling,  
15 picnicking, fishing, and/or golfing? Why are  
16 those not considered sensitive receptors?

17 MR. BAKER: The only portions of park  
18 area that we believe are adversely impacted by the  
19 project would be those nearest the project, and  
20 these are just trails, or proposed trails. These  
21 are not places where you will sit and fish, or  
22 where you will picnic for hours, or where you'll  
23 watch your children play for hours. These are  
24 places where you'll be moving through. Sometimes  
25 pretty quickly, jogging, or on a bicycle.

1 Sometimes walking. But you're not going to be  
2 there for very long.

3 And so for that reason, we didn't feel  
4 it was at all necessary to regard the trail  
5 portions as sensitive receptors. Mr. Rosen has  
6 told me that he's had several conversations with  
7 different city and county officials, and he's  
8 gotten differing interpretations of this, but  
9 nothing definitive as to whether the trail is or  
10 is not, in fact, considered a sensitive receptor.

11 MR. SCHOLZ: Thank you for that answer.  
12 I'll go off my script. Would you agree that if  
13 this project wasn't built, the intent for this  
14 area was to have a large recreational element?

15 MS. WILLIS: Objection. This is outside  
16 the testimony in the FSA.

17 HEARING OFFICER VALKOSKY: Sustained.

18 MR. SCHOLZ: The area designated in the  
19 master development plan is -- there's a  
20 substantial recreational element right on the  
21 site. There was an expectation that the community  
22 and the -- and the --

23 HEARING OFFICER VALKOSKY: Mr. Scholz,  
24 you're -- you're testifying. It may be something  
25 you want to look at in Land Use, when we're

1 talking about proposed land uses. These witnesses  
2 are confined to the technical topic of Noise.

3 MR. SCHOLZ: Why did you ignore or  
4 overlook impacts to nearby businesses due to  
5 project noise that are in the recreation business,  
6 i.e., the facility ground rentals of the grange  
7 hall, Coyote Ranch parkway lakes for fishing, and  
8 the nearby golf courses, Coyote Creek, Santa  
9 Teresa, and perhaps Cinnabar Hills?

10 MR. BAKER: We did not identify them as  
11 sensitive receptors near enough to be adversely  
12 impacted by noise from the project.

13 MR. SCHOLZ: So you wouldn't propose any  
14 mitigation measures for these businesses?

15 MR. BAKER: We have not done so.

16 MR. SCHOLZ: Is the noise generated by  
17 the proposed project expected to exceed the  
18 current ambient noise levels?

19 MR. BAKER: Within certain distances  
20 from the plant, yes.

21 MR. SCHOLZ: Can someone differentiate  
22 between noise generated by the proposed project as  
23 opposed to noise from other ambient sources?

24 MR. BAKER: It's possible, when you're  
25 -- you know, if you monitor noise and do it

1 properly and carefully, and use the human ear in  
2 addition to the instruments, you can responsibly  
3 get noise measurements that represent the source  
4 you're interested in.

5 MR. SCHOLZ: If people can differentiate  
6 between highway traffic and a train passing by,  
7 should they be able to differentiate between noise  
8 generated by the proposed project?

9 MR. BAKER: Between the noise from the  
10 proposed project and what?

11 MR. SCHOLZ: Highway traffic, or a train  
12 passing by. I can differentiate those two. I can  
13 differentiate an airplane going by. Will I be  
14 able to differentiate power plant noise?

15 MR. ROSEN: Yes, I believe you would be  
16 able to.

17 MR. SCHOLZ: Do you agree with  
18 statements then made by the Applicant and its  
19 staff that nobody will hear the noise from this  
20 plant?

21 MS. WILLIS: Can you identify where that  
22 statement is from? Is that -- could you -- could  
23 you cite that?

24 MR. SCHOLZ: I -- it's been stated  
25 publicly in media sources.

1                   HEARING OFFICER VALKOSKY: Okay. Let me  
2 -- let me try. Mr. Baker, is the noise emitted by  
3 the Metcalf Energy Center distinguishable from the  
4 existing ambient noise?

5                   MR. BAKER: I would expect it would be.

6                   HEARING OFFICER VALKOSKY: Okay. In  
7 what respects?

8                   MR. BAKER: The noise from a power plant  
9 is a very steady, continuous, even background hum  
10 or roar. It's not that different from what's  
11 called white noise. The existing ambient is very  
12 variable. The noise levels go up and down as  
13 vehicles go by on the road and highway, as  
14 airplanes fly over, as animals are excited and  
15 make noise, as -- as trains come by. Whereas the  
16 power plant is a relatively steady, and I believe  
17 actually soothing source of noise.

18                   HEARING OFFICER VALKOSKY: Thank you.

19                   MR. SCHOLZ: If the CEC now believes the  
20 design of the proposed project should not reduce  
21 the noise generated at the source, but instead to  
22 insulate the receptors who can hear the project,  
23 why isn't the condition of certification to  
24 insulate everyone's home and place of business so  
25 the plant can't be heard?

1                   MR. BAKER: Because the Passantino  
2 residence was the only one identified as suffering  
3 adverse impacts. Excuse me, significant adverse  
4 impacts.

5                   MR. SCHOLZ: And did you quantify how  
6 you determined who gets classified as a adverse  
7 impact?

8                   MR. BAKER: That's detailed in our FSA,  
9 where we talk about the possibility that an  
10 increase in -- in background noise of five dB or  
11 more could point to a significant adverse impact.

12                  MR. SCHOLZ: Thank you. The lowest  
13 ambient noise measurement provided in the  
14 testimony is 37 dBa. Why wasn't that figure used  
15 as your starting point instead of 39 dBa plus  
16 five?

17                  MR. BAKER: As I've explained before,  
18 where traffic is the dominant noise source, it's  
19 customary to average noise over a longer period of  
20 time, typically the night time hours.

21                  MR. SCHOLZ: Did the CEC inquire if the  
22 Applicant did any other ambient noise measurements  
23 for the proposed project not submitted in the  
24 Application for Certification, or any data  
25 responses?

1 MR. BAKER: Not that I'm aware of.

2 MR. SCHOLZ: Thank you. Ambient noise  
3 at Coyote Creek last Saturday was 57 to 61  
4 decibels. Did you state what the ambient noise  
5 level recorded at Fisher Creek last Saturday was?

6 MR. ROSEN: I don't believe I did, but I  
7 -- no.

8 MR. SCHOLZ: Could you state what you  
9 measured there?

10 MR. ROSEN: Can you repeat that  
11 question, please?

12 MR. SCHOLZ: Certainly. Ambient noise  
13 at Coyote Creek was measured last Saturday in the  
14 range of 57 to 61 decibels. What was the ambient  
15 noise level that you recorded in the Fisher Creek  
16 area last Saturday?

17 MR. ROSEN: Measured a -- a level of 52  
18 decibels.

19 MR. SCHOLZ: I think I've weeded out for  
20 duplicates. I think this is my last question.  
21 Would Staff consider providing ambient noise level  
22 monitoring for weekends?

23 MR. BAKER: Our testimony stands.

24 MR. SCHOLZ: One of your conditions was  
25 was that the Applicant do a noise level assessment

1 after the project's in operation. Could you make  
2 -- extend that condition to say do one during the  
3 weekdays and one during the weekends?

4 MR. BAKER: The purpose of that noise  
5 measurement is to measure noise coming from the  
6 power plant, and you do it in such a way as to  
7 minimize noise from outside sources and maximize  
8 the noise you're recording from the power plant  
9 itself. You do that by placing the measuring  
10 devices carefully so that you exclude as much as  
11 possible of the ambient. You want to know what  
12 the power plant's doing.

13 Since the power plant will be operating  
14 at some certain power level above 80 percent, it  
15 doesn't matter when you do the measurement. You  
16 could do it weekday, weekend, holiday, night time,  
17 daytime; the power plant doesn't care.

18 MR. SCHOLZ: So you're not measuring at  
19 the closest receptor. You're just getting a  
20 figure -- a ballpark of what it's doing right  
21 where it's located, if I understood you correctly.

22 MR. BAKER: Yes.

23 MR. SCHOLZ: Thank you.

24 HEARING OFFICER VALKOSKY: Is that it,  
25 Mr. Scholz?

1 MR. SCHOLZ: That's it.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Mr. Garbett, again, keep it brief,  
4 because you did not indicate your desire to cross.  
5 Very brief.

6 CROSS EXAMINATION

7 MR. GARBETT: William Garbett, speaking  
8 on behalf of the public.

9 Question. In the city code, Title 20,  
10 because you did observe what you call LORS, was  
11 the designation for use permits looked upon as to  
12 what noise factors were required before your  
13 studies began on noise?

14 MS. WILLIS: Could you clarify what  
15 you're referring to?

16 MR. GARBETT: What I'm referring to is  
17 Title 20 of the Municipal Code regarding various  
18 use permits that might be applicable to the  
19 Calpine Metcalf project, more specifically, for  
20 instance, campus park industrial designations  
21 and/or commercial zones which might be applicable  
22 for a valid use or conditional use permit.

23 PRESIDING MEMBER LAURIE: So is your  
24 question whether or not in the view of these  
25 witnesses, a special use permit might be required?

1                   MR. GARBETT: Well, if their noise  
2 studies are adequate, since the city code requires  
3 the ANSI C weighted noise measurements.

4                   PRESIDING MEMBER LAURIE: Witnesses, do  
5 you know the answer to that?

6                   MR. BAKER: No, sir.

7                   PRESIDING MEMBER LAURIE: Thank you.  
8 That's your answer.

9                   MR. GARBETT: Okay. Did you make any  
10 measurements with the ANSI C weighted measurement?

11                  MR. ROSEN: No.

12                  MR. GARBETT: Did you make any  
13 continuous measurements over a 24 hour period?

14                  MR. ROSEN: Yes.

15                  MR. GARBETT: From those figures, then  
16 you calculated your LDN?

17                  MR. ROSEN: Yes.

18                  MR. GARBETT: With the testimony of Mr.  
19 Kisabuli, who is not here --

20                  MS. WILLIS: I'm going to object.

21 That's -- Mr. Kisabuli did not --

22                  HEARING OFFICER VALKOSKY: Sustained.

23                  MS. WILLIS: -- testify --

24                  MR. GARBETT: Let me complete my  
25 question --

1                   HEARING OFFICER VALKOSKY: Mr.  
2                   Kisabuli's testimony is not part of the evidence  
3                   offered by Staff.

4                   MR. GARBETT: It has been asked about  
5                   the PSA, the changes between that and the FSA.

6                   HEARING OFFICER VALKOSKY: All right.  
7                   That's -- then phrase your question on that basis.

8                   MR. GARBETT: Okay.

9                   HEARING OFFICER VALKOSKY: That's not  
10                  testimony.

11                  MR. GARBETT: Okay. But with the  
12                  particular -- Mr. Kisabuli not being present, and  
13                  there have been changes made by the supervisor in  
14                  coming up with the FSA, during the FSA was the  
15                  determination made as to the cost effectiveness of  
16                  insulation and/or \$5 million worth of  
17                  modification, was this influenced by a letter from  
18                  the Applicant from Mr. Passantino stating that he  
19                  was satisfied with the 49 dBa at his residence?

20                  MR. ROSEN: Yes.

21                  MR. GARBETT: Okay. Is it a fact, then,  
22                  that there will be no money spent on any sound  
23                  attenuation at the nearest receptor, which is the  
24                  Passantino residence, then? Because there will be  
25                  no insulation provided because Mr. -- the --

1                   MR. BAKER: I can't imagine how you draw  
2 that conclusion. Mr. Passantino wrote that he  
3 would be satisfied with the mitigations proposed  
4 by Calpine.

5                   MR. GARBETT: Okay. My recollection is  
6 the 40 dB is what he would be satisfied with, and  
7 there is no real mention of insulation.

8                   Going further on this, is the riparian  
9 corridor considered a place where sensitive  
10 receptors are?

11                  MR. BAKER: It's my understanding that  
12 CEQA's only interested in human receptors.

13                  MR. GARBETT: Is there a municipal  
14 requirement of the city that noise ratings be made  
15 there, and also under the county noise element,  
16 that noise measurements be made of riparian  
17 corridors?

18                  MR. BAKER: This might possibly be a  
19 question for the Biology folks.

20                  HEARING OFFICER VALKOSKY: Okay. Mr.  
21 Baker, so you're saying you don't know the answer  
22 to that. That's --

23                  MR. BAKER: That's correct.

24                  HEARING OFFICER VALKOSKY: Thank you.

25                  MR. GARBETT: That answer is sufficient.

1                   Last Saturday, in making your  
2                   measurements at Fisher Creek, did you observe any  
3                   wildlife?

4                   MR. ROSEN:    Yes.

5                   MR. GARBETT:   Okay.  Did you observe any  
6                   when you made your measurements across Monterey  
7                   Road?

8                   MR. ROSEN:    Yes.

9                   MR. GARBETT:   Any at the Coyote Inn?  
10                  I'll withdraw that.

11                  HEARING OFFICER VALKOSKY:  Okay.  How  
12                  much more, Mr. Garbett?

13                  MR. GARBETT:   Thank you.  That's the end  
14                  of my questions.

15                  HEARING OFFICER VALKOSKY:  Thank you.

16                  Redirect.

17                  MS. WILLIS:   Thank you.  I only have a  
18                  couple of questions.

19                  REDIRECT EXAMINATION

20                  BY MS. WILLIS:

21                  Q     Just to clarify, Mr. Rosen, was it your  
22                  testimony that at the Coyote Creek bike trail,  
23                  that it would be estimated that the impact from  
24                  the MEC project would be three dBa?

25                  A     That's correct.

1           Q     And so that would be less than the five  
2     dBa that you would expect to create a significant  
3     impact?

4           A     Correct.

5           Q     With the proposed mitigation and the  
6     proposed Conditions of Certification, in your  
7     opinion does this project pose a significant  
8     adverse impact in the area of noise?

9           A     No.

10           MS. WILLIS:  That's all I have.  Thank  
11     you.

12           HEARING OFFICER VALKOSKY:  Mr. Harris.

13           MR. HARRIS:  One question.  I wanted  
14     some clarification.  I think on the Staff's  
15     independent analysis, and I might put the question  
16     in that form.

17                                RE CROSS EXAMINATION

18           MR. HARRIS:  Although you do receive  
19     materials from the Applicant, do you accept those  
20     materials, or -- at face value, or do you perform  
21     your own independent analysis of the materials we  
22     provide to you?

23           MR. BAKER:  We perform an independent  
24     analysis.

25           MR. HARRIS:  Okay.  That -- I thought

1       there was one point where that was a little  
2       unclear. That's the only question I have. Thank  
3       you.

4               HEARING OFFICER VALKOSKY: Ms. Dent.

5               MS. DENT: Nothing further.

6               HEARING OFFICER VALKOSKY: Ms.

7       Grueneich.

8               MS. GRUENEICH: Nothing further.

9               HEARING OFFICER VALKOSKY: Ms. Cord.

10              MS. CORD: I just have one question,  
11       actually.

12                       RE CROSS EXAMINATION

13              MS. CORD: You just said we perform our  
14       own independent analysis. Did you perform an  
15       independent noise analysis that would be similar  
16       to that one that's reflected -- I don't find the  
17       table, but March 16th, 17th, and 18th. Did you  
18       perform an independent analysis parallel to that  
19       one?

20              MR. BAKER: We reviewed the Applicant's  
21       numbers after visiting the site, and becoming  
22       familiar with it we believed that the numbers were  
23       valid. We reviewed the Applicant's analysis of  
24       those numbers, and in our opinion the analysis was  
25       valid. We made one change. We re-analyzed, we

1 re-averaged the -- the night time background  
2 levels to exclude the morning traffic.

3 MS. CORD: Okay.

4 MR. BAKER: But yes, we -- we performed  
5 our own analysis. We did not go out and do  
6 extensive noise measurements, because in this  
7 particular case we, after seeing the site,  
8 believed the numbers that the Applicant produced.

9 MS. CORD: Okay. So that table is  
10 based on Applicant data. Applicant's --

11 MR. BAKER: Yes.

12 MS. CORD: -- data supplied by the  
13 Applicant. And that's not your data.

14 MR. BAKER: No.

15 MS. CORD: Thank you.

16 HEARING OFFICER VALKOSKY: Mr. Scholz.

17 MR. SCHOLZ: Nothing further.

18 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

19 MR. AJLOUNY: No.

20 HEARING OFFICER VALKOSKY: Mr. Garbett.

21 MR. GARBETT: Nothing.

22 HEARING OFFICER VALKOSKY: Thank you.

23 Is there anything else for --

24 PRESIDING MEMBER LAURIE: Mr. Valkosky.

25 Mr. Rosen, turn to page 286 of your FSA.

1 I want to make reference to cumulative impacts and  
2 Cisco. Reading pages 286, 287, the FSA does make  
3 reference to and does analyze the Cisco project in  
4 its cumulative impacts analysis. Do you agree  
5 with that?

6 MR. ROSEN: Yes.

7 PRESIDING MEMBER LAURIE: Is that  
8 inconsistent with your earlier testimony that you  
9 did not examine the impacts of Cisco in your  
10 analysis?

11 MR. ROSEN: No.

12 PRESIDING MEMBER LAURIE: Okay. But in  
13 reading pages 286, 287, was it your intent to  
14 include Cisco in the cumulative impact analysis?

15 MR. ROSEN: Yes.

16 PRESIDING MEMBER LAURIE: And your  
17 conclusions of that analysis are printed at the  
18 bottom of page 287.

19 MR. ROSEN: Yes.

20 PRESIDING MEMBER LAURIE: Thank you.

21 HEARING OFFICER VALKOSKY: Anything else  
22 for the Staff witnesses? Thank you, gentlemen.  
23 You're excused.

24 We'll go off the record for a second.

25 (Off the record.)

1 HEARING OFFICER VALKOSKY: We're  
2 reconvened. The final witness tonight, Ms.  
3 Grueneich.

4 MS. GRUENEICH: Yes. Thank you. At  
5 this time CVRP wishes to call as its witness Mr.  
6 Steve Radis, who is sponsoring the document that  
7 we have identified as Exhibit 35.

8 HEARING OFFICER VALKOSKY: Sir, if you  
9 would spell your name for the record, and the  
10 reporter will administer the oath.

11 MR. RADIS: Steve Radis, R-a-d-i-s.  
12 (Thereupon Steve Radis was, by the  
13 reporter, sworn to tell the truth,  
14 the whole truth, and nothing but  
15 the truth.)

16 TESTIMONY OF

17 STEVE RADIS

18 called as a witness on behalf of Intervenor CVRP,  
19 having been first duly sworn, was examined and  
20 testified as follows:

21 MS. GRUENEICH: Thank you.

22 DIRECT EXAMINATION

23 BY MS. GRUENEICH:

24 Q Mr. Radis, do you have before you the  
25 document that we have identified as Exhibit 35?

1 A Yes, I do.

2 Q And was this document prepared by you or  
3 under your direction and supervision?

4 A Yes, it was.

5 Q And are the facts stated therein true  
6 and correct to the best of your knowledge?

7 A Yes.

8 Q And are the opinions stated therein your  
9 own?

10 A Yes.

11 Q At this time do you have any errata to  
12 that testimony?

13 A Yes, I do.

14 Q Could you please go through it?

15 A Yes. On page -- or Section 2.5, page 6,  
16 we had noted the Santa Clara County ordinance as  
17 45 dBa. As I think we've heard earlier, the  
18 change in land use between the MEC site and the  
19 adjacent sites allows for the addition of  
20 additional five decibels, for a standard of 50  
21 dBa.

22 Q Could you, so that we have this clear  
23 for the record, take us a little bit slower  
24 through the exact location and the exact change?

25 A Not if you want me to take 15 minutes.

1 Q I know we're kind of rushed, but we want  
2 to get this accurate.

3 A Okay. This would be the third full  
4 paragraph, first sentence.

5 Q Let's make sure we're on the right page.

6 A Page 6, Section 2.5. Okay. The second  
7 correction is also on page 6, Section 2.5. We  
8 referred to the Crockett noise standard at the  
9 nearest receptor being the property boundary.  
10 That was not quite accurate. It is actually the  
11 adjacent property. There is a slight buffer area  
12 between the project and that property.

13 Q So you would substitute for the words  
14 "property line" the words "adjacent property"?

15 A Correct.

16 Q Please continue.

17 HEARING OFFICER VALKOSKY: Okay. Excuse  
18 me. One -- one question. Your first change, I  
19 assume you're referring to the first sentence in  
20 paragraph three of this, so that it should read  
21 the Santa Clara County noise ordinance requires a  
22 noise level of 50 dBa from 10:00 p.m.?

23 THE WITNESS: Correct.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Okay, continue please, Ms. Grueneich.

1                   THE WITNESS: Under our proposed  
2 modification to NOISE-2, in Section 3, we'd like  
3 to add including those due to vibrations or start-  
4 up noise.

5                   BY MS. GRUENEICH:

6                   Q     Could you give us the page number and  
7 the line, please.

8                   A     Yes, I'm going there. Okay. It would  
9 be page 7, NOISE-2, first paragraph, and it would  
10 be basically at the end of that sentence. So it  
11 would read, all project related noise complaints,  
12 including those due to vibrations and start-up  
13 noise.

14                   Under NOISE-5, where we talk about noise  
15 surveys, we propose to add a sentence basically  
16 saying noise surveys should be conducted annually  
17 in response to continuing noise complaints.

18                   Q     And where would that go, please?

19                   A     It could go probably at the end of the  
20 only paragraph under NOISE-5.

21                   HEARING OFFICER VALKOSKY: Okay. Could  
22 you repeat your proposed change, please?

23                   THE WITNESS: It would be noise surveys  
24 should be conducted annually and in response to  
25 continuing noise complaints.

1           The final change is under NOISE-5, after  
2           the fifth sentence. We've proposed that there be  
3           some definition of a legitimate complaint. It's  
4           in the testimony, but I can read it here, as well.

5           A legitimate complaint constitutes  
6           either of the following. One, a violation of any  
7           LORS which may be documented by any affected or  
8           other party. Two, a minimum of three complaints  
9           over a 24 hour period that are confirmed by the  
10          project owner, the CV -- CVRP campus health and  
11          safety professional, or any local or state agency  
12          with jurisdiction.

13                   BY MS. GRUENEICH:

14           Q     Am I correct that the sentence that you  
15           have just read is the sentence that is set forth  
16           in your testimony on page 4?

17           A     Correct.

18           Q     The last sentence on that page, as your  
19           recommended change to COC NOISE-5, and what you  
20           are doing is actually indicating where that  
21           sentence would be on NOISE-5 as it is set forth on  
22           page 10.

23           A     Correct.

24           Q     With regard to the two other changes  
25           that you have just indicated, one for NOISE-2 and

1 one for NOISE-5, are those additional items that  
2 you are presenting tonight, or are those items  
3 contained in the text of your testimony?

4 A They're already contained in the text of  
5 my testimony.

6 Q Okay. Do you have any other errata or  
7 changes to make to your testimony?

8 A No, I do not.

9 Q Do you adopt the testimony?

10 A Yes, I do.

11 Q Mr. Radis, could you briefly describe  
12 your background in doing noise analysis similar to  
13 that presented in your testimony?

14 A Sure. I've been conducting noise  
15 studies for more than 15 years. Most of these are  
16 part of EIRs for development projects, typically  
17 oil and gas, a recent hydrogen plant, pipeline  
18 installations. I also did work for the State of  
19 Hawaii Department of Economic Development, on  
20 developing a noise model to evaluate cumulative  
21 geothermal development in the Kilauea east/west  
22 zone.

23 I also have, as well as my staff that  
24 work for me, pretty extensive experience in  
25 monitoring noise. We've spent about the last two

1 years monitoring construction noise at Avila  
2 Beach, associated with sheet pile driving and the  
3 remediation activities there.

4 Q Thank you. Could you briefly summarize  
5 the change --

6 PRESIDING MEMBER LAURIE: Ms. Grueneich,  
7 before you go on. Mr. Radis, you make no  
8 reference to noise experience in your resume. Is  
9 there a specific reason for that?

10 THE WITNESS: That particular resume was  
11 submitted as my resume for hazardous materials. I  
12 don't put everything that I've ever done in one  
13 single resume, and I did not have an opportunity  
14 to submit a second resume to cover noise.

15 MS. GRUENEICH: And if anything,  
16 Commissioner Laurie, I'd like to apologize, and I  
17 think it was really my oversight.

18 PRESIDING MEMBER LAURIE: Okay. Well, I  
19 just want to make sure if Mr. Radis is testifying  
20 as an expert, I want to make sure there is  
21 something in the record that qualifies him for  
22 such.

23 THE WITNESS: There was, I believe, one  
24 reference to noise as part of typically being a  
25 principal investigator as part of environmental

1 impact reports and studies.

2 PRESIDING MEMBER LAURIE: Okay. Well,  
3 absent any objection from other parties, his  
4 testimony will be allowed to go forward.

5 MS. GRUENEICH: Thank you.

6 BY MS. GRUENEICH:

7 Q Mr. Radis, could you please summarize  
8 the change that you are recommending to Staff's  
9 proposed condition NOISE-2, and the basis for that  
10 recommendation?

11 A Yes. Basically, we're suggesting that  
12 NOISE-2 be modified to shorten the time required  
13 for someone at the facility to respond to noise  
14 complaints. Our rationale here is that in many  
15 cases it takes 24 hours or longer, the noise or  
16 offending noise is probably gone, and any  
17 investigation would really reveal nothing in terms  
18 of what was causing the noise.

19 We actually think it's probably to the  
20 advantage of the Applicant to respond rapidly to  
21 noise complaints, given that it could probably be  
22 from another source, as has been the case in other  
23 projects.

24 Q Thank you. Could you please summarize  
25 with regard to the Staff Condition NOISE-5, what

1 are your recommended changes and the basis for  
2 those?

3 A We have quite a few changes. I'll start  
4 first with the noise survey component. We had  
5 mentioned, and Staff has already addressed the  
6 issue of doing surveys at different levels of the  
7 site from 80 percent. We believe that noise  
8 levels will vary based on load, and will vary  
9 based on start-up conditions. We have some  
10 experience at other facilities -- granted, older  
11 facilities -- that have experienced varying noise  
12 at different load levels.

13 We believe the surveys should include  
14 start-up and shut-down, or any other non-routine  
15 condition where noise characteristics could be  
16 different than normal operations.

17 We would propose adding additional  
18 monitoring sites in the noise survey to get a  
19 better feel for noise impacts besides just a  
20 couple locations. One would be the CVRP property,  
21 or the boundary for that. The second one would be  
22 the child care facility. There would be two of  
23 them located in the Cisco development. We believe  
24 there should be one at the nearest offsite  
25 recreation area. And, finally, one in the

1 riparian area nearby.

2 We think that surveys should be  
3 conducted annually to address potential changes in  
4 operations over the years, and especially in  
5 response to any major or continuing complaints.

6 We also believe that noise monitoring  
7 would be preferential to extrapolation, given the  
8 complexities of the terrain in the area, the fact  
9 that extrapolation done as part of the Applicant's  
10 analysis did not consider any noise attenuation or  
11 amplifying effects, including atmospheric  
12 conversions or terrain reflection. Therefore, we  
13 feel that it would be beneficial to not use  
14 extrapolation in this case, but actually do site  
15 specific monitoring in different locations.

16 The second component of our changes to  
17 NOISE-5 covers legitimate complaints. I think  
18 I've covered that already in my errata. That  
19 would be defining of what a legitimate complaint  
20 would be.

21 As far as design standards, we feel that  
22 the PSA recommendation of 44 dBa is more  
23 appropriate than 49 dBa. And secondly, it's  
24 better to rely on source mitigation versus  
25 receptor. There are many reasons for this. One

1 is we don't believe the project meets the current  
2 LORS in terms of noise levels in the nearby  
3 riparian areas. The areas surrounding the  
4 facility would -- are currently classified as  
5 campus industrial, with a 55 dBa standard. If  
6 that were ever to change, I think we've already  
7 heard that the DNL at the property line is 70 dBa,  
8 and the straight dBa level is, I think, 63 or 64.

9 Those are -- are quite loud levels at  
10 the property boundary, and if development were  
11 ever to occur at those locations, it would far  
12 exceed noise standards.

13 The final component again gets back to  
14 start-up noise. The Applicant has proposed  
15 significant mitigation for start-up. We're not  
16 convinced that it would not exceed the noise  
17 standards in the area. And in addition, given the  
18 number of start-ups per year, this is going to be  
19 a pretty frequent event. Steam releases could  
20 definitely result in short term noise impacts  
21 greater than the allowable standards.

22 Q You have also proposed a new noise  
23 condition, Number 8. Could you please summarize  
24 it, and the basis for that recommendation?

25 A We have some concerns over vibration

1 from the facility. I've been around older  
2 combined cycle turbines that -- pretty significant  
3 vibration. I attempted to operate a Doppler  
4 acoustic sounder about a quarter of a mile from an  
5 old Edison facility unsuccessfully, due to noise  
6 and vibration. It's very sensitive equipment.

7           There are -- there's potential that the  
8 Cisco facility will contain very vibration  
9 sensitive R&D facilities. At this point we don't  
10 know where those would be located or if there'd be  
11 any effect. Therefore, we propose that a baseline  
12 vibration study be conducted, and then a follow-up  
13 vibration study when the plant is in operation,  
14 just to assure that there would not be any impact  
15 to adjacent facilities.

16           Q     Finally, we've heard tonight discussion  
17 of both 50 dBA versus 70 dBA noise levels. Could  
18 you summarize, in layperson's term, what might be  
19 the difference of those two levels?

20           A     In terms of what they would be  
21 equivalent to?

22           Q     I'm sorry. In terms of just somebody  
23 who was experiencing noise level at 50 dBA versus  
24 a noise level at 70 dBA.

25           A     Well, a -- a 70 dBA level is about the

1 equivalent of a freight train at 100 feet. The  
2 difference being that a freight train moves on,  
3 but this would be continuous noise. As we've  
4 heard, 50 dBa is very similar to many of the  
5 ambient measurements that have been taken, or  
6 within that range, and I believe is equivalent to  
7 many indoor office locations, for example.

8 MS. GRUENEICH: Thank you. Mr. Radis is  
9 now available for cross examination.

10 HEARING OFFICER VALKOSKY: Thank you.  
11 Before we do that I've got just a couple of  
12 questions.

13 Mr. Radis, I'd like to direct your  
14 attention to page 6 of your testimony.  
15 Specifically, that third paragraph, and I believe  
16 you changed the existing 45 dBa to 50 dBa. Is  
17 that correct?

18 THE WITNESS: Yes.

19 HEARING OFFICER VALKOSKY: Okay. Now,  
20 as I read it, the first sentence says the Santa  
21 Clara noise ordinance requires a noise level of 50  
22 dBa from 10:00 p.m. to 7:00 a.m. Okay. Now, it's  
23 the next sentence that I'm confused on. The  
24 project design standard of 40 dBa at the nearest  
25 property boundary, this standard -- and I assume

1       that means the standard in the ordinance -- cannot  
2       be met even under best case operating conditions.

3                 Is that still a correct statement in  
4       view of your change?

5                 THE WITNESS:  Actually, I think I have  
6       another errata here.  That would be 49 dBa at the  
7       nearest residence, and clearly it would be much  
8       louder, as we've already heard, at the property  
9       boundary.  And our interpretation of the county  
10      standard would be that it's the property boundary,  
11      not the nearest residence.

12                MR. HARRIS:  Excuse me.  I'm confused as  
13      to what the sentence says now.  Can we go through  
14      it?

15                HEARING OFFICER VALKOSKY:  Yeah.  Could  
16      you just -- I think that's a valid inquiry.  Could  
17      you read us the version of the three sentences in  
18      that paragraph that represents your testimony?

19                THE WITNESS:  Okay.  The first sentence  
20      would be correct.  The second one would probably,  
21      or should probably read, the -- with the project  
22      design standard of 49 dBa at the nearest  
23      residence, the standard cannot be met even under  
24      best case operating conditions at the property  
25      boundary.

1                   HEARING OFFICER VALKOSKY: Okay. And in  
2 that second sentence, what does the word  
3 "standard" refer to?

4                   THE WITNESS: We're --

5                   HEARING OFFICER VALKOSKY: I mean, as --  
6 as I see it there are two potential references in  
7 that paragraph. One is to the 50 dBa in the  
8 county ordinance, and the other is to the design  
9 standard of 49 dBa.

10                  THE WITNESS: Okay. The -- the project  
11 design standard of 49 dBa at the nearest residence  
12 cannot meet the county ordinance at the property  
13 boundary, is basically what we're saying.

14                  HEARING OFFICER VALKOSKY: Okay. Could  
15 you -- you're helping me if you could just repeat  
16 that once more.

17                  THE WITNESS: I was afraid of that.

18                  The project design standard of 49 dBa at  
19 the nearest residence cannot meet the county noise  
20 ordinance at the property boundary.

21                  HEARING OFFICER VALKOSKY: Okay. Thank  
22 you.

23                  THE WITNESS: And we've already heard, I  
24 think, from Staff that property boundary noise  
25 would be on the order of 63 or 64 dBa.

1                   HEARING OFFICER VALKOSKY: Fine. It's  
2 just I think there was a -- there was, at least in  
3 my mind, an ambiguity there.

4                   THE WITNESS: I think there's part of  
5 the sentence missing.

6                   HEARING OFFICER VALKOSKY: Thank you.  
7                   Is it your testimony that with the  
8 implementation or the adoption of the measures, or  
9 the Conditions of Certification as you have  
10 modified them, that the project would then meet  
11 all applicable LORS?

12                  THE WITNESS: We have not done the -- an  
13 analysis of noise at every given location. But  
14 based on just a review of the Applicant and  
15 Staff's analysis, it appears that the reduction at  
16 the source would be adequate to reduce noise  
17 levels at most locations to within the applicable  
18 LORS. I'm not sure if that would be the case at  
19 the planned path that would be adjacent to the  
20 facility. And it probably would not quite meet  
21 the standard at the southern property boundary at  
22 this point. At least I'm not convinced of that  
23 without doing an analysis of it.

24                  HEARING OFFICER VALKOSKY: Do you have  
25 an opinion as to the order of priority or order of

1 importance of the -- the changes which you  
2 propose?

3 THE WITNESS: I hadn't really thought  
4 about it, although my preference would probably be  
5 for noise reduction at the source, only in that  
6 that would tend to reduce the potential for  
7 complaints and impacts in the surrounding areas.

8 HEARING OFFICER VALKOSKY: Okay. Thank  
9 you.

10 PRESIDING MEMBER LAURIE: Mr. Radis,  
11 good evening, sir. Thank you for being so patient  
12 with us today.

13 To what extent are you familiar with the  
14 Cisco project?

15 THE WITNESS: Not overly. I obviously  
16 have seen the layout, or at least where the  
17 location is. I have browsed through their -- at  
18 least their draft EIR, so I'm --

19 PRESIDING MEMBER LAURIE: And does that  
20 include the noise section of the EIR?

21 THE WITNESS: I did flip through it this  
22 evening.

23 PRESIDING MEMBER LAURIE: Okay. Do you  
24 have a specific recollection of the noise impacts  
25 generated by the Cisco project?

1 THE WITNESS: The Cisco project, due to  
2 vehicle traffic, would exceed the noise standards,  
3 obviously, during periods of large flows of  
4 traffic.

5 PRESIDING MEMBER LAURIE: And are those  
6 impacts fully mitigated?

7 THE WITNESS: It's my understanding that  
8 they were mitigated to the maximum extent feasible  
9 under CEQA, which doesn't mean that they'll meet  
10 the LORS. I still believe they considered that  
11 significant, which required a statement of  
12 overriding considerations by the city council.

13 PRESIDING MEMBER LAURIE: And is it your  
14 understanding that the city did make overriding  
15 findings on the noise, on the noise impact?

16 THE WITNESS: I have no knowledge,  
17 except that they wouldn't approve the project  
18 without it.

19 PRESIDING MEMBER LAURIE: Thank you,  
20 sir.

21 HEARING OFFICER VALKOSKY: Cross  
22 examination, Mr. Harris?

23 MR. HARRIS: Yes, a few questions.

24 ///

25 ///

1 CROSS EXAMINATION

2 BY MR. HARRIS:

3 Q I noticed, as the Commissioner did, that  
4 you your experience is related to -- in your  
5 resume, air quality, public health, and hazardous  
6 materials. But you have provided expert testimony  
7 on -- on noise in the past; is that correct?

8 A As part of the preparation of  
9 environmental impacts. Correct.

10 Q Okay. Have you --

11 A As well as part of the geothermal  
12 development in Hawaii.

13 Q Okay. Have you testified as an expert  
14 witness on noise before this Commission?

15 A No, I have not.

16 Q Have you testified as an expert witness  
17 on noise before any regulatory agency?

18 A When you say regulatory agency, would  
19 that include state and local governments?

20 Q Outside the context of the EIR that you  
21 said before. Yes.

22 A Outside the context --

23 Q Not -- not including the EIR review you  
24 referenced, for traditional developments. Well,  
25 let me -- I'll be specific. Have you testified on

1 noise issues for the Public Utilities Commission?

2 A No.

3 Q Have you testified before any state  
4 regulatory body or federal regulatory body on  
5 noise issues?

6 A No, I have not.

7 Q Thank you. In your testimony on the  
8 bottom of page 2, there's a footnote that talks  
9 about an EPA guidance information on levels of  
10 noise. Do you have your testimony before you?

11 A Yes, I do.

12 Q That document reference is a 1974  
13 document. Can you explain why that's the most  
14 recent document you relied on for those  
15 statements?

16 A I think it was what was handy at the  
17 time. In -- in many cases the methodologies used  
18 to estimate noise have really not changed over the  
19 years.

20 Q Can you give us a brief summary of the  
21 information that was presented in that document  
22 you've referenced in your testimony?

23 A The particular reference relates to EPA  
24 recommendations for noise levels for outdoor  
25 activities, and defines how they would create

1 annoyance.

2 Q And how typically do noise professionals  
3 use this document?

4 A I really don't know what all other noise  
5 professionals rely on.

6 Q Okay. Typically, in your experience,  
7 how have you used this document?

8 A I and my staff have referenced this  
9 before in other documents, mainly CEQA documents.

10 Q And referenced it in support of what  
11 proposition?

12 A What proposition?

13 Q How -- how have you used the document in  
14 the past, I guess.

15 A Typically, we've used it in the absence  
16 of specific LORS or noise ordinances, to define  
17 what a significant impact might be under CEQA.

18 Q And to your knowledge, that document has  
19 not been updated since 1974?

20 A Not to my knowledge.

21 Q Thank you. Footnote 4, you also  
22 reference a study that was done in the "Journal of  
23 Sound Vibration". Was that particular article  
24 about power plant vibration?

25 A No. That was, I believe, related to jet

1 engines. Slightly different turbine application.

2 Q So is it directly applicable, then,  
3 analogous to a power plant situation?

4 A I think from a noise propagation  
5 standpoint it would be analogous. Obviously, the  
6 initial sound levels of a jet engine are different  
7 than a power plant. They're going to be much  
8 louder.

9 Q How about with -- with respect to  
10 vibration. Would that be an applicable or good  
11 analogy to use, a jet engine and a -- and a  
12 combustion turbine?

13 A Again, for propagation analysis, it  
14 would be applicable, but not as a reference for  
15 the initial vibration conditions that would be  
16 created.

17 Q Okay. So propagation, but not  
18 vibration? And what do you mean by propagation?

19 A Propagation would mean the attenuation  
20 of either sound or vibration waves in the  
21 atmosphere or in the ground.

22 Q Thank you. In your testimony on page 1,  
23 you have a sentence at the end of the first  
24 paragraph where you state that -- I think it's the  
25 next to the last sentence. The campus will be

1 devoted to research and development, assembly and  
2 light manufacturing, is located on 385 acres  
3 within a thousand feet south of the project.

4 Is that number correct, a thousand feet,  
5 and how did you measure them?

6 A The measurement is based on the distance  
7 from property boundary to property boundary. And  
8 obviously, a majority of the facility would be  
9 located beyond a thousand feet.

10 Q So it's not from the noise source to the  
11 receptors. Is that correct?

12 A No.

13 Q What would be your estimate, then, of  
14 the distance from the noise source to the nearest  
15 receptor on the CVRP campus?

16 A My guess is it would be probably another  
17 two to 300 feet.

18 Q Well, if I'm not mistaken, I believe the  
19 Passantino property is about 1200 feet from the  
20 noise source. So with that reference in mind,  
21 what would be your estimate of the distance from  
22 the noise source to the campus industrial?

23 A I really can't tell from this figure,  
24 without a scale. But it is farther. I'll admit  
25 that. But I don't think it's substantially

1 farther away from the property boundary.

2 Q Can you give me a ballpark, oh, 2000?

3 A I don't think it's 2,000. I don't think  
4 it's double. It looks more like it's another 10  
5 to 20 percent greater.

6 Q Okay. Then is it fair to say you don't

7 --

8 A Twenty percent.

9 Q -- you don't know for sure the exact  
10 distance from the noise source to the campus?

11 A Correct.

12 Q Did your analysis, then, assume that the  
13 noise was generated at the property line, or at  
14 the noise source itself?

15 A No, at the noise source.

16 Q So although you don't know the distance  
17 from the noise source to the nearest receptor, and  
18 that's not in your testimony, but you're saying  
19 that's -- that was the distance you used in doing  
20 your analysis.

21 A We actually did not do an analysis. All  
22 we did was reviewed the Staff and Applicant  
23 analysis, reviewed applicability to the LORS in  
24 areas where we could actually see impacts based on  
25 the Applicant's analysis.

1 Q Okay.

2 A We never actually did any analysis  
3 related to the CVRP property.

4 Q Okay, thank you. Do you happen to know  
5 what the -- the -- excuse me, let me back up.

6 Let's talk about the noise measurements,  
7 because a couple of times you talked about DNL,  
8 and there's been L-90 even used in the past, and  
9 dBa, and my liberal arts education often fails me,  
10 so I want to make sure I'm understanding that --  
11 that we're comparing apples to apples.

12 Can you describe briefly, is DNL, is  
13 that an average number?

14 A That's the day/night average, 24 hour  
15 average, which has a night time penalty of ten  
16 decibels to account for greater sensitivity at  
17 night.

18 Q So that's an averaging of numbers.

19 A Correct.

20 Q All right. And L-90?

21 A I believe that's the level that would be  
22 only exceeded ten percent of the time, or would be  
23 characteristic of 90 percent of the time.

24 Q Okay. So that's not an average number.  
25 Is that correct?

1           A     It's -- it's actually based on some  
2 averaging time is how you calculate that  
3 particular number. So it's not specific to a  
4 given averaging time.

5           Q     It has to do with exceedences,  
6 essentially.

7           A     Right.

8           Q     Okay. Were you aware that CVRP had  
9 proposed for its project a 60 DNL and a 45 -- or,  
10 excuse me, a 54 dBa?

11           MS. GRUENEICH: Objection. Unless we  
12 have the fact in the record I think we should pose  
13 it perhaps as a hypothetical. I mean, it may or  
14 may not be true. I don't know. I'm just  
15 questioning whether we have -- have that in the  
16 record.

17           MR. HARRIS: I have a document that  
18 shows that.

19           HEARING OFFICER VALKOSKY: Could you  
20 identify the document and indicate whether it's in  
21 this record?

22           MR. HARRIS: It's an attachment to the  
23 CVRP EIR -- I'm -- I'll be pleased to pose this as  
24 a hypothetical --

25           HEARING OFFICER VALKOSKY: Fine.

1                   MR. HARRIS:  -- that avoids introducing  
2 a document, so.

3                   BY MR. HARRIS:

4                   Q     Hypothetically speaking, if there was a  
5 source nearby that had proposed a 60 DNL and a 54  
6 dBa -- you got those numbers in mind?

7                   A     Yes.

8                   Q     Now, are those numbers higher or lower  
9 than the proposed numbers for the Metcalf Energy  
10 Center?

11                  A     I'm not sure in what context those  
12 numbers are proposed, if that is for traffic noise  
13 coming to and from the facility or if that's from  
14 fixed facility noise.  I really don't understand  
15 the context of what they were proposing.

16                  Q     Well, the impacts would be analyzed  
17 against those levels.

18                  A     Okay.

19                  Q     A 60 DNL, 54 dBa.  Are those numbers  
20 higher or lower, those hypothetical numbers,  
21 higher or lower than the numbers proposed for the  
22 Metcalf Center?

23                  A     They are higher.

24                  Q     Do you know what the numbers are for the  
25 Metcalf Center?

1 A For the design standard?

2 Q Yes. The impacts --

3 A A 49 dBa at the nearest residence, and I  
4 believe it was 55 DNL.

5 Q Okay. So the DNL difference there would  
6 be -- the hypothetical would be five higher on the  
7 DNL and about five higher, as well, on the dBa.  
8 Is that correct?

9 A Well, except that the design standard  
10 ignores all the other areas surrounding the  
11 facility --

12 Q Answer my question, if you could. Sixty  
13 versus 55 for DNL, and 54 versus 49 for dBa. Is  
14 that correct?

15 A If it's correct for the CVRP, which I  
16 don't know.

17 Q Okay. In your testimony, you proposed a  
18 different level for the Metcalf Energy Center.  
19 You proposed a 50 DNL and a 44 dBa. Is that  
20 correct?

21 A Correct. That was based on the Staff's  
22 original recommendation in the PSA.

23 Q Okay. So, to make sure I have the  
24 numbers correct, the hypothetical number, 60 DNL,  
25 the Metcalf Energy Center, 55 DNL, and your

1 proposal for Metcalf is 50 DNL. Are those numbers  
2 correct?

3 A Those numbers are correct. The  
4 application is different.

5 Q Okay. The dBa, again, 54 for the  
6 hypothetical, 49 for Metcalf, and 44 for your  
7 proposal for Metcalf. Are those numbers correct?

8 A I love numbers. Can you do that one  
9 more time?

10 Q Fifty-four dBA, 49 dBa, 44 dBa.

11 A Okay, 44 in the PSA --

12 Q Forty-four in your recommendations.

13 A -- 49 currently proposed.

14 Q In the -- in the FSA. And 54 in the  
15 hypothetical.

16 A Those numbers would be correct if they  
17 were applied in the same manner.

18 Q Okay. Thank you. Do you know whether  
19 there's been recommended monitoring for the CVRP  
20 project?

21 A I am not aware of any.

22 Q So you're not aware of any monitoring  
23 that's been recommended for recreation areas or  
24 the child care center, or any of the other areas  
25 you've proposed in your testimony?

1 A No.

2 Q So those would apply only to Metcalf?

3 A Excuse me?

4 Q So those would only apply to the Metcalf  
5 Center, from what you know.

6 A That's the only project I'm testifying  
7 on.

8 Q Okay. I want to go back to the  
9 paragraph, moving on, that you started out with,  
10 on page 6. It is the Santa Clara noise number.  
11 This is the one we kind of went through a couple  
12 of three times. I want to go back to the first  
13 sentence of that one.

14 You said the Santa Clara noise ordinance  
15 requires a noise level -- and your corrected  
16 testimony is 50 dBa. That number is for a  
17 residential receiver, is it not?

18 A Correct.

19 Q Okay.

20 A That is for the residential property at  
21 the boundary.

22 Q Yes, it's a residential number.

23 A Correct.

24 Q Thank you. I'm going to try to skip a  
25 whole bunch of these. Going on to the question of

1 Condition 5. You talked about older facilities  
2 and start-up noise. You haven't analyzed new  
3 combined cycle or efficient power plant -- you  
4 mentioned older facilities only. Isn't that  
5 correct?

6 A We've analyzed smaller cogen facilities,  
7 but I --

8 Q But you haven't analyzed a project of  
9 this size and magnitude and this configuration; is  
10 that correct?

11 A That's correct.

12 Q The noise vibration studies that you've  
13 talked about as well, are those typically -- this  
14 would be vibration studies. Are those typically  
15 considered noise issues?

16 A We typically consider noise and  
17 vibration together in an analysis.

18 Q In terms of vibrations, have -- have you  
19 taken any vibration readings in terms of train  
20 studies, and what have you, for CVRP?

21 A I'm sorry. Have I taken measurements  
22 for CVRP?

23 Q Related to vibrations and the train  
24 traffic in the area.

25 A No, I have not.

1           Q     Do you know whether that subject has  
2     been investigated for the CVRP project?

3           A     Not to my knowledge.

4           Q     Is your testimony tonight --

5                     MS. GRUENEICH:  The witness is  
6     testifying to CVRP, or to --

7                     MR. HARRIS:  His testimony tonight --  
8     let me tie it back.

9                     BY MR. HARRIS:

10          Q     Your testimony tonight was that there  
11     are vibration concerns in the area.  Is that  
12     correct?

13          A     That is correct.

14          Q     And you stated those vibration concerns  
15     may be an issue for people who are using the  
16     campus industrial area.

17          A     Correct.

18          Q     And you stated, though -- and my  
19     question was, have vibration studies been  
20     performed for the train traffic in the area, and  
21     your answer is?

22          A     No, they have not.  At least not to my  
23     knowledge.

24          Q     One final thing.  You mentioned this --  
25     this definition of a legitimate complaint on page

1 4 of your testimony. So you're proposing to  
2 expand -- excuse me. You heard Mr. Baker's  
3 testimony where he defined a legitimate complaint.  
4 Did you hear that testimony?

5 A I did hear it, but I -- I can't recall  
6 what he said. If he could perhaps repeat that I  
7 would appreciate it.

8 MS. GRUENEICH: Why don't we hear the  
9 question first, and see if we need to hear it.

10 BY MR. HARRIS:

11 Q Well, my question is, are you proposing  
12 to change Mr. Baker's standard for what a  
13 legitimate complaint is?

14 A We were looking mainly for clarification  
15 of what Mr. Baker's definition of a legitimate  
16 complaint was. Given that left as it is, it's  
17 left to quite a wide range of interpretation.

18 Q With the understanding that you have  
19 this evening, based on Mr. Baker's testimony, has  
20 that -- has that issue now been taken off the  
21 table; can we ignore this proposed definition?

22 A I can't recall what Mr. Baker said for  
23 legitimate. I -- I do recall only that it had to  
24 do with whether or not it involved the MEC  
25 facility or another facility. I think he gave

1       Crockett as an example there, the CNH facility was

2       --

3               HEARING OFFICER VALKOSKY:  As -- as -- I  
4       don't want to get Mr. Baker back on the stand,  
5       but, Ms. Willis, correct me if I'm wrong.  But I  
6       basically understood Mr. Baker's testimony as  
7       define a legitimate complaint as a noticeable  
8       noise emanating from the subject facility, as  
9       opposed to from another facility.  Is that --

10              MS. WILLIS:  That was correct.

11              HEARING OFFICER VALKOSKY:  Okay.  So  
12       that's essentially Mr. Baker's definition of a  
13       legitimate complaint.

14              THE WITNESS:  It would seem that Mr.  
15       Baker's definition would cover basically what  
16       we've got here, and probably be more wide ranging  
17       in terms of identifying what -- what a complaint  
18       would be.

19              BY MR. HARRIS:

20              Q     Okay.  So can we withdraw, then, the  
21       portion of your testimony regarding the definition  
22       of legitimate complaints?

23              A     I think maybe a combination would  
24       perhaps be better than one or the other.

25              MS. GRUENEICH:  For clarification, I'm

1 not sure that I heard Staff say that they were  
2 proposing to put in the condition the definition  
3 given tonight on legitimate complaint. We heard  
4 that there was an interpretation --

5 HEARING OFFICER VALKOSKY: I agree.

6 MS. GRUENEICH: -- from the Staff --

7 HEARING OFFICER VALKOSKY: That is --  
8 that is correct.

9 MS. GRUENEICH: -- person, and before we  
10 kind of march into this I wanted to make sure we  
11 were making, I think, perhaps an assumption that  
12 hadn't been stated.

13 HEARING OFFICER VALKOSKY: Right. From  
14 the Committee's viewpoint we're just clarifying  
15 the desires of the parties on the contents of a  
16 set of conditions.

17 BY MR. HARRIS:

18 Q Okay. One more question along this  
19 line, too. What kind of qualifications -- the  
20 second half of your -- of your proposed  
21 definition, the CVRP campus health and safety  
22 professional, is that a title that someone has  
23 there, and if so, what are the qualifications for  
24 that person?

25 A I do not know what their qualifications

1 are. But it is a title at the current Cisco  
2 facility.

3 Q So you don't have any idea what kind of  
4 training, if any, these folks have with regard to  
5 noise; is that correct?

6 A I would not -- I really can't say for  
7 sure. I can speculate, but I probably shouldn't.

8 MR. HARRIS: Okay. Thank you. No more  
9 questions.

10 HEARING OFFICER VALKOSKY: Ms. Willis.

11 MS. WILLIS: Thank you. I just have a  
12 few questions.

13 CROSS EXAMINATION

14 BY MS. WILLIS:

15 Q On page 2 -- and these are mostly just  
16 clarifying -- clarifying questions. On the second  
17 paragraph, about fourth line down, starting with  
18 the third line down at the end. You discuss the  
19 proposed Juan Bautista de Anza National Historic  
20 Trail bicycle route, and the Bay Area Ridge Trail.  
21 Could you point out, or describe where those  
22 trails are, or proposed trails, and maybe clarify  
23 if you're saying the Bay Area Ridge Trail is an  
24 existing trail?

25 A I do not recall if it's an existing or a

1 proposed trail at this point. But I do believe  
2 that they mostly traverse on the opposite side of  
3 Monterey Road.

4 Q Have you visited the area of the  
5 proposed or existing trails?

6 A I have not visited the trails. I have  
7 driven through the area.

8 Q And your testimony, then, is that you're  
9 not sure if these trails are in existence or not?

10 A I do not know if they're all in  
11 existence. Correct.

12 Q Thank you. Just another point of  
13 clarification. In your testimony, you mentioned  
14 the noise -- potential noise impact if the area is  
15 developed, with a concern about at the property  
16 line the noise measurement would be at 70 dBa. Is  
17 that a correct characterization of your testimony?

18 A Actually, I believe it's 70 LDN,  
19 day/night average, and that's based on the 63 dBa.  
20 And again, the -- the 10 dBa penalty at night  
21 increases that value to 70. And I believe that  
22 came from either the Applicant or Staff's  
23 testimony.

24 Q Is it your understanding that the  
25 development in the area would be for residential

1 use?

2 A I believe it would be a continuation of  
3 campus industrial, and under the plan for that  
4 development I believe they were implementing a 55  
5 dBa standard.

6 Q For -- so your understanding is that the  
7 city ordinance, or -- is a 55 dBa standard for  
8 industrial uses?

9 A No. It's -- it's actually the -- in the  
10 FSA, Table 1, for the North Coyote Valley campus  
11 industrial area master development plan, it's  
12 listed as 55 dBa.

13 Q For?

14 A For that development.

15 Q I'm sorry, for industrial use. You --  
16 you're talking -- this is not an existing use,  
17 this is -- you said that if the area were  
18 developed. And I'm asking you what type of  
19 development do -- would you -- you said you did  
20 not think it was residential development, but it  
21 could be campus industrial development.

22 A It's currently planned for campus  
23 industrial development.

24 Q Correct. So industrial use standards  
25 would apply then; is that correct?

1           A     I believe in this particular instance it  
2 would not apply, because it's got a specific  
3 requirement for this development as campus  
4 industrial, which has a more stringent noise  
5 requirement than a straight industrial designation  
6 as you might find in an industrial land use zone.

7           Q     Have you reviewed the amended North  
8 Coyote Valley master development plan?

9           A     No, I have not.

10          Q     I believe it's dated October 24th, 2000.

11          A     I don't believe so. I took that value  
12 from the Staff's FSA.

13          Q     Okay, thank you. One further question.  
14 On page 3, or -- you talk -- on the change that  
15 you propose for Condition NOISE-2, the question I  
16 have is in regards to response within one hour of  
17 a complaint receipt.

18                   Given Mr. Baker's testimony, do you  
19 still think that's something that's feasible?

20          A     I still think that some effort should be  
21 made to identify as soon as possible what the  
22 offending noise might be. If it's something that  
23 waits up to 24 hours, it's more than likely that  
24 that noise will have passed.

25          Q     So your -- your testimony would be that

1 you just -- there needs to be identification of  
2 the noise?

3 A Yeah, I think it's more identification  
4 and abatement of the noise. If this is a  
5 complaint that's coming in at night, whoever is  
6 making the complaint isn't going to feel any  
7 relief if they hear back 24 hours later if  
8 nothing's done.

9 Q So your testimony is more than  
10 identification. It'd be identification and  
11 abatement?

12 A I would assume that if there was an  
13 identification of excessive noise, that it would  
14 be abated.

15 Q Within one hour.

16 A Within whatever time it takes.

17 Q So --

18 A It may not be feasible within one hour.

19 MS. WILLIS: Okay. Thank you. That's  
20 all I have.

21 HEARING OFFICER VALKOSKY: Thank you.

22 Ms. Dent.

23 MS. DENT: No questions.

24 HEARING OFFICER VALKOSKY: Ms. Cord.

25 MS. CORD: Yes, thank you.

1 CROSS EXAMINATION

2 BY MS. CORD:

3 Q We were talking about legitimate noise  
4 sources a minute ago. And there was a reference  
5 to the Crockett Power Plant as being near other  
6 industrial uses so there could be a mistake as to  
7 what the source of the noise could be. And you're  
8 saying your one hour response time would help  
9 define the source of the noise.

10 A I think in that case there -- my  
11 understanding is the majority of the noise  
12 complaints came from an adjacent facility. And  
13 clearly, if you're able to identify what that  
14 noise is as soon as possible, then you can get  
15 back to the person and basically tell them that  
16 it's not our facility, and you can more or less  
17 narrow it down as to what that noise is coming  
18 from. I think it actually aids the facility in  
19 deflecting noise complaints that they're not  
20 responsible for.

21 Q Thank you. Do you know of any other  
22 heavy industrial facilities anywhere in the  
23 vicinity of the proposed Metcalf Energy Center?

24 A Not at this time.

25 Q Okay. So can -- we've heard that

1 traffic and train noises are existing in the area,  
2 but that they'll be easily distinguished from the  
3 Metcalf Energy Center noise?

4 A I think at this point it would be easier  
5 to distinguish between vehicle traffic, train  
6 noise, and power plant noise.

7 Q So I guess I'm beginning to feel like  
8 the possibility that the noise could come from  
9 another source is probably pretty low, since there  
10 really aren't other similar sources anywhere  
11 nearby.

12 A Yeah, given the current situation. I  
13 don't know if that would change in the future or  
14 not, but currently it would be, I think, fairly  
15 easy to distinguish between the noise sources that  
16 would be present.

17 Q So if there were a noise complaint, it  
18 would be -- it wouldn't be that likely that it  
19 wouldn't be coming from the power plant?

20 A Not as likely as other locations that  
21 have multiple industries.

22 Q Good. Okay. Thank you.

23 And I just want to clarify. Did you  
24 write the Cisco EIR?

25 A I had nothing to do with the Cisco EIR.

1 Q You didn't contribute to it?

2 A Not at all.

3 Q You haven't been asked to review it?

4 A No.

5 Q And you didn't come here tonight

6 prepared to testify about the Cisco EIR?

7 A No, I did not.

8 MS. CORD: Thank you. No further

9 questions.

10 HEARING OFFICER VALKOSKY: Thank you,

11 Ms. Cord.

12 Mr. Wade.

13 MR. WADE: I have no questions.

14 HEARING OFFICER VALKOSKY: Okay. Mr.

15 Scholz.

16 MR. SCHOLZ: No questions.

17 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

18 MR. AJLOUNY: Since I took so much time

19 on the other, I have no questions.

20 HEARING OFFICER VALKOSKY: Thank you.

21 Mr. Garbett.

22 MR. GARBETT: I just have three

23 questions.

24 ///

25 ///

1 CROSS EXAMINATION

2 BY MR. GARBETT:

3 Q The first question is, on the ANSI A  
4 weighted scale, is train noise vastly attenuated  
5 in the readings because the roll off at the low  
6 end of the ANSI A weighted scale where you don't  
7 really get a representative quantity of noise as  
8 you might hear as a person?

9 A I'm not sure of that. The A weighted  
10 scale is specifically designed to try and  
11 represent what humans would hear. The noise  
12 monitors tend to pick up noise beyond the scale,  
13 as well. So I'm not sure that you would lose any  
14 noise from trains or other sources. I -- I think  
15 that it's fairly representative of what you would  
16 hear.

17 Q Noise and vibration, for instance, you  
18 referred to some older power plants previously in  
19 your testimony, what you might call shake, rattle,  
20 and roll in some instances. But would there be a  
21 vibration event, for instance, if you had foreign  
22 object damage or lost a bucket on one of the  
23 compressor blades or turbine blades?

24 A Oh, I think if you had some kind of  
25 turbine failure, catastrophic turbine failure or

1 turbine trip, you would experience some increased  
2 vibration. That would be expected.

3 Q In a power crunch like tonight, might  
4 they continue to run the plant anyway, giving  
5 plenty of vibration around the community, rather  
6 than to --

7 PRESIDING MEMBER LAURIE: Irrelevant,  
8 sir, and not within the scope of this witness'  
9 testimony. I don't mean it's irrelevant, it's  
10 speculative and not within the scope of this  
11 witness' testimony.

12 BY MR. GARBETT:

13 Q In the event of a vibration event, would  
14 human intervention normally shut down the power  
15 plant, or would they rely upon a reliable -- a  
16 more reliable or a less reliable computer  
17 controlled shut-down?

18 A I think you'd probably have a  
19 combination. I think in many cases the turbine  
20 would trip and it would shut itself down. Yeah,  
21 it's possible if that would not happen it would  
22 take intervention, but the operators are right  
23 there. I don't think this is something that would  
24 take a long time.

25 MR. GARBETT: That's all I have. Thank

1       you.

2                   HEARING OFFICER VALKOSKY: Thank you.

3                   Redirect, Ms. Grueneich?

4                   MS. GRUENEICH: May I just have a moment  
5       with the witness.

6                   (Pause.)

7                   MS. GRUENEICH: I have no redirect.

8                   HEARING OFFICER VALKOSKY: Okay. Well,  
9       that makes recross easy.

10                  Would you --

11                  MS. GRUENEICH: Oh, I would like to move  
12       the exhibit into evidence, please.

13                  HEARING OFFICER VALKOSKY: Is there  
14       objection to admitting Exhibit 35?

15                  No objection.

16                  MR. HARRIS: Just so I'm clear, is that  
17       their prepared testimony, is that what --

18                  HEARING OFFICER VALKOSKY: That is their  
19       prepared testimony on Noise.

20                  MR. HARRIS: Okay. It's on the list.  
21       I'm sorry. No objection.

22                  HEARING OFFICER VALKOSKY: Okay.  
23       Exhibit 35 is admitted.

24                  (Thereupon Exhibit 35 was  
25       received into evidence.)

1 HEARING OFFICER VALKOSKY: And again,  
2 Mr. Harris, I know you indicated earlier that you  
3 had joint sponsorship of several of your exhibits.  
4 Does that include Exhibit 37, which I have  
5 indicated as comments on Noise?

6 MR. HARRIS: That's a new exhibit,  
7 right? That -- that was the new exhibit that we  
8 assigned, I think, Number 37.

9 HEARING OFFICER VALKOSKY: Thirty-seven,  
10 yeah.

11 MR. HARRIS: Okay.

12 HEARING OFFICER VALKOSKY: Yeah. My  
13 question is do you want to move that into evidence  
14 or is somebody else going to sponsor -- sponsor a  
15 portion of it later? That's all.

16 MR. HARRIS: There is -- all of our  
17 documents will be sponsored later by other --

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. HARRIS: -- so we'll just have them  
20 marked, but not moved. Thank you for asking.

21 HEARING OFFICER VALKOSKY: Excellent.

22 Is there anything else? Any public  
23 comment on the topic of Noise?

24 Thank you, Mr. Radis. You're excused.

25 Okay. With that, we'll adjourn

1           tonight's hearing, and we'll reconvene at 2:00  
2           o'clock tomorrow, on the topic of Soil and Water  
3           Resources.

4                       MS. WILLIS; Mr. Valkosky --

5                       HEARING OFFICER VALKOSKY: I'm sorry.

6           Until then, good-night.

7                       (Thereupon the Evidentiary Hearing

8                       was adjourned at 10:40 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein' that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January, 2001.

JAMES RAMOS

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