

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Eastshore Energy) 06-AFC-6
Center in Hayward by Tierra)
Energy of Texas)
-----)

VOLUME III

CITY COUNCIL CHAMBERS
HAYWARD CITY HALL
777 B STREET
HAYWARD, CALIFORNIA

MONDAY, JANUARY 14, 2008

10:00 A.M.

Reported by:
Ramona Cota
Contract No. 170-07-001

06-AFC-6

DOCKET 06-AFC-6	
DATE	JAN 14 2008
RECD.	FEB 05 2008

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

Gabriel Taylor, Advisor to Commissioner Byron

STAFF AND CONTRACTORS PRESENT

Mark Hesters

Caryn Holmes, Staff Counsel

Bill Pfanner, Project Manager

Dr. Suzanne Phinney, Aspen Environmental Group

Shaelyn Strattan

PUBLIC ADVISER

Bill Pfanner, Acting as Public Adviser

APPLICANT

June E. Luckhardt, Downey Brand, outside counsel

Nicolaas W. Pullin, Downey Brand, outside counsel

Greg Trewitt, Tierra Energy

R. Peter Mackin, PE, Utility System Efficiencies,
Inc.

Jennifer Scholl, CH2MHILL

David A. Stein, PE, CH2MHILL

INTERVENORS

Paul Haavik

Paul N. Haavik

Jesus Armas

City of Hayward

Diana J. Graves, Pillsbury Winthrop Shaw
Pittman, outside counsel to the City of
Hayward

Robert A. Bauman, PhD, PE, City of Hayward

David Rizk, AICP, City of Hayward

Alameda County

Andrew Massey, Office of County Counsel

Cindy Horvath, Alameda County Community
Development Agency

Eileen Dalton, Alameda County Community
Development Agency

Chabot Las Positas

Arlin B. Kachalia, Liebert Cassidy Whitmore,
outside counsel to Chabot-Las Positas

Group Petitioners

Jewell Hargleroad, outside counsel to Group
Petitioners

Suzanne Barba

Carol Ford, California Pilots Association

Sherman Lewis

ALSO PRESENT

Scott Galati, Galati|Blek, counsel to Pacific Gas
and Electric Company

Council Member Barbara Halliday, Hayward City
Council

Supervisor Alice Lai-Bitker, Alameda County Board
of Supervisors

David Fouquet

Martha Perez

Connie Jordan

Karen Kramer

Michael Toth

Diane Zuliani

Charlie Cameron

Susan Silva

Rob Simpson

David Head

John McCarthy

Edward Bogue

Andrew Wilson III

Patricia Taylor

Suzanne Barba

Fernando Hernandez

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

2 10:08 a.m.

3 PRESIDING COMMISSIONER BYRON: Good
4 morning and welcome to the City of Hayward. We
5 are finishing our last day of evidentiary hearing
6 on the Eastshore Energy Center Application for
7 Certification before the Energy Commission.

8 I am Commissioner Jeff Byron, the
9 Presiding Member of the Siting Committee for this
10 particular case. With me is my advisor, Gabriel
11 Taylor, and our Hearing Officer, Susan Gefter.

12 If I could just make a few opening
13 remarks I'll then turn it over to Ms. Gefter.
14 First I would like to thank all the parties for
15 being here once again. You have all shown
16 tremendous resolve and patience.

17 I am very hopeful that today will be our
18 last day of evidentiary hearings. Our purpose is
19 to pull together the information and the evidence
20 that the Commission needs in order to make a
21 determination for this application. We have a
22 couple of issues left to discuss today, Local
23 System Effects, Alternatives, Land Use and then
24 we'll be discussing the override request.

25 We also have scheduled from six until

1 eight o'clock tonight once again public comment so
2 we'll take some breaks. We'll take a break at one
3 or so for lunch and then probably one a little
4 before five or about five for dinner.

5 I would like to ask that -- Again, what
6 we're interested in here is gathering the evidence
7 and the information that is necessary for the
8 Commission to make a determination so it is very
9 much appreciated if all of our parties stay on
10 point.

11 I'd like to again thank everyone's
12 participation up until now, I think it has been
13 exemplary. A lot of good information has been
14 brought forward and we, of course, have a lot of
15 public interest in this case as you know.

16 So please continue to show each other
17 tremendous respect. We will get through the day
18 and we will press on this evening until we are
19 completed gathering the evidence.

20 I think I will go ahead and turn it over
21 to our Hearing Officer and we'll go through
22 introductions and get started. Ms. Gifter.

23 HEARING OFFICER GEFTER: Yes. Is this
24 working? I don't think so.

25 PRESIDING COMMISSIONER BYRON: Press the

1 monitor mic controls.

2 HEARING OFFICER GEFTER: Thank you,
3 thank you my very high-tech Commissioner. Thank
4 you very much, Commissioner Byron.

5 The first thing we'll do is introduce
6 the members of the Committee. Commissioner Byron
7 already introduced himself. Gabe Taylor is
8 Commissioner Byron's Advisor. I am Susan Gefter,
9 I'm the Hearing Officer. Commissioner Geesman who
10 was on this Committee, his term is expired so he
11 won't be joining us at this point in this
12 proceeding. I would also like to ask the parties
13 to introduce themselves starting with the staff.

14 MR. PFANNER: Bill Pfanner, project
15 manager for the Energy Commission.

16 HEARING OFFICER GEFTER: Thank you.

17 MR. HESTERS: Mark Hesters, Local System
18 Effects witness for the Commission.

19 MS. HOLMES: Caryn Holmes, staff
20 counsel.

21 HEARING OFFICER GEFTER: And applicant,
22 please.

23 MS. LUCKHARDT: I'm trying to figure out
24 how to turn my mic on.

25 PRESIDING COMMISSIONER BYRON:

1 Ms. Luckhardt, do I need to come down there and
2 help you?

3 (Laughter)

4 MS. LUCKHARDT: No, I believe we've got
5 it now. This is Jane Luckhardt for the applicant.
6 I'll let the rest of the folks on the dais
7 introduce themselves.

8 MR. TREWITT: I'm Greg Trewitt, I
9 represent the project owner.

10 MR. MACKIN: Peter Mackin, I provided
11 the local system effects testimony.

12 HEARING OFFICER GEFTER: Thank you. And
13 then Mr. Haavik.

14 MR. HAAVIK: Paul Haavik, intervenor.
15 Oops.

16 HEARING OFFICER GEFTER: Thank you.

17 MR. HAAVIK: Paul Haavik, intervenor.

18 HEARING OFFICER GEFTER: Thank you,
19 Mr. Haavik.

20 Mr. Sarvey who is an intervenor is not
21 here at this point.

22 And the City of Hayward, please.

23 MS. GRAVES: I'm Diana Graves from
24 Pillsbury Winthrop Shaw Pittman, counsel for the
25 City of Hayward, and I have two witnesses with me

1 today.

2 DR. BAUMAN: bob Bauman, Public Works
3 Director for the City of Hayward.

4 MR. RIZK: David Rizk, Planning Manager
5 for the City of Hayward.

6 HEARING OFFICER GEFTER: Thank you. And
7 Alameda County, please.

8 MR. MASSEY: Andrew Massey, Alameda
9 County Office of County Counsel. I have with me
10 Cindy Horvath and in the back our witness today is
11 Eileen Dalton.

12 HEARING OFFICER GEFTER: Thank you. And
13 Chabot College.

14 MS. KACHALIA: Arlin Kachalia on behalf
15 of Chabot-Las Positas Community College District.

16 HEARING OFFICER GEFTER: Thank you. And
17 you're standing in for Laura Schulkind?

18 MS. KACHALIA: Yes I am today.

19 HEARING OFFICER GEFTER: Thank you. And
20 group petitioners?

21 MS. HARGLEROAD: Good morning. Jewell
22 Hargleroad here for group petitioners, California
23 Pilots Association. Carol Ford was planning to be
24 here, she is the vice president, but she had a
25 medical emergency and she is at the doctor's as we

1 speak. I also have Suzanne Barba here. And also
2 we are representing the San Lorenzo Village Homes
3 in addition to Hayward Area Planning Association.

4 And as I believe my e-mail reflected on
5 December 19 we have Sherman Lewis here, who has
6 been here a few times already to testify on
7 Alternatives.

8 HEARING OFFICER GEFTER: Thank you. And
9 today our representative from the Public Adviser's
10 Office cannot join us so if anyone has any
11 questions in the public on how to participate, how
12 to fill out a blue card, I think I'm going to ask
13 Mr. Pfanner from our staff to assist members of
14 the public if they have any questions.

15 PRESIDING COMMISSIONER BYRON: Just so
16 we're clear on that, Ms. Gefter.

17 HEARING OFFICER GEFTER: Yes.

18 PRESIDING COMMISSIONER BYRON: The blue
19 cards are just so that we can help organize people
20 that wish to speak.

21 HEARING OFFICER GEFTER: That's right.

22 PRESIDING COMMISSIONER BYRON: The
23 public comment period will begin at six p.m. this
24 evening.

25 HEARING OFFICER GEFTER: That's right.

1 PRESIDING COMMISSIONER BYRON: And we
2 welcome all public comment.

3 HEARING OFFICER GEFTER: And any elected
4 officials who wish to address us, I don't know if
5 anyone is here right now. I understand they may
6 be joining us at six this evening.

7 Do any of the parties have any public
8 officials that you expect to be here?

9 MS. GRAVES: Barbara Halliday from the
10 Hayward City Council would like to speak just
11 after the lunch break.

12 HEARING OFFICER GEFTER: After the lunch
13 break so at two o'clock?

14 MS. GRAVES: Yes.

15 HEARING OFFICER GEFTER: And the name
16 again, Halliday?

17 MS. GRAVES: Barbara Halliday.

18 HEARING OFFICER GEFTER: Barbara
19 Halliday, thank you. We'll plan on having her
20 address us at two p.m.

21 MR. MASSEY: In addition Alameda County
22 will be having Supervisor Alice Lai-Bitker speak
23 during the regular public comment.

24 HEARING OFFICER GEFTER: At six?

25 MR. MASSEY: At six.

1 HEARING OFFICER GEFTER: Thank you. And
2 could you tell me her name again. I'm sorry, I
3 missed it.

4 MR. MASSEY: It's Alice Lai-Bitker, L-A-
5 I dash B-I-T-K-E-R.

6 PRESIDING COMMISSIONER BYRON: And go
7 ahead and leave the microphone on. When the
8 battery wears out we'll replace it.

9 HEARING OFFICER GEFTER: Let's get
10 going. Hopefully we will be finished today.

11 Today's hearing is a continuation of the
12 hearing held on December 17 and 18. Transcripts
13 of the December 17 and 18 hearing days are posted
14 on the Energy Commission's web site.

15 Members of the public who wish to speak
16 should write their comments on the blue cards
17 provided in the back of the room and Mr. Pfanner
18 will help people do that and we will take your
19 comments at six p.m. If the parties have not
20 completed their witness testimony by six p.m. we
21 will break for the public comment and then we will
22 reconvene afterwards to resume taking evidence
23 until we conclude.

24 The current exhibit list has been
25 distributed to the parties. We will use this list

1 to organize the receipt of evidence into the
2 record and we will use the topic and witness
3 schedule that was on today's notice as our agenda
4 for today's hearing.

5 What we have, as Commissioner Byron has
6 indicated, local system effects will be our first
7 topic. So before we get started if anyone has any
8 housekeeping matters let's do that real quickly
9 and then get started with testimony. Does anyone
10 want to mention anything at this point?

11 Then I will ask applicant to begin on
12 local system effects. Identify your witness and
13 we'll swear the witness in.

14 MS. LUCKHARDT: Our witness is Peter
15 Mackin and he needs to be sworn.

16 Whereupon,

17 PETER MACKIN

18 Was duly sworn.

19 HEARING OFFICER GEFTER: Thank you.

20 MS. LUCKHARDT: And Mr. Trewitt is also
21 here and available if he needs to answer
22 additional questions.

23 HEARING OFFICER GEFTER: Mr. Trewitt is
24 still sworn from the previous hearing dates.

25 Thank you.

1 DIRECT EXAMINATION

2 BY MS. LUCKHARDT:

3 Q Mr. Mackin, if you could please state
4 your name for the record and spell it.5 A My name is Peter Mackin, first name P-E-
6 T-E-R, the last name is spelled M-A-C-K-I-N.
7 Thank you. And was a statement of your
8 qualifications attached to or does it appear in
9 your testimony?

10 Q Yes it does.

11 HEARING OFFICER GEFTER: Could you tell
12 us which exhibit the testimony is, please.13 MS. LUCKHARDT: The exhibits that I have
14 -- Do you want to read them off or do you want me
15 to?16 MR. MACKIN: The testimony is Exhibit 14
17 and then there are some exhibits referenced in the
18 testimony. Do you want those numbers too?

19 HEARING OFFICER GEFTER: Yes please.

20 MR. MACKIN: Okay. Exhibit 2, Exhibit
21 5, Exhibit 6, Exhibit 8, Exhibit 13 and Exhibit
22 14.

23 HEARING OFFICER GEFTER: Thank you.

24 MS. LUCKHARDT: Do you have any
25 corrections to your testimony at this time?

1 MR. MACKIN: Yes, I have four.

2 MS. LUCKHARDT: And I believe those have
3 been passed out but I am going to have Peter go
4 ahead and go through them so you can all see them.

5 MR. MACKIN: On the first page in the
6 Introduction, paragraph C of Qualifications,
7 Section 7, we're going to strike that. The
8 sentence that begins with "Peter Mackin directed."

9 And then under Prior Filings, Section 2.
10 We're going to strike the first bullet that begins
11 with "Eastshore Energy Center application."

12 And then on page two under Section 3,
13 Proposed Licensing Conditions we're going to
14 strike the first paragraph.

15 And then the last correction is on page
16 four of the testimony. There's a typographical
17 error at the top of the page, the word that should
18 be than, T-H-A-N. And that's all the corrections.

19 BY MS. LUCKHARDT:

20 Q Thank you. And with those corrections
21 insofar as your testimony contains statement of
22 facts are those facts true and correct to the best
23 of your knowledge?

24 A Yes they are.

25 Q And insofar as your testimony contains

1 statements of opinion do they represent do they
2 represent your best professional judgment?

3 A Yes they do.

4 Q Do you now adopt all these exhibits as
5 your sworn testimony?

6 A I do.

7 MS. LUCKHARDT: Thank you.

8 I have nothing further. The witness is
9 available for cross.

10 HEARING OFFICER GEFTER: Okay. I think
11 what we're going to do is the same as we did in
12 the past. We would have then staff do their
13 direct and then allow the parties to cross examine
14 both witnesses, it's more efficient that way.
15 Thank you.

16 MS. HOLMES: Thank you. Staff's witness
17 for local system effects is Mark Hesters and he
18 does need to be sworn.

19 HEARING OFFICER GEFTER: Mr. Hesters,
20 would you please stand.

21 Whereupon,

22 MARK HESTERS

23 Was duly sworn.

24 BY MS. HOLMES:

25 Q Mr. Hesters, was your testimony on local

1 system effects for the Eastshore project included
2 in Exhibit 200?

3 A Yes.

4 Q And was a statement of your
5 qualifications included with that?

6 A Yes.

7 Q Do you have any corrections to make to
8 your testimony at this time?

9 A I do, actually. On Appendix A, the
10 tables I through VI, there's a labeling error in
11 each of the tables on column two. In Table I it
12 says, currently reads "PG&E system loss with
13 SFERPP 3 units." That should read EEC instead of
14 SFERPP 3 units.

15 Q And that is true for each table?

16 A No, just for the first and second one.

17 Q Thank you.

18 A So for Table I and Table II that need to
19 be replaced with EEC. For Table III and Table IV
20 those same words, SFERPP 3 units, needs to be
21 replaced with Russell City or RCEC. And for
22 Tables V and VI those same words, SFERPP 3 units,
23 needs to be replaced with RCEC and EEC.

24 Q Thank you.

25 A It's just a labeling error because we

1 used, it's a template we used before.

2 Q Thank you.

3 HEARING OFFICER GEFTER: You know what,
4 you went really fast and I missed that so tell me
5 what you're replacing out of tables and what
6 you're replacing it with.

7 MR. HESTERS: Okay, on each table, if
8 you go to Tables I and II.

9 HEARING OFFICER GEFTER: Yes.

10 MR. HESTERS: The second column where it
11 says, SFERPP 3 units, that should be replaced with
12 EEC.

13 HEARING OFFICER GEFTER: And what do the
14 units stand for in that? Wasn't that megawatts?

15 MR. HESTERS: The units were just being
16 -- The units refer to the three San Francisco
17 Energy Project units.

18 HEARING OFFICER GEFTER: Okay.

19 MR. HESTERS: So that's for Tables I and
20 II. For Tables III and IV those same words or
21 that same acronym should be replaced with RCEC,
22 standing for Russell City Energy Center. And for
23 Tables V and VI that same column label should be
24 replaced with RCEC plus EEC, referring to Russell
25 Energy Center and the Eastshore Energy Center.

1 HEARING OFFICER GEFTER: Thank you.

2 MR. HESTERS: The numbers are all the
3 same, the label just for that column is changing.

4 MS. HOLMES: And with those --

5 MR. HAAVIK: Pardon me, Ms. Gefter. In
6 those tables also it says after the SFERPP 3
7 units, parentheses, MW. All that stays the same?
8 The 3 units and the MW stay the same also, Mark?

9 MR. HESTERS: No, that's what we're
10 replacing.

11 MR. HAAVIK: All of that is replaced,
12 just not the letters?

13 MR. HESTERS: The whole SFERPP 3 units.
14 The units don't make sense.

15 MR. HAAVIK: Thank you.

16 MR. HESTERS: That's all referring to
17 the San Francisco Energy Project.

18 HEARING OFFICER GEFTER: Now I have a
19 question about the changes. I understand that you
20 brought this table over from another case, perhaps
21 the San Francisco case. So this column then was
22 created to talk about the San Francisco project.
23 So now why are those same numbers applicable to
24 EEC and EEC plus RCEC.

25 MR. HESTERS: The label is the only

1 thing we missed, didn't change. The numbers all
2 refer to these projects or the projects that we
3 studied.

4 HEARING OFFICER GEFTER: Okay, so the
5 numbers are not referring to San Francisco.

6 MR. HESTERS: Right, exactly.

7 HEARING OFFICER GEFTER: Thank you.

8 BY MS. HOLMES:

9 Q With those corrections are the facts
10 contained in your testimony true and correct?

11 A Yes.

12 Q And do the conclusions in your testimony
13 represent your best professional judgment?

14 A Yes.

15 Q The witness is available for cross --
16 Excuse me, would you like to present a
17 brief summary of your testimony.

18 A I can do it briefly. I was instructed
19 to limit this to a minute or preferably shorter.

20 Local system effects essentially refer
21 to the benefits that occur when a project is
22 located mostly in a load center. We looked at
23 several potential benefits.

24 The primary benefit that we quantified
25 was the effect of the project on system losses.

1 And we found that unexpected essentially loss
2 savings, without this project system losses are
3 nine megawatts higher than they would be if this
4 project was built. And that is essentially power
5 that has to be produced somewhere. If you're
6 importing the power into the Bay Area the losses
7 occur. Associated with those losses is an annual
8 energy savings of an estimated 24 gigawatt hours,
9 which is enough to power over 3,600 homes.

10 We also found that the project would
11 increase reactive margin in the Bay Area, which
12 improves voltage stability and system reliability.
13 A couple of benefits that we -- We looked at the
14 potential effect of the project on deferring the
15 need for other transmission facilities or
16 reliability upgrades in the Bay Area but were
17 unable to come to any conclusions about that.

18 We also briefly looked at the effect of
19 the project on essentially the need for local
20 capacity resources. PG&E is required to purchase
21 energy in local areas because -- or power in local
22 areas in order to meet reliability criteria. This
23 project because it is under contract with PG&E
24 would reduce the amount of local capacity
25 resources needed.

1 We wanted to determine sort of the cost
2 savings of that because it would essentially be a
3 difference between some other local capacity with
4 the cost of some other local resource and the
5 price that this project is being paid under
6 contract. And we don't have either of those
7 information but it would be of -- we assume it
8 would be of some kind of benefit. And I think
9 that's about it at this point.

10 MS. HOLMES: Thank you. Now the witness
11 is available for cross examination.

12 HEARING OFFICER GEFTER: Before I open
13 it up we need some clarification and I would like
14 to ask Mr. Hesters to give us a little bit more
15 explanation about what you mean by system loss due
16 to imported power. Where do you get that
17 information from? How do you calculate that?

18 MR. HESTERS: We basically use a load
19 flow model that takes all the characteristics of
20 the transmission system and we studied in this
21 case a single peak hour of -- a single peak hour
22 and we looked at it with and without the project.
23 Do you want a complete overview of the study? Is
24 that what you're --

25 HEARING OFFICER GEFTER: I just want to

1 understand what it means. You don't need to give
2 us, you know, every little detail but I do need to
3 have an idea of what the words mean.

4 MR. HESTERS: Okay. Basically power, at
5 least for the Bay Area and for the Hayward area,
6 this area in particular, is either produced
7 locally or its shipped over transmission lines.
8 If it's shipped over transmission lines there are
9 associated line losses and if you produce the
10 power locally you don't have those line losses.
11 And essentially our study was looking at what
12 those line losses are with and without the
13 Eastshore Energy Center and the study came up with
14 an expected loss savings of nine megawatts.

15 HEARING OFFICER GEFTER: Were you able
16 to estimate how much of the power generated by the
17 project would stay in the Hayward area?

18 MR. HESTERS: We have looked at load
19 flow diagrams that were done for the study. Most
20 of it, it stays locally.

21 HEARING OFFICER GEFTER: When you say
22 locally, does it go to Hayward or does it go to
23 the East Bay or does it stay in the Bay Area?
24 What do you mean?

25 MR. HESTERS: It mostly stays in the Bay

1 Area and mostly goes to Hayward, San Leandro and
2 -- we have one other city and I don't have it
3 sitting in front of me. But it's basically on the
4 local 115 network.

5 HEARING OFFICER GEFTER: Did you look at
6 any other substations where the power might be
7 distributed to the Bay Area other just than the
8 Eastshore substation?

9 MR. HESTERS: You mean, did we study
10 this power plant at other -- no, we did not, we
11 just looked at the Eastshore. I did do a rough
12 comparison of some of the other studies that we
13 did for plants in the Bay Area and the loss
14 savings are pretty equivalent for each of the
15 projects on a percentage of the power plant size
16 basis.

17 HEARING OFFICER GEFTER: Do you have a
18 -- In terms of the projects that are in the Bay
19 Area is there a huge import of power into the
20 Hayward and East Bay area or are there power
21 plants in the area that are serving the local
22 area?

23 MR. HESTERS: There is a huge import of
24 power. I mean, it depends on how far you are
25 considering imported. If an import from Contra

1 Costa in Pittsburg is an import then yes, there's
2 an import. If you consider those in the same
3 local area then no, there's less of an import.

4 HEARING OFFICER GEFTER: And what impact
5 does the Russell City project have on imported
6 power to the area?

7 MR. HESTERS: We did the study in
8 several ways just to provide information on it.
9 We did it with and without the Russell City. If
10 you assume Russell City is at the Eastshore
11 substation before the -- at the substation
12 beforehand then the expected loss factor or
13 expected system loss reduction went from nine
14 megawatts to seven megawatts.

15 HEARING OFFICER GEFTER: You also make a
16 statement in here at page 5.6-3 of the FSA in your
17 testimony that over the coming years the addition
18 to the Eastshore project would probably not defer
19 any identified major transmission facilities.
20 What does that mean?

21 MR. HESTERS: Basically when -- The ISO
22 and the utilities are required to build
23 transmission facilities such that their system
24 does not result in reliability criteria violation.
25 These are national standards at this point and

1 some local standards.

2 Sometimes if you build a power plant in
3 a local area it means that you don't then have to
4 build a transmission line into that area to meet
5 these standards. And we weren't able to determine
6 whether or not this project would actually have
7 that effect.

8 HEARING OFFICER GEFTER: And then also
9 one of your conclusions is in terms of the
10 millions of dollars that the project could save
11 ratepayers and you talk about estimated present
12 value. What do you mean by present value? Are you
13 talking about 2007 dollars or are you talking
14 about dollars in the future?

15 MR. HESTERS: We are looking at 2007
16 dollars discounted at an eight percent discount
17 rate, if that helps. We're looking at it over 20
18 years and discounting the expected savings over 20
19 years.

20 HEARING OFFICER GEFTER: And did you
21 know whether a system impact study that was
22 submitted on behalf of the Eastshore project, did
23 that also include the Russell City project in
24 terms of overall cumulative effects?

25 MR. HESTERS: It didn't because the

1 Russell City Energy Center is behind Eastshore in
2 the ISO's interconnection queue, the Independent
3 System Operator's interconnection queue.

4 HEARING OFFICER GEFTER: Do any of the
5 parties have questions? I'll start with
6 applicant, whether you have cross examination of
7 staff. Let's start with that.

8 MS. LUCKHARDT: I do, I have just a
9 couple of questions.

10 CROSS EXAMINATION

11 BY MS. LUCKHARDT:

12 Q Mr. Hesters, you just talked about the
13 interconnection queue. In your analysis on page
14 5.6-5 you talk about the impacts or the benefits
15 of Eastshore and RCEC together, correct?

16 A Yes.

17 Q And in that when you look at the two
18 projects and the benefits decrease you gave all of
19 the benefit to RCEC; isn't that correct?

20 A When we looked at the two projects
21 together we looked at a net. So if you assume
22 Russell City is in there first and come up with --
23 we basically netted the two, as I sort of
24 explained. So we looked at Russell City and then
25 Russell City and Eastshore and subtracted out the

1 Russell City by itself.

2 Q Right. And since Eastshore is ahead of
3 Russell City in the queue wouldn't it be more
4 appropriate to subtract Eastshore out and give the
5 remainder to Russell City?

6 A I guess we could have done it that way.
7 My only concern is that from this Commission's --
8 I mean, the Energy Commission has already approved
9 Russell City, we haven't yet approved Eastshore.
10 I was mostly trying to provide the information so
11 that if somebody wanted to calculate it on their
12 own they could. If that makes sense.

13 Q And you used the Commission's approval
14 as opposed to the interconnection queue as a
15 method for determining which project received the
16 benefits, the primary benefits of the two projects
17 together.

18 A In the way you presented it, yes.

19 Q And isn't it true that Eastshore
20 requires no system upgrades?

21 A Yes.

22 Q Wouldn't a new location for a project
23 like this and a new interconnection require a new
24 place in the interconnection queue or a new
25 application?

1 A When you say new application do you mean
2 a new application here or with the ISO?

3 Q With the ISO.

4 A Yes it would.

5 Q And do later positions in the
6 interconnection queue generally require additional
7 system upgrades?

8 A It really depends on what other projects
9 are proposed ahead of that project, that become
10 ahead of that project, the proposed project, in
11 the queue and if they're in the area that affects
12 the new interconnection.

13 Q As far as -- Did you work on the Russell
14 City project at all or review that analysis?

15 A Yes.

16 Q And did the Russell City project require
17 upgrades beyond the first point of
18 interconnection?

19 A There was one -- I hadn't reviewed it
20 that recently but I think there was one, a need
21 for one line, transmission line reconductoring and
22 it wasn't very long.

23 Q Therefore if Russell City was ahead of
24 Eastshore wouldn't it be true that Eastshore might
25 have additional upgrades?

1 A I'd have to see the study. If Russell
2 City triggered the need for that upgrade even
3 without Eastshore, which it could because it's a
4 larger project, then that upgrade would not be an
5 Eastshore issue.

6 Q For a new project in a new location
7 isn't it true that PG&E would need to perform a
8 new feasibility study, a system impact study to
9 determine the impacts of interconnecting at a new
10 location?

11 A When you say PG&E perform, the ISO is
12 actually responsible for the study; now they
13 mostly contract with PG&E to perform them. So the
14 ISO is technically the one that performs the study
15 and yes they would.

16 MS. LUCKHARDT: Okay, fair enough.

17 Okay, I have nothing further.

18 HEARING OFFICER GEFTER: Thank you. I
19 have a question before we go on again to cross
20 examination. It occurs to me, Mr. Hesters, did
21 you perform the local system effects analysis for
22 the Metcalf case or any other case where that
23 analysis was required in the project review?

24 MR. HESTERS: I didn't for the Metcalf,
25 I did for the San Francisco Electric Reliability

1 Project and for the Los Esteros, a critical energy
2 facility phase II.

3 MS. LUCKHARDT: I believe Mr. Mackin may
4 have worked on the Metcalf project.

5 MR. MACKIN: Yeah, I did.

6 HEARING OFFICER GEFTER: Okay. And for
7 the other parties, these are other projects that
8 the Energy Commission has certified and we will
9 take judicial notice, administrative notice of the
10 decisions in that case and the record that
11 supported those decisions. So in the Metcalf
12 case, for example, there was a local system
13 effects analysis. Mr. Mackin, what role did you
14 have? At Cal-ISO, is that where your role was at
15 that time?

16 MR. MACKIN: Yes, I was working at the
17 ISO at the time. And Al McCuen and myself, we
18 prepared the local system effects testimony.

19 HEARING OFFICER GEFTER: Mr. McCuen
20 worked for the Energy Commission at that time?

21 MR. MACKIN: Yes he did, he was Mark's,
22 he had the position before Mark had it.

23 HEARING OFFICER GEFTER: And the
24 question I have then is what was the difference in
25 the local system effects analysis, if there was

1 one, between what you found for Metcalf and the
2 need for Metcalf at that interconnection location
3 compared with this project? Can you give us any
4 insight on that.

5 MR. MACKIN: Could you ask that question
6 one more time so I can try to understand it. The
7 analysis that we did for Metcalf and that Mark did
8 for Eastshore were very similar in their
9 structure. I think Metcalf was the first and then
10 all the subsequent analyses have been kind of
11 copied from that one.

12 But the results that we found for
13 Metcalf. Obviously Metcalf is a larger project,
14 it came in a long time ago. I shouldn't say a
15 long time ago but there was less internal Bay Area
16 generation at the time of Metcalf so the loss
17 savings were quite a bit larger. There were some
18 potential deferred transmission projects, I
19 believe, in Metcalf that we did not see here in
20 the Eastshore.

21 HEARING OFFICER GEFTER: There was quite
22 a bit of discussion in the Metcalf case about
23 imported power and how it wasn't local generation
24 in that --

25 MR. MACKIN: Yes, in the Metcalf

1 situation -- Essentially the Metcalf, if you look
2 at San Jose in the Metcalf case and compare it to
3 Hayward in the Eastshore case it's essentially an
4 identical situation. San Jose had, if you don't
5 count the generation in Santa Clara there was
6 essentially no generation in the San Jose area
7 before Metcalf.

8 In Hayward it's the same situation on
9 the 115 kV network, there is no old generation in
10 the Hayward or San Leandro area. After Eastshore
11 then there would be local generation that would
12 provide additional reliability and load service.
13 Whereas in Metcalf it was a similar situation
14 except Metcalf as a percentage of San Jose load
15 was smaller. Eastshore is almost equal to the
16 Hayward and San Leandro loads whereas in San Jose
17 it was about 30 percent or so of San Jose's load.

18 HEARING OFFICER GEFTER: Metcalf
19 presented a larger, it's a larger project.

20 MR. MACKIN: Yes, Metcalf is a larger
21 project and San Jose is such a much larger load.
22 San Jose was about 2,000 megawatts of load where
23 San Leandro and Hayward I think is around 100
24 megawatts or thereabouts. So on a percentage
25 basis Eastshore is much bigger relative to the

1 area it is serving than Metcalf was.

2 HEARING OFFICER GEFTER: But do you take
3 Russell City into account in that assumption?

4 MR. MACKIN: I don't because Russell
5 City connects to the 230 network, which is, you
6 know. Hayward and San Leandro, they're all served
7 off of the 115 which comes transformed out from
8 the 230. So I don't consider Russell City as
9 serving Hayward load, I consider Russell City as
10 serving -- it connects to the major bulk grid and
11 it serves the Bay Area load more. That's the way,
12 that's the way I look at it.

13 HEARING OFFICER GEFTER: Mr. Hesters, do
14 you have any response to that discussion?

15 MR. HESTERS: I do briefly. One of the
16 things I did as we were doing the study was seeing
17 whether the loss savings essentially as a
18 percentage of the size of the plant. Because the
19 plants are much -- like Metcalf was much bigger,
20 it was over five or six hundred megawatts, and the
21 expected loss savings for that were something like
22 seven percent of the size of the project.

23 And I did that same sort of look for San
24 Francisco and for Los Esteros and they all are
25 about the same. Even as you're stacking more of

1 these generators in the Bay Area it's still
2 staying about seven percent. This one was a
3 little bit higher at nine percent being on the
4 115. But the loss savings are -- There's so much
5 load in the Bay Area that as you add these
6 generators you're not seeing a large change in
7 loss savings.

8 HEARING OFFICER GEFTER: Again, since
9 this is sort of the underlying issue in this case
10 is the location or the interconnection into
11 Eastshore and whether or not either Mr. Mackin or
12 Mr. Hesters, whether you've looked at any other
13 interconnection sites where you could get similar
14 benefits or even more benefits to the local area?

15 MR. HESTERS: We didn't perform any
16 study of this project interconnected anywhere
17 else.

18 HEARING OFFICER GEFTER: And Mr. Mackin,
19 from your work at Cal-ISO, what sort of studies
20 would be required to do that kind of review?

21 MR. MACKIN: To determine what?

22 HEARING OFFICER GEFTER: Look at other
23 interconnection sites in the East Bay area to
24 provide the same benefits.

25 MR. MACKIN: Are you asking me only in

1 respect to local system effects?

2 HEARING OFFICER GEFTER: Yes.

3 MR. MACKIN: You would essentially need
4 to repeat the work that Mark did for Eastshore
5 looking at a different, a different location.

6 HEARING OFFICER GEFTER: Do you agree,
7 Mr. Hesters, that would be necessary?

8 MR. HESTERS: Yes. You would also have
9 to repeat to some degree the ISO interconnection
10 study in order to determine whether or not it had
11 a -- part of our discussion is that it doesn't
12 have an impact or a need for new facilities and we
13 can't do that without the system impact study.

14 HEARING OFFICER GEFTER: I'm going to
15 open it up to cross examination. We'll start with
16 the City.

17 MS. GRAVES: The City doesn't have any
18 questions at this time.

19 HEARING OFFICER GEFTER: Okay, we'll
20 start with Alameda County then.

21 MR. MASSEY: We plan on briefing these
22 issues so we don't have any questions at this
23 time.

24 HEARING OFFICER GEFTER: Okay. Chabot
25 College.

1 MS. KACHALIA: The District also doesn't
2 have any questions at this time.

3 HEARING OFFICER GEFTER: Group
4 petitioners.

5 MS. HARGLEROAD: Well we do.

6 CROSS EXAMINATION

7 BY MS. HARGLEROAD:

8 Q Let's see. Mr. Hesters, you relied on a
9 PG&E contract?

10 A No. I don't understand --

11 Q Well there are some references in your
12 testimony to the PG&E contract with Tierra.

13 MS. HOLMES: Why don't you reference him
14 to the place in his testimony so that we're all
15 looking at the same.

16 MS. HARGLEROAD: Well he, that's what he
17 testified to here just now. So that was a verbal
18 testimony and I do not have a screen showing where
19 that is.

20 MR. HESTERS: I can tell you where it
21 is.

22 BY MS. HARGLEROAD:

23 Q Okay, thank you.

24 A It's on page 5.6-6 and it's under the
25 local capacity requirements costs. And basically

1 what we said was that because they have a PG&E
2 contract other local capacities need to be
3 purchased because this one is already, wouldn't
4 need to be purchased or brought under contract
5 because this is already under contract.

6 And the way we determine the savings and
7 local capacity costs, local capacity procurement
8 costs, is by comparing the costs that PG&E -- of
9 this contract with a potential local capacity
10 payment to some other generator and we don't have
11 that information. And that's really all I said
12 was that they have a contract, we don't know the
13 know the terms of that contract.

14 Q Would it be helpful to have the contract
15 and know the terms of the contract?

16 A It would help some but we'd still have
17 to forecast the cost of procuring other local
18 capacity resources and we don't have that
19 information either.

20 Q So you're really kind of operating in
21 the dark here.

22 MS. LUCKHARDT: I object to that.
23 That's not what Mr. Hesters has based his
24 testimony on. That information isn't in here. He
25 did not provide any costs or benefits associated

1 with that because he didn't have the numbers.
2 Therefore that information is irrelevant to this
3 discussion. And we're not claiming any benefits
4 based upon that either.

5 MS. HARGLEROAD: Well I think that's a
6 pretty important point though because from what I
7 understand the applicant is not relying on the
8 PG&E contract. Is that correct?

9 MS. LUCKHARDT: I'm confused about what
10 relying on the PG&E contract means. Relying on it
11 for what purpose I guess is my -- that would help
12 us understand your questions.

13 MS. HARGLEROAD: One of the reasons
14 we're going through this analysis is because there
15 is a PG&E contract.

16 MS. HOLMES: I think that Mr. Hesters
17 has answered your question and explained the
18 limited extent to which he --

19 MS. HARGLEROAD: I don't know. He
20 hasn't --

21 MS. HOLMES: Can I please finish my
22 answer? I think that --

23 MS. HARGLEROAD: You're testifying?

24 MS. HOLMES: No, I am not testifying, I
25 am explaining why this question has been asked and

1 answered. Mr. Hesters has explained the limited
2 extent to which he relied upon the PG&E contract
3 in his testimony. If there is an additional
4 question I'm not hearing it.

5 HEARING OFFICER GEFTER: Ms. Hargleroad,
6 would you rephrase the question. And also you can
7 draw your own inferences from the testimony.

8 MS. HARGLEROAD: Thank you. I just want
9 to also clarify local. There's quite a bit of a
10 discussion on local.

11 You state in your summary of conclusions
12 that a primary benefit -- number two page 5.6-1.
13 Okay. A primary benefit of the addition of the
14 Eastshore project is that the plant will serve as
15 a local generation facility. Isn't this a peaker
16 plant?

17 MS. HOLMES: I'm sorry.

18 MR. HESTERS: 5.6-6.

19 MS. HOLMES: She said one.

20 MR. HESTERS: No, two.

21 MS. HARGLEROAD: It's number two on page
22 5.6-1. That's the page.

23 MS. HOLMES: Okay.

24 MS. HARGLEROAD: And the summary of
25 conclusion is number two.

1 MS. HOLMES: Thank you.

2 MR. HESTERS: I am not sure how it being
3 a peaker plant is relevant.

4 BY MS. HARGLEROAD:

5 Q So you're just including it because it
6 is there. Isn't a peaker plant, the object of a
7 peaker plant is it's only going to be kicking in
8 if needed; is that correct?

9 A Yeah, but I'm trying to figure -- it's a
10 local generation plant that is available when it's
11 needed. I'm struggling figuring out how that's
12 relevant.

13 Q Well.

14 A I mean, it's available potentially 4,000
15 hours a year.

16 Q Okay, we are assuming that there will be
17 additional need above and beyond to kick that in.

18 Also on number one you state that --
19 this is under summary of conclusions, sentence
20 two. "Over 20 years the savings to ratepayers
21 would have an estimated present value between 11.4
22 million and 16.3 million." Who are the
23 ratepayers?

24 A Basically, everybody that's served by
25 these rate -- under the PG&E and the California

1 ISO.

2 Q Do you know how many customers that is?

3 A I have a sheet with it on, it's a lot of
4 customers.

5 Q Well perhaps you could provide that
6 number to me.

7 MS. LUCKHARDT: I'm wondering why that's
8 relevant.

9 MS. HOLMES: Yes.

10 MS. HARGLEROAD: Well I think that's
11 very relevant because from what I understand the
12 PG&E, the number of PG&E customers is six million.
13 And we're talking about a savings of \$11 million
14 over 20 years, which breaks down to about \$600,000
15 a year. So dollar-wise what is the savings per
16 customer?

17 MS. HOLMES: I don't believe that's part
18 of his testimony. His testimony is on the system
19 effects, he didn't look at the effect on
20 individual customers. If you would like to
21 introduce, if you would like to introduce evidence
22 about the number of customers and do the math
23 you're welcome to do that.

24 MS. HARGLEROAD: Well I'm simply -- You
25 have offered a witness here under local systems

1 effect (sic). His summary of conclusions is,
2 number one, the second sentence. And I'm asking
3 the question based on that sentence. I think
4 that's a quite relevant point.

5 BY MS. HARGLEROAD:

6 Q Can you tell us -- Because what is the
7 cost? When you look at the savings you also have
8 to consider the cost; isn't that correct? The
9 cost of building the plant, the cost of operating,
10 the cost of the emissions from the plant.

11 A These benefits that we are talking about
12 here are purely from the losses, that's all.
13 That's it, the nine megawatts expected loss
14 savings. Not overall operation of the plant.

15 Q So you are not taking into any
16 consideration those additional, external costs
17 associated with operating the plant; is that
18 correct?

19 MS. HOLMES: I have to object because I
20 think --

21 MS. HARGLEROAD: It's a yes or no.

22 MS. HOLMES: Perhaps it would help if
23 Mark went back and explained again one more time
24 exactly what his analysis looks at and doesn't
25 look at because it seems we are getting questions

1 that are not relevant to his testimony. Mark, can
2 you -- Hearing Officer Gefter, is that acceptable?

3 HEARING OFFICER GEFTER: That would be
4 fine, yes.

5 MS. HOLMES: Mark, can you go into a
6 little bit more detail about how you did this
7 analysis.

8 MR. HESTERS: I guess I can do a little
9 bit. We are not doing a cost-benefit analysis.
10 It is not a full cost-benefit analysis of the
11 entire project. All we've done is that because
12 you're building this project close to loads is
13 there is this expected loss savings. This is
14 generation that would have to be generated
15 somewhere else with an increase or a -- I guess
16 you wouldn't see the reduction in the losses.
17 It's nine megawatts on peak that some other power
18 plant would have to produce because the Eastshore
19 Energy Center wasn't built.

20 MS. HOLMES: Mr. Hesters, is what you're
21 saying that the overall generation required to
22 provide the PG&E system will be higher without
23 this project than with this project?

24 MR. HESTERS: Yes.

25 MS. HOLMES: And that you, based on the

1 assumptions that are contained in your testimony,
2 attributed a value to that difference; is that
3 correct?

4 MR. HESTERS: Yes.

5 MS. HOLMES: Thank you.

6 MS. HARGLEROAD: Thank you, Ms. Holmes,
7 for that.

8 BY MS. HARGLEROAD:

9 Q Mr. Hesters, back to local. When you
10 say that this is going to serve or benefit the
11 local area isn't it also correct that that also
12 includes the San Mateo area?

13 A Yes it could, some of the power could
14 flow over to San Mateo at different times.

15 Q Well that's what your report states.

16 A Yes and I agreed.

17 Q Okay, just so I'm clear on that. You do
18 not know how many ratepayers we're talking about.

19 HEARING OFFICER GEFTER: That's been
20 asked and answered, let's move on.

21 MS. HARGLEROAD: Okay. I just want to
22 make sure.

23 Can you tell me why is this -- You're
24 stating this is going to reduce the cost of
25 producing power in California and that's why I

1 asked the external cost question. Because your
2 testimony is supposed to be somewhat narrow but at
3 the same time these very broad statements are
4 made. And that's referred to under page 5.6-6
5 number one under your conclusions.

6 MS. HOLMES: Is there a question?

7 MS. HARGLEROAD: Well yeah, the basis of
8 the conclusion. The third sentence of conclusion
9 one.

10 MS. HOLMES: Asked and answered, these
11 are the questions I asked on direct.

12 MS. HARGLEROAD: I was going to the
13 external cost, the cost of producing power. And
14 your testimony is not directed towards that.

15 MS. HOLMES: The second --

16 MS. HARGLEROAD: The witness could
17 just --

18 MR. HESTERS: We've talked about loss
19 savings and the fact that you don't have to
20 produce these nine megawatts. Because you are not
21 producing these nine megawatts that whole sentence
22 talks about there's fossil fuel that you're not
23 consuming, there's water that is not being used to
24 produce power, there's emissions that aren't being
25 produced somewhere on the system to provide those.

1 And what we're talking about is the nine megawatts
2 in losses.

3 MS. HARGLEROAD: Okay, thank you.

4 HEARING OFFICER GEFTER: Any redirect?

5 MS. HOLMES: (Shook head).

6 HEARING OFFICER GEFTER: Mr. Haavik.

7 MR. HAAVIK: Yes, I have one question.

8 I believe both Peter and Mark can answer this
9 because it is interrelated in regards to Metcalf.
10 And I believe --

11 CROSS EXAMINATION

12 MR. HAAVIK: Mark, did you work on Los
13 Esteros?

14 MR. HESTERS: I did.

15 CROSS EXAMINATION

16 MR. HAAVIK: Yes.

17 I know that Mr. Mackin indicated that
18 you worked on the Metcalf facility, about a 600
19 megawatt plant.

20 MR. MACKIN: Yes.

21 RESUMED CROSS EXAMINATION

22 BY MR. HAAVIK:

23 Q And Mark, you worked on Los Esteros,
24 which is a plant of what size, about 175 megs.

25 A Actually when you're talking about

1 worked on it, when we did the local system effects
2 that was purely for the Phase II which was a
3 combined cycle.

4 Q Okay, all right. Did you consider Los
5 Esteros I in any portion of your study for system
6 effects in regards to where that feeds into the
7 local grid?

8 A Can you please -- Could you --

9 Q Los Esteros I feeds into the southern
10 portion of the grid near Dumbarton. And then you
11 said you worked on number two. And probably
12 you're the wrong person to ask and I do apologize
13 but, you know, did you consider the local systems
14 effects for Los Esteros I versus the systems
15 effects for I guess it would be number two? And I
16 don't know the timing between that. Was Los
17 Esteros I on-line?

18 A I'm thinking we just -- I haven't looked
19 at it. I think we just did the incremental
20 combined cycle conversion when we did local system
21 effects for the --

22 Q So you don't have the information on Los
23 Esteros I as far as local systems effect feeding
24 into the southern portion of the grid that may be
25 the same grid that future Eastshore may feed into.

1 A I'm confused on the study. All the
2 studies that we did for Eastshore, Los Esteros I
3 and II were in the case and operating.

4 MR. HAAVIK: Thank you. Thank you,
5 Mr. Mackin.

6 MR. MACKIN: Okay.

7 HEARING OFFICER GEFTER: For the record
8 on the transcript. I originally had asked for
9 redirect and I had forgotten to ask Mr. Haavik if
10 he had cross so that was cross examination.

11 MR. HAAVIK: Sorry.

12 HEARING OFFICER GEFTER: I missed
13 calling on you before. And now we're going to ask
14 the applicant and staff if they have any redirect.

15 MS. HOLMES: No.

16 HEARING OFFICER GEFTER: I would like --

17 MS. LUCKHARDT: I guess the --

18 HEARING OFFICER GEFTER: Do you have
19 something?

20 MS. LUCKHARDT: I guess just to clarify.

21 DIRECT EXAMINATION

22 BY MS. LUCKHARDT:

23 Q There were some questions about the
24 value of a facility in a certain location and
25 whether it's running or not as a peaker. Maybe

1 Mr. Trewitt can talk about that briefly.

2 A Well I think the question was in regards
3 to, as to whether Eastshore would serve locally if
4 it's a peaker. Is that the correct question?

5 Q Yes.

6 A And I think we sometimes confuse
7 electricity with other types of utilities. But
8 really just having a plant ready and capable of
9 producing power is serving. So I just want to
10 make that clarity.

11 REDIRECT EXAMINATION

12 BY MS. LUCKHARDT:

13 Q And then Mr. Mackin, there were some
14 questions about where the power would flow for
15 this facility. In your evaluation of this project
16 where did you think that -- where did your study
17 show that the power would flow or your analysis
18 showed the power would flow?

19 A Well I guess we need to be clear then.
20 I didn't do any studies, I reviewed studies that
21 others had done. What I had determined is that on
22 peak the power stays all within the 115 kV network
23 serving Hayward, San Leandro and some south. Not
24 quite to Newark but in that area. None of it goes
25 up on the 230 and flows over to San Mateo,

1 although under some conditions as Mark indicated
2 that could occur. I think that's it.

3 MS. LUCKHARDT: Thank you. I have
4 nothing further.

5 HEARING OFFICER GEFTER: Thank you.
6 Does anyone have any recross of the applicant's
7 witness before we wind down.

8 MS. HARGLEROAD: Yes, I would like to go
9 to page 5.6-2 under settings and area resources.

10 MS. HOLMES: I'm sorry, we didn't have
11 any recross -- I mean redirect.

12 HEARING OFFICER GEFTER: That's right.
13 You can ask the --

14 MS. HARGLEROAD: Well Ms. Luckhardt --

15 HEARING OFFICER GEFTER: You can ask the
16 applicant's witnesses on recross because the staff
17 didn't present any redirect.

18 MS. HARGLEROAD: Well this was in
19 general because then it appears, it sounds like we
20 have a conflict in testimony here. Because
21 according to staff at 5.6-2, the last half of the
22 paragraph under setting and resources, it clearly
23 states that power from Eastshore would serve the
24 load demands of the cities of Hayward, Fremont and
25 San Leandro in the southern East Bay area through

1 the existing 115 kV network and, to some extent,
2 would also serve the load demands of the City of
3 San Mateo in the San Francisco peninsula area
4 through the San Mateo substation via the
5 Eastshore-San Mateo 230 kV line that runs across
6 the SF Bay over the San Mateo Bridge.

7 MS. LUCKHARDT: I believe that
8 Mr. Mackin agreed with Mr. Hesters' analysis so I
9 don't think there is a conflict there.

10 HEARING OFFICER GEFTER: You can argue
11 in your brief if you don't agree with the
12 applicant.

13 MS. HARGLEROAD: Well the testimony says
14 what it says so.

15 HEARING OFFICER GEFTER: Okay, so we are
16 going to wind down now on local system effects and
17 close this topic.

18 PRESIDING COMMISSIONER BYRON: Actually
19 I --

20 HEARING OFFICER GEFTER: We have one
21 more question from Commissioner Byron.

22 PRESIDING COMMISSIONER BYRON: Just a
23 clarification, if I may, to the applicant. The
24 line of questioning that you had early on,
25 Ms. Luckhardt, with regard to the queue. Was

1 there some inference there with regard to which
2 plants, which of the two plants in Hayward are
3 going to be built first?

4 MS. LUCKHARDT: The key analysis, is my
5 understanding for an interconnection analysis, is
6 to look at the queue position. When Mr. Hesters
7 did his analysis of the project benefits he gave
8 the benefits primarily to Russell City putting
9 Russell City first.

10 It is our position that Eastshore should
11 be treated first because from an interconnection
12 standpoint it is first in the queue. And
13 depending on what this Commission does and how
14 soon this Commission acts, the construction time
15 for Eastshore is considerably shorter than Russell
16 City so Eastshore very well could potentially be
17 on-line and operating prior to Russell City as
18 well.

19 PRESIDING COMMISSIONER BYRON: Okay, I
20 thought that's what you meant by your question.

21 And staff then, did I understand the
22 answer you provided earlier that you did the
23 beneficial analysis for both Russell City and
24 Eastshore?

25 MR. HESTERS: Yes we did. We mostly

1 provided it so that -- as much information as we
2 could so that somebody could choose which one they
3 wanted to do because we weren't real certain
4 whether we should be using the Energy Commission's
5 permitting processes at the stage or the ISO
6 interconnection queue. We provided the
7 information so that the Commission could use
8 either.

9 PRESIDING COMMISSIONER BYRON: All
10 right, thank you. Anything else you want to add?
11 Okay, thank you.

12 HEARING OFFICER GEFTER: And just
13 following up on Mr. Hesters' last comment. The
14 nine megawatts of expected loss savings includes
15 the Russell City plus the Eastshore?

16 MR. HESTERS: The nine megawatts is just
17 Eastshore by itself. It drops to seven megawatts
18 if you assume Russell city is there first.

19 HEARING OFFICER GEFTER: Thank you.
20 We're going to move on then. We're closing local
21 system effects. We're going to move on to the
22 next topic, which is alternatives. We'll also
23 take a five minute break so people can stretch.
24 Off the record.

25 (Whereupon a recess was

1 taken.)

2 HEARING OFFICER GEFTER: Back on the
3 record. We are going to begin with the testimony
4 on alternatives. I am going to ask the applicant
5 to begin with offering your witnesses and we'll
6 swear them in if they haven't already been sworn.

7 MS. LUCKHARDT: Both Mr. Trewitt and
8 Mr. Stein have been sworn. Our primary witness is
9 Mr. Trewitt, Mr. Stein is available if needed.

10 HEARING OFFICER GEFTER: And would you
11 please identify the exhibit numbers that go to the
12 alternatives section please.

13 MS. LUCKHARDT: Okay, the alternatives
14 section deals with the alternatives section of the
15 AFC, that's Exhibit 1, alternative data responses
16 that are contained in Exhibit 2, comments on the
17 PSA on alternatives that are contained in Exhibit
18 13, the project owner's supplemental testimony on
19 alternatives which is Exhibit 16. And then we
20 have the City of Hayward's response to the
21 Eastshore Energy Center and RCEC projects on one
22 site, which is Exhibit 47, and response to
23 Committee questions on the revised scheduling
24 order on alternatives and that's Exhibit 10.

25 HEARING OFFICER GEFTER: Exhibit 10,

1 which was presented more in the form of a brief,
2 is that testimony that either of your witnesses is
3 going to adopt?

4 MS. LUCKHARDT: Yes. We didn't know
5 whether it would be necessary or needed and if the
6 issue on putting the project on two sites would be
7 important or not. Therefore we thought out of an
8 abundance of caution Mr. Trewitt would sponsor
9 that and bring that in if needed.

10 HEARING OFFICER GEFTER: And Mr. Trewitt
11 could testify that he participated in preparing
12 that document?

13 MS. LUCKHARDT: Yes.

14 HEARING OFFICER GEFTER: Okay, thank
15 you, go ahead.

16 DIRECT EXAMINATION

17 BY MS. LUCKHARDT:

18 Q Okay, Mr. Trewitt, can you please state
19 your name and spell your last name for the record.

20 A Greg Trewitt, T-R-E-W-I-T-T.

21 Q And was a statement of your
22 qualifications attached to your testimony?

23 A Yes.

24 Q And are you sponsoring exhibits number,
25 the portion of the following exhibits that deal

1 with alternatives? That would be Exhibits 1, 2,
2 13, 16, 10 and 47.

3 A Yes I am.

4 Q And in regards to Exhibit 10 did you
5 contribute to the development of that response?

6 A Yes I did.

7 Q And do you have any corrections to your
8 testimony at this time?

9 A I do not.

10 Q Insofar as your testimony contains
11 statements of fact are those facts correct to the
12 best of your knowledge?

13 A Yes they are.

14 Q And so far as your testimony contains
15 statements of opinion do they represent your best
16 professional judgment?

17 A Yes they do.

18 Q And do you adopt all these exhibits as
19 your sworn testimony?

20 A Yes.

21 Q And the just for clarification of the
22 record, could you please describe the timing and
23 early development of the Eastshore Energy Center
24 to the best of your knowledge.

25 A Yes, there has been some uncertainty

1 there and I wanted to maybe clarify that. The
2 development of the Eastshore Energy project began
3 with the RFO from PG&E back in 2004. I believe
4 Black Hills Energy at the time had hired a local
5 developer called Ramco Generating Two. That
6 company is located in Orinda, California.

7 That development went through the
8 process with the RFO through I believe it was
9 April of 2006, at which time PG&E chose the
10 Eastshore project as a successful bidder. However
11 my understanding is that Black Hills at the time
12 was in a merger discussion with another company
13 and could not announce that successful bid.

14 They also at that time offered up the
15 project for sale to Tierra Energy. Tierra Energy
16 purchased that and I believe closed at the end of
17 April of 2006. There's been some questions as to
18 why that was not announced when the PG&E
19 successful bidders were announced and I believe
20 that's the reason why.

21 I joined Tierra Energy on May of 2006,
22 May 22nd to be exact, and was hired by Tierra for
23 development of the project going forward.

24 Q Were you previously employed by Black
25 Hills before joining Tierra.

1 A Yes I was.

2 Q Were you involved in the development of
3 the Eastshore project while you were employed by
4 Black Hills?

5 A No I was not.

6 MS. LUCKHARDT: Okay, the witnesses are
7 available for cross.

8 HEARING OFFICER GEFTER: We have staff's
9 witness but you may cross on that because that is
10 really a different subject than what staff is
11 going to talk about so you may cross.

12 MS. HARGLEROAD: Well my only concern is
13 timing for Mr. Lewis because this is the third day
14 he has been here. He was here for both December
15 17 and December 18 and we certainly have attempted
16 to accommodate witnesses schedules.

17 HEARING OFFICER GEFTER: Okay.

18 MS. HARGLEROAD: And we would appreciate
19 it if other people attempted to do that too.

20 HEARING OFFICER GEFTER: Okay, I
21 understand. How long is his testimony?

22 MS. HARGLEROAD: I think it's not that
23 long, five or ten minutes, depending upon any
24 cross examination.

25 HEARING OFFICER GEFTER: If the parties

1 have no objection we can put Mr. Sherman on.

2 MS. HARGLEROAD: Professor Lewis. Lewis
3 is the last name.

4 HEARING OFFICER GEFTER: Sherman Lewis.

5 MS. HARGLEROAD: Right.

6 HEARING OFFICER GEFTER: Okay, we can
7 put Sherman Lewis on and take his direct testimony
8 and allow him to be crossed if necessary and then
9 we can continue on with staff's direct testimony.
10 And Mr. Trewitt would then be available for cross
11 examination on his testimony too.

12 MS. HARGLEROAD: Thank you.

13 HEARING OFFICER GEFTER: So let's take
14 Mr. Lewis and allow him to leave for his other
15 appointments.

16 MS. HARGLEROAD: He has to teach.

17 HEARING OFFICER GEFTER: All right.

18 Mr. Lewis, do you want to come up here, please,
19 and you can be sworn. You can either stand there
20 or you can sit down, there's a place to sit.

21 MR. LEWIS: This is fine.

22 HEARING OFFICER GEFTER: Thank you.

23 Whereupon,

24 SHERMAN LEWIS

25 Was duly sworn.

1 HEARING OFFICER GEFTER: Thank you.

2 Ms. Hargleroad has submitted a
3 declaration from Mr. Lewis. Are you presenting
4 him as an expert witness? And if that's the case
5 what are his qualifications?

6 MS. HARGLEROAD: Well I think Professor
7 Lewis can certainly tell you his qualifications.
8 He has been a --

9 HEARING OFFICER GEFTER: Well ask the
10 witness to tell us.

11 PRESENTATION OF QUALIFICATIONS

12 BY MS. HARGLEROAD:

13 Q Professor Lewis, could you give the
14 Commission some of the background as to your
15 qualifications as to why you are extremely
16 knowledgeable about alternatives in the
17 environment.

18 A I have been a long-time professor of
19 political science at California State University
20 Hayward; I have taught public policy and the
21 environment; I have been active in the
22 environmental movement; I have read a lot of the
23 literature dealing with energy issues and energy
24 problems. That's in brief where I'm coming from.

25 Q Weren't you also formerly an elected

1 board member of BART, the Bay Area --

2 A Yes, I served for four years on the
3 Board of Directors of the Bay Area Rapid Transit
4 District.

5 Q And isn't it correct that often the
6 transit villages we see around the BART stations
7 are projects that you certainly advocated for?

8 A Yes, certainly and specifically the one
9 in Castro Valley. As well as being active in
10 regional policy through the Advisory Council of
11 the Metropolitan Transportation Commission and
12 service for the Bay Area Alliance for Sustainable
13 Communities, RAF, TRANSDEF and a number of other
14 regional advocacy groups for smart growth and
15 transportation pricing reforms.

16 HEARING OFFICER GEFTER: Thank you. Do
17 applicant or staff have any voir dire of the
18 witness on his qualifications to testify on
19 alternatives?

20 VOIR DIRE EXAMINATION

21 BY MS. LUCKHARDT:

22 Q I guess I would like to hear more about
23 your knowledge in the area of energy resource
24 planning.

25 A I've just read a lot in the area. I've

1 read the documents relating to this plant as they
2 relate to alternatives.

3 Q Okay, but you haven't, you haven't
4 performed alternatives analyses for large
5 industrial projects like this in the past.

6 A That's true.

7 MS. LUCKHARDT: I guess I'm just having
8 trouble with having him qualified as an expert in
9 the area of alternatives and alternative energy
10 planning, which is the focus of his testimony,
11 when he does not have either an educational
12 background or work experience in the area of
13 energy planning and energy siting.

14 HEARING OFFICER GEFTER: Thank you. And
15 does the staff have any voir dire of the witness
16 in terms of qualifications?

17 MS. HOLMES: No, I think we'll save it
18 for cross.

19 HEARING OFFICER GEFTER: All right. Why
20 don't we take your concerns under advisement,
21 Ms. Luckhardt, and allow the witness to testify
22 and then we'll discuss whether or not we'll keep
23 the testimony in subsequently because he needs to
24 leave. So let's allow the witness to testify and
25 be available for cross before you have to leave.

1 Would you ask your witness to present
2 his direct testimony, please.

3 DIRECT EXAMINATION

4 BY MS. HARGLEROAD:

5 Q Professor Lewis, when you talk about
6 energy and what you have also studied in energy
7 aren't you looking at a big picture of core energy
8 usage?

9 A Let me present this testimony on
10 alternatives.

11 Q Please.

12 A And I have two extra copies here. To
13 who do I give it to?

14 Q They have all been distributed.

15 A Okay.

16 Q They're additional.

17 A Would you please in that case turn to
18 page two at the top where I say Tierra Eastshore
19 is not needed. The source of my testimony is the
20 policy of the California Energy Commission. There
21 are two policy documents. One of them is the
22 Eastshore Staff Assessment on page 6-12 which says
23 that -- it has several paragraphs explaining the
24 potential for alternatives to peak energy. It
25 then has a paragraph that says, quote:

1 "Current demand side programs
2 are not sufficient to satisfy
3 future electricity needs, nor is it
4 likely that even much more
5 aggressive demand side programs
6 could accomplish this at the
7 economic and population growth
8 rates of the last ten years."

9 That statement is a conclusion not
10 supported by evidence. The evidence that perhaps
11 is the most important is the 2007 Integrated
12 Energy Policy Report, the IEPR Committee Final
13 pages 60 to 68, 108 to 111, page 120 and 199 to
14 200. I would like in particular to look at page
15 108 of the Commission's own policy findings that
16 deal with --

17 MS. HOLMES: Excuse me, do you have
18 copies of that for people to look at?

19 MR. LEWIS: It's your document.

20 MS. HARGLEROAD: It certainly is your
21 document. And in fact last time when we were at
22 one of the hearings the document was available to
23 the public out front. So to reproduce that
24 substantial document was a bit much.

25 HEARING OFFICER GEFTER: We'll let the

1 witness read from it because we can take
2 administrative notice of the document.

3 MS. HARGLEROAD: Thank you.

4 MR. LEWIS: You'll see that I have in
5 fact attached some of those pages, 108 and
6 following, to the testimony on alternatives. So
7 if you look through this you'll find attached to
8 my testimony part of the CEC document entitled
9 using demand responses to meet electrical systems.

10 HEARING OFFICER GEFTER: Right, we have
11 it, thank you.

12 MS. HOLMES: That's attached to the
13 back.

14 HEARING OFFICER GEFTER: It's attached
15 to your testimony, we have it, thank you.

16 MR. LEWIS: It makes a very strong case
17 for elasticities of demand that can meet the need
18 without peaking plants. So if you read your own
19 document on policy you would be led to conclude
20 that we should be relatively optimistic about
21 alternatives to meet peaking demand. And these
22 pages, I don't want to read all of your policy to
23 you but I think if you read your policy you'll
24 discover a very strong case for alternatives. It
25 is very well substantiated in some depth.

1 And that is basically what I put before
2 you. You need to pay attention to your own
3 document from your own basic policies and to have
4 a study to see if your peaking policies and how
5 they apply to this plant. Because reading this
6 document it's clear that you don't need this
7 plant. You have a conflict between your
8 documents.

9 HEARING OFFICER GEFTER: With respect to
10 your testimony, on alternatives, your proposal is
11 a no project alternative?

12 MR. LEWIS: No, it's what is in your own
13 documents for energy policy to avoid the need for
14 peaking plants. You've got great ideas for
15 avoiding the need for peaking plants, you need to
16 execute them.

17 HEARING OFFICER GEFTER: Right, okay.

18 MR. LEWIS: The decision before you is
19 fundamentally political. The evidence favors
20 avoiding these peaking plants if we're going to
21 deal with global warming and other problems.

22 HEARING OFFICER GEFTER: Thank you. Any
23 more direct?

24 BY MS. HARGLEROAD:

25 Q Professor Lewis, too just briefly. I

1 think this was already attached to your
2 declaration on your CV that's been docketed. But
3 if you could just briefly give your educational
4 background, where you graduated from.

5 A I graduated from Harvard College and
6 then I got my PhD at Columbia University.

7 I think what we're dealing with in some
8 ways is the ghost of John Geesman because he
9 advocated for this plant at the same time that he
10 said:

11 "I think we have held
12 ourselves out to a much higher
13 level of performance than we have
14 actually be able to achieve. I
15 think there is an ongoing
16 schizophrenia in state energy
17 policy between what we say we want
18 to do and what we actually allow to
19 happen."

20 So I would urge the Commission to not
21 allow this to happen. Follow the advice of your
22 staff, follow the advice of your fundamental
23 policy relating to energy in California.

24 HEARING OFFICER GEFTER: Thank you.

25 Is the witness available for cross

1 examination?

2 MS. HARGLEROAD: Absolutely.

3 HEARING OFFICER GEFTER: Thank you.

4 Ms. Luckhardt.

5 MS. LUCKHARDT: Yes.

6 CROSS EXAMINATION

7 BY MS. LUCKHARDT:

8 Q Mr. Lewis, you reference AB 32 and I
9 guess your letter on the Russell City Energy
10 Center. Have you been involved in the AB 32
11 development process?

12 A No.

13 MS. LUCKHARDT: I have nothing further.

14 HEARING OFFICER GEFTER: Thank you.

15 Ms. Holmes.

16 MS. HOLMES: First I would like to begin
17 by asking pursuant to Section 1213 of the
18 Commission's own regulations for official notice
19 of the entire IEPR rather than cross examine the
20 witness on sections of the document. I think
21 that's appropriate and we can reference it in our
22 brief if that motion is granted.

23 HEARING OFFICER GEFTER: Absolutely, the
24 2007 IEPR, as we call it, is noticed. It's a
25 Commission document, we can use the entire

1 document.

2 MS. HOLMES: Thank you. Then I just, I
3 think I have just one question.

4 CROSS EXAMINATION

5 BY MS. HOLMES:

6 Q Is your concern about the staff's
7 alternative analysis based in any way on the
8 California Environmental Quality Act requirements?

9 A The California Environmental Quality Act
10 only requires the creation of information. It
11 really doesn't get into substantive analysis of
12 policy.

13 Q So would it be fair to say that it is
14 not your testimony that the staff's alternatives
15 analysis violates those CEQA informational
16 requirements?

17 A It depends on the standard to which you
18 wish to hold the staff analysis.

19 Q Well can you reference a particular
20 section of the CEQA statute, of the CEQA
21 guidelines with which this analysis is
22 inconsistent?

23 A No. No, I would just say that having
24 read the Commission's policy and having read the
25 staff assessment the staff assessment does not

1 respond to the detail and the information and the
2 policy direction of the Commission's policy.

3 MS. HOLMES: Thank you.

4 HEARING OFFICER GEFTER: Thank you.

5 MS. HARGLEROAD: Thank you, Professor
6 Lewis for your time.

7 HEARING OFFICER GEFTER: Thank you for
8 being here and thanks for your patience. We
9 appreciate your coming.

10 We are going to resume now with
11 testimony from the staff on the staff's
12 alternatives analysis and then we'll make both
13 applicant and staff's witnesses available for
14 cross examination.

15 MS. HOLMES: Thank you. Staff's witness
16 on alternatives is Dr. Suzanne Phinney and she
17 does need to be sworn.

18 Whereupon,

19 DR. SUZANNE PHINNEY

20 Was duly sworn.

21 HEARING OFFICER GEFTER: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. HOLMES:

24 Q Dr. Phinney, did you prepare the
25 alternatives testimony that is contained in

1 Exhibit 200?

2 A Yes.

3 Q And is a statement of your
4 qualifications included in that document?

5 A Yes.

6 Q Do you have any changes or corrections
7 to make to your testimony?

8 A I just wanted to acknowledge that the
9 applicant has submitted information that discusses
10 the encumbrances on Tierra Alternative Site 1.
11 Staff requested information regarding the
12 encumbrance in its Data Request number 2 and this
13 information was not provided until after the PSA
14 or the FSA was prepared.

15 Q And with that change is your testimony
16 true and correct to the best of your knowledge?

17 A Yes.

18 Q And do the conclusions contained in your
19 testimony represent your best professional
20 judgment?

21 A Yes.

22 Q Would you please provide a summary of
23 how you conducted the analysis and the conclusions
24 that are contained in Exhibit 200.

25 A Yes. And I'll probably take a few more

1 minutes than Mark because the alternatives
2 analysis is very much about process. And it's
3 purpose is to evaluate the comparative merits of a
4 range of reasonable alternatives to the project or
5 to the location of the project which would
6 feasibly attain most of the project objectives but
7 would avoid or substantially lessen one or more of
8 the significant effects of the project. And so we
9 did this through the following steps.

10 The basic objectives were identified.
11 Any potential, significant environmental effects
12 were identified, alternative sites or locations
13 were identified and the environmental impacts were
14 evaluated. Technology alternatives to the project
15 were evaluated and the impacts of not constructing
16 the project, or the no project alternative, were
17 identified.

18 So to start off in terms of the project
19 objectives, these were to construct and operate a
20 nominal 115.5 megawatt net natural gas-fired
21 intermediate peaking load generating facility to
22 deliver electricity to the PG&E substation at 115
23 kV without the need for system upgrades and to
24 provide voltage support to the regional 230 kV
25 transmission system.

1 Staff has determined that siting of the
2 proposed Eastshore project would result in
3 significant adverse impacts to aviation safety and
4 air traffic patterns and to the utility of the
5 Hayward Executive Airport and surrounding
6 airspace. So those are the first two steps.

7 We used a number of criteria to identify
8 potential alternative sites including whether
9 there was available land, whether environmental
10 impacts could be reduced, whether the site was
11 near a transmission line. How close they were to
12 sensitive receptors. Looking at general plan and
13 zoning requirements and was the site available.

14 We started out with a study region in
15 the geographic area near the PG&E substation to
16 see what sites might be available that could
17 provide power to the Eastshore substation. The
18 study region was expanded to the greater East Bay
19 area, particularly in response to the concerns of
20 the Hayward citizens and to allow for informed
21 decision-making and public participation.

22 A dozen alternative sites were initially
23 considered including sites identified by the
24 applicant, other properties in the study region
25 including a request from the Committee to look at

1 co-location of the Eastshore and Russell City.
2 Alternative sites that have been proposed for
3 other power plants and sites at the former Alameda
4 Naval Air Station in response to requests from the
5 public.

6 Many of the sites were eliminated from
7 further consideration because they did not meet
8 the criteria. Five sites were retained for
9 further analysis. Three of these were from
10 Tierra's original list of six alternative sites
11 and they were all located in Hayward and will
12 connect to the Eastshore substation. Two sites
13 were in Fremont and would connect to the Newark
14 substation.

15 For these five sites we looked at
16 distances to schools and homes and the approximate
17 distance of linears, the transmission line, gas
18 pipeline, sewer and water. In general the
19 alternatives were further away from schools and
20 residences but the distance for the linears was
21 often significantly graded.

22 The potential environmental effects of
23 the alternative sites were compared and we had a
24 matrix in the section that compared all of these.
25 The Depot Road site would have similar aviation-

1 related impacts to that of the Eastshore project.
2 The other two Hayward sites could also have
3 similar impacts but these impacts would be less in
4 comparison to the Eastshore project because these
5 two sites are a little further removed from the
6 airport.

7 The two Fremont sites by virtue of their
8 location would not have significant aviation-
9 related impacts. And the Fremont site on Boyce
10 Road, which was staff Alternative Site D, reduces
11 the significant impacts of the Eastshore project
12 and appears to have fewer environmental impacts as
13 compared to the other alternatives.

14 We also looked at conservation and
15 demand side management practices as well as
16 electricity generated from renewable resources.
17 Current demand side programs are not likely to be
18 sufficient to satisfy future electricity needs.
19 Renewable resources that could meet the quick-
20 start capability of the proposed project and that
21 could provide 115.5 megawatts of power in the East
22 Bay region are not available.

23 The no-project alternative was
24 evaluated, it would have positive and negative
25 attributes. It would eliminate the significant

1 aviation-related impacts but it could cause older,
2 more polluting plants to operate more and would
3 eliminate the benefits of serving local load
4 demand.

5 Q Thank you. Dr. Phinney, in your written
6 testimony you did not reach an explicit conclusion
7 as to whether the alternatives examined would
8 avoid or reduce significant impacts and still meet
9 project objectives; is that correct?

10 A Yes.

11 Q Could you please summarize what your
12 conclusion on that issue is.

13 A We did not identify any feasible
14 alternatives that would meet the project
15 objectives.

16 MS. HOLMES: Thank you.

17 HEARING OFFICER GEFTER: And just to
18 follow that up, is that because the staff's most
19 favorable site, which is located in Fremont,
20 doesn't interconnect into the Eastshore
21 substation?

22 DR. PHINNEY: Yes.

23 HEARING OFFICER GEFTER: And that is one
24 of the applicant's objectives.

25 DR. PHINNEY: Yes.

1 HEARING OFFICER GEFTER: And how does
2 determine what the project objectives are when you
3 do an alternatives analysis?

4 DR. PHINNEY: Those objectives were
5 taken from the introduction to the whole FSA, they
6 were not independently created by alternatives
7 staff.

8 HEARING OFFICER GEFTER: So when you do
9 an alternatives analysis that's the standard
10 approach, which is to take what the project
11 proponent indicates are their objectives and you
12 go from there in terms of your analysis; is that
13 right?

14 DR. PHINNEY: Well, the Energy
15 Commission staff, and particularly the project
16 manager in preparing the introduction to the FSA
17 or the PSA, looks at the applicant's objectives
18 and may or may not include all of them.

19 HEARING OFFICER GEFTER: Have you
20 completed your direct testimony?

21 DR. PHINNEY: Yes.

22 HEARING OFFICER GEFTER: Yes? Okay.
23 Then I will open up the floor for cross
24 examination for both applicant's and staff's
25 testimony. Does the City have cross examination?

1 MS. GRAVES: The City has a question for
2 Mr. Trewitt.

3 CROSS EXAMINATION

4 BY MS. GRAVES:

5 Q Prior to purchasing the PG&E contract
6 did Tierra Energy contact the City of Hayward
7 regarding the proposed site?

8 A To my knowledge, prior to Tierra owning
9 the project, no.

10 Q I don't know if you are familiar with
11 the due diligence in purchasing the contract. Do
12 you know if Black Hills contacted the City of
13 Hayward regarding the proposed site?

14 A I'm sorry?

15 Q Do you know if Black Hills when it was
16 responding to the RFO contacted the City of
17 Hayward regarding the proposed site? That may or
18 may not have been in Tierra's due diligence in
19 purchasing the contract from Black Hills. I don't
20 know if that's within your scope --

21 A I wasn't involved in the purchase so I
22 wouldn't know.

23 MS. GRAVES: That's all we have.

24 HEARING OFFICER GEFTER: Thank you.

25 Alameda County, are there any questions of the

1 witnesses?

2 MR. MASSEY: We don't have any
3 questions, thank you.

4 HEARING OFFICER GEFTER: Thank you.
5 Chabot College?

6 MS. KACHALIA: The District does not
7 have any questions.

8 HEARING OFFICER GEFTER: Group
9 Petitioners?

10 MS. HARGLEROAD: Yes.

11 CROSS EXAMINATION

12 BY MS. HARGLEROAD:

13 Q Mr. Trewitt, you are referring to the
14 RFO and the purchase contract with PG&E.

15 A That's correct.

16 Q Okay. I understand that Tierra is not
17 relying on that contract. Because we asked to
18 have that contract to be produced.

19 MS. LUCKHARDT: I'm sorry, in what
20 context are you asking if we are relying --

21 MS. HARGLEROAD: In any context.

22 MS. LUCKHARDT: To what context are you
23 referring?

24 MS. HARGLEROAD: I am referring to the
25 testimony concerning the contract and there is

1 reliance on this contract that has not been
2 produced.

3 MS. LUCKHARDT: We are simply relying
4 upon the contract in the fact that it exists. It
5 has been publicly disclosed --

6 MS. HARGLEROAD: Well then if --

7 MS. LUCKHARDT: -- that existing.

8 MS. HARGLEROAD: Okay, well we need to
9 know the terms of that contract. So I think
10 before --

11 MS. LUCKHARDT: What terms do you need
12 to know to complete your analysis? We are not
13 relying on any terms other than the fact that the
14 contract exists and we have publicly disclosed the
15 on-line date.

16 MS. HARGLEROAD: Okay, then I --

17 MS. LUCKHARDT: There is nothing else
18 that we are relying on in our analysis.

19 MS. HARGLEROAD: I would make a motion
20 to strike all testimony referring to the contract
21 in any way then unless it is going to be produced.
22 Because there is this reference to the RFO and
23 this contract.

24 MS. LUCKHARDT: The RFO and the RFO
25 documents have been provided in data responses.

1 All of that information is in the record. Not
2 only is it publicly available from the PUC but we
3 have provided it in the record at the request of
4 staff. That provides a pretty robust description
5 of the general parameters of a contract.

6 There is nothing about the specific
7 terms of the contract that we're relying on. All
8 we are simply doing is saying that the contract
9 exists and that's public knowledge.

10 HEARING OFFICER GEFTER: And we also
11 take administrative notice of the PUC's 2004 RFO
12 process in which the PUC approved seven projects
13 chosen by PG&E during that process. We've already
14 discussed that.

15 MS. LUCKHARDT: There were official PUC
16 decisions on that that are available and public
17 and that --

18 HEARING OFFICER GEFTER: And also,
19 Ms. Luckhardt, again I know that this is public
20 but what is the on-line date under the RFO
21 contract for the Eastshore project? Mr. Trewitt?

22 MR. TREWITT: It's scheduled for May
23 2009.

24 HEARING OFFICER GEFTER: Thank you.
25 Further examination, Ms. Hargleroad?

1 MS. HARGLEROAD: I think I've made my
2 position clear concerning the testimony at this
3 time.

4 HEARING OFFICER GEFTER: You have no
5 further questions on alternatives? Do you have
6 any questions for staff's witness?

7 MS. HARGLEROAD: No, no thank you.

8 HEARING OFFICER GEFTER: Okay.

9 MS. LUCKHARDT: I have a couple for
10 staff.

11 HEARING OFFICER GEFTER: Sure.

12 CROSS EXAMINATION

13 BY MS. LUCKHARDT:

14 Q Ms. Phinney, isn't it true that locating
15 a project like this in another location could
16 generate a similar level of public and local
17 jurisdiction opposition to that location?

18 A Well, siting a power plant is specific.
19 The results that you look at from the public is
20 specific to the location that is selected and you
21 may have more concerns, less concerns. It just
22 depends.

23 Q And isn't it true that moving this
24 project to an alternative location would result in
25 substantial loss of applicant's development

1 efforts and cause significant delay to the
2 project?

3 A What was the last part of that question?

4 Q And cause significant delay.

5 A In my testimony I identify that if the
6 project is moved to a different location that
7 there would be additional studies that would need
8 to be done. I can't speak to whether it would be
9 a significant delay or not.

10 Q In your experience in evaluating
11 applications for certification, if this project
12 were moved to either Alternative D or Alternative
13 E would that require a new application for
14 certification?

15 A Yes I believe so.

16 MS. LUCKHARDT: Thank you, I have
17 nothing further.

18 HEARING OFFICER GEFTER: Ms. Holmes,
19 would that be a legal decision, a legal conclusion
20 rather than testimony on behalf of the witness?

21 MS. HOLMES: Yes it would but --

22 HEARING OFFICER GEFTER: You'll let
23 her --

24 MS. HOLMES: I have redirect when we're
25 at that point.

1 HEARING OFFICER GEFTER: Go ahead on
2 redirect.

3 REDIRECT EXAMINATION

4 BY MS. HOLMES:

5 Q I'm concerned that there may be some
6 confusion based on the last question that you just
7 received from Ms. Luckhardt. Can you please state
8 whether or not it is staff's position that
9 Alternatives D and E feasibly attain the project
10 objections.

11 A It is our conclusion that they would not
12 meet the project objectives.

13 Q Thank you. And then I would like to go
14 back to a question that Ms. Gefter asked. You
15 indicated that there is a review of the project
16 objectives that are provided in the AFC by the
17 staff when the AFC is submitted; is that correct?

18 A Yes.

19 Q And is the purpose of that to determine
20 whether or not those objectives are reasonable and
21 to delete the ones that are not reasonable?

22 A Yes.

23 Q And can you please explain why
24 interconnecting at the Eastshore substation was
25 retained as a project objective by staff.

1 A Because it was very central to the
2 whole project.

3 MS. HOLMES: Thank you.

4 HEARING OFFICER GEFTER: May I ask what
5 that means.

6 DR. PHINNEY: It was based on our belief
7 that going through the whole process from the
8 beginning of the AFC through all of the public
9 hearings that the objective of connecting to the
10 Eastshore substation was very important.

11 HEARING OFFICER GEFTER: Is that because
12 of the RFO or because it would just require more
13 work?

14 DR. PHINNEY: I don't think I have a
15 specific answer to that.

16 HEARING OFFICER GEFTER: Okay, so really
17 you're speculating as to why staff retained that,
18 that interconnecting at the Eastshore was
19 essential. You don't really have a -- you can't
20 enumerate the reasons why staff decided to keep
21 that objective.

22 DR. PHINNEY: I think it was based on
23 the information that was provided by the
24 applicant. The fact that there was an RFO process
25 and the discussions that took place in the

1 hearings throughout the process.

2 MS. HOLMES: Would it be fair to say
3 that it also included the testimony on local
4 system effects?

5 DR. PHINNEY: Yes.

6 HEARING OFFICER GEFTER: Thank you. I
7 also have another question. I don't mean to put
8 you on the spot but since you're here and you can
9 help us understand this analysis. In your
10 experience at the Energy Commission or even doing
11 CEQA analyses for other agencies has it ever
12 occurred where the analysis recommends a
13 particular alternative as a better site all the
14 way around environmentally and more feasible that
15 an applicant has then changed their site to a
16 recommended site under the alternatives analysis?

17 DR. PHINNEY: I can only speak to the
18 analyses that I have done and I have not come
19 across that.

20 HEARING OFFICER GEFTER: Then again with
21 respect to Alternative D, which would be located
22 in Fremont and interconnect at the Newark
23 substation. Are you aware of any other projects
24 that might have been proposed to interconnect at
25 that substation at the Energy Commission?

1 DR. PHINNEY: Are you asking whether an
2 AFC was submitted where the proposed project would
3 interconnect with Newark?

4 HEARING OFFICER GEFTER: Right, yes.

5 DR. PHINNEY: I am not aware of any.

6 HEARING OFFICER GEFTER: Okay.
7 Commissioner.

8 PRESIDING COMMISSIONER BYRON: I'll
9 direct this to anyone that might be able to answer
10 it. Do we know, did PG&E's RFO for this
11 procurement specify an injection point for this
12 power?

13 MR. TREWITT: Can you rephrase that
14 again real quick.

15 PRESIDING COMMISSIONER BYRON: Did PG&E
16 specify the Eastshore substation as the injection
17 point in the RFO?

18 MR. TREWITT: In the contract they do.

19 PRESIDING COMMISSIONER BYRON: But not
20 in the request for offer for a proposal.

21 MR. TREWITT: In the request for offer
22 it's basically the whole, the entire PG&E grid and
23 with preference to the Bay Area.

24 PRESIDING COMMISSIONER BYRON: Okay. In
25 the contract they specify the injection point.

1 MR. TREWITT: Yes sir.

2 PRESIDING COMMISSIONER BYRON: Okay,
3 thank you.

4 MR. HAAVIK: I believe maybe Mr. Mackin
5 might be able to answer the question on Newark.
6 Isn't Los Esteros into Newark?

7 HEARING OFFICER GEFTER: Mr. Haavik,
8 you're asking Mr. Mackin?

9 MR. HAAVIK: I'm sorry.

10 HEARING OFFICER GEFTER: I'm sorry that
11 I failed to ask you if you had any cross
12 examination.

13 MR. HAAVIK: That's okay. Commissioner
14 Byron said for anybody.

15 HEARING OFFICER GEFTER: Right.

16 MR. HAAVIK: I was just suggesting that
17 he might know.

18 HEARING OFFICER GEFTER: Okay, that's
19 fair enough.

20 MR. MACKIN: The Los Esteros power plant
21 connects to the Los Esteros substation, which is
22 looped into the Newark-Metcalf 230 line. So
23 indirectly it connects to Newark.

24 HEARING OFFICER GEFTER: And while we
25 have Mr. Mackin on the stand, there was originally

1 during the energy crisis in 2000 and 2001, there
2 were several Calpine projects proposed and one was
3 to interconnect into the Newark substation. Do
4 you remember that?

5 MR. MACKIN: I think I recall that. I
6 don't think it got very far.

7 HEARING OFFICER GEFTER: No. Okay,
8 thank you. With respect to Commissioner Byron's
9 question about whether the RFO that was
10 established by PG&E -- there was a letter from
11 PG&E that was sent to the Committee in May of 2007
12 in which it describes how PG&E reviewed the sites.
13 Do you remember that letter? Because we talked
14 about it at a previous hearing.

15 MR. TREWITT: Yes, I recall that letter.

16 HEARING OFFICER GEFTER: Actually we
17 discussed it at the status conference in June. In
18 that letter it says that PG&E, the RFO did not
19 specify the location of any project, which
20 confirms what you just told us. So you actually
21 agree with what PG&E said in that letter.

22 MR. TREWITT: That they didn't specify a
23 location, yes.

24 HEARING OFFICER GEFTER: All right. Are
25 you done with your redirect?

1 MS. HOLMES: I am.

2 HEARING OFFICER GEFTER: Okay. Does
3 anyone have any recross? If not we're going to
4 close down alternatives.

5 MS. LUCKHARDT: I guess --

6 HEARING OFFICER GEFTER: Do you have a
7 question?

8 MS. LUCKHARDT: I just have one question
9 based on the discussion that just went on.

10 HEARING OFFICER GEFTER: Okay.

11 REDIRECT EXAMINATION

12 BY MS. LUCKHARDT:

13 Q Mr. Trewitt, was there a preference
14 given for projects located in the load center or
15 projects that did not have large system upgrade
16 costs attached to them in the RFO documents?

17 A I believe the system upgrade costs would
18 be borne by the developer and so if there was a
19 huge system upgrade cost that would come out in
20 your pricing and I think you would be less
21 competitive. So I think what we have seen is sort
22 of a natural selection, if you will, of projects
23 that were bid into the Bay Area.

24 HEARING OFFICER GEFTER: If there are no
25 questions on alternatives we're going to close

1 alternatives. We'll move the exhibits at the end
2 of the day when we move all the exhibits.

3 Let's go off the record.

4 (Whereas a discussion was held
5 off the record.)

6 HEARING OFFICER GEFTER: Back on the
7 record. We're going to begin with the applicant's
8 witness on land use.

9 MS. LUCKHARDT: The applicant calls
10 Jennifer Scholl. She needs to be sworn.
11 Whereupon,

12 JENNIFER SCHOLL
13 Was duly sworn.

14 HEARING OFFICER GEFTER: Thank you.

15 MS. LUCKHARDT: Ms. Scholl will be
16 sponsoring the land use portions of a whole set of
17 exhibits and I will now read those exhibit numbers
18 into the record. That would be 1, 3, 7, 9, 13,
19 17, 22, 24. Wait a minute, 22 and 24 I believe
20 were sponsored by other folks. So 13, 17, 40, 49,
21 50 and 51.

22 HEARING OFFICER GEFTER: What did you
23 say about 22 and 24?

24 MS. LUCKHARDT: I believe that 22 and 24
25 were actually sponsored by Alameda County --

1 HEARING OFFICER GEFTER: We'll check
2 that.

3 MS. LUCKHARDT: -- with one witness or
4 another.

5 HEARING OFFICER GEFTER: We'll look at
6 that.

7 MS. LUCKHARDT: They were sponsored by
8 other witnesses.

9 MR. MASSEY: Madame Hearing Officer.

10 HEARING OFFICER GEFTER: Yes.

11 MR. MASSEY: We are going to object to
12 the introduction of Exhibit 17.

13 HEARING OFFICER GEFTER: Okay, and what
14 is that.

15 MR. MASSEY: That is the testimony from
16 the witness.

17 MS. LUCKHARDT: Are you objecting to the
18 corrections that have been handed out today or the
19 original testimony?

20 MR. MASSEY: I assume the correction is
21 to replace the original. Our issue is not with
22 the corrections themselves, our issue is with the
23 attachments to her testimony, Attachments 1 and 2,
24 which are portions of a July internal draft of the
25 updated airport land use plan for the Hayward

1 Executive Airport.

2 That was an internal draft that was
3 inadvertently disclosed in the Russell City
4 proceedings. Ms. Horvath appeared at the Russell
5 City proceedings and informed the Commission that
6 that was an internal draft that was inadvertently
7 disclosed and it shouldn't be relied on.
8 Ms. Scholl has relied upon it in her testimony.

9 We would move at a minimum to strike the
10 two attachments and to strike her responses in
11 which she opines based on the July draft that is
12 an internal draft, it has been substantially
13 revised.

14 And as you know the County has prepared
15 a Proposed Exhibit 534 which is the publicly
16 available draft, or will be publicly available on
17 Wednesday but it's been noticed for the Wednesday
18 Airport Land Use Commission meeting. That is a
19 draft that will be available to the public and we
20 believe it would be reasonable for the Energy
21 Commission to rely upon that draft in their
22 analysis of the Eastshore AFC.

23 HEARING OFFICER GEFTER: Ms. Luckhardt.

24 MS. LUCKHARDT: Our response is that the
25 draft that we had and provided was accepted and

1 taken into the record in the Russell City
2 proceeding. So regardless of the fact that it may
3 not have been intended to be distributed it was
4 available and was the only publicly available
5 version for us to work off of at the time we
6 created our testimony.

7 We understand that since then, and that
8 was handed out today, Alameda County has adopted
9 or moved on to yet another draft. Nonetheless
10 that's all we had to work from at the time and it
11 is publicly available, whether it was intended to
12 be or not. Therefore we believe that we should be
13 able to opine upon it. Obviously it is a draft
14 and we understand that drafts do evolve and change
15 over time.

16 Regarding the second exhibit, the map
17 that you referred to. That was actually created
18 by CH2MHILL, that was not taken from your
19 document. So that's just a clarification on the
20 second item that you mentioned.

21 MR. MASSEY: And we'll withdraw the
22 motion with respect to the map but with respect to
23 the chart that's attached -- and I think it
24 started out as an Attachment 2 and I think it
25 moved to become Attachment 1. I'm not really sure

1 but it's the chart as opposed to the map. That is
2 the source of our objection.

3 HEARING OFFICER GEFTER: Do you have an
4 updated version of that chart?

5 MR. MASSEY: The chart that was included
6 with Ms. Scholl's testimony is an excerpt from the
7 July 2007 draft plan. What we provided is the
8 entirety of the December 2007 draft plan which
9 includes at Section 3- -- Table 3-2 is the updated
10 chart. It substantially revises what was in the
11 July 2007 draft.

12 Therefore we believe that Ms. Scholl's
13 testimony in that regard has no evidentiary value.
14 We are not saying that this was, that she intended
15 to try to mislead the Commission but we believe
16 that relying on her testimony based on an outdated
17 draft has the potential to mislead the Commission.

18 HEARING OFFICER GEFTER: I understand
19 that. Unfortunately it was admitted in the
20 Russell City case so it is already part of the
21 administrative record that we could take
22 administrative notice of. Apparently the County
23 wasn't a party there who could have objected at
24 the time but apparently, you know, it was
25 submitted somehow because someone had it

1 inadvertently.

2 You certainly have the opportunity to
3 cross examine Ms. Scholl on that, you have your
4 new document that you are submitting to us today
5 to update that information and certainly in your
6 brief you can argue to us that the updated
7 information is what we should rely on rather than
8 the earlier version that Ms. Scholl relied on.

9 MR. MASSEY: I appreciate that.

10 HEARING OFFICER GEFTER: So let's go
11 with that. Okay, Ms. Scholl.

12 DIRECT EXAMINATION

13 BY MS. LUCKHARDT:

14 Q Ms. Scholl, was a statement of your
15 qualifications attached to or does it appear in
16 your testimony?

17 A Yes it does.

18 Q And do you have any corrections to your
19 testimony at this time?

20 A Yes I do.

21 Q And could you please go over them.

22 A Beginning on page three under question
23 four there is a minor typo. The letter --

24 HEARING OFFICER GEFTER: Is that in
25 Exhibit 17 that you're referring to?

1 MS. SCHOLL: I am referring to -- This
2 was passed out earlier, the minor corrections to
3 my testimony. They are all basically
4 administrative.

5 MS. LUCKHARDT: This is Exhibit 17. And
6 what we passed out earlier was a redline/strikeout
7 to show changes to make it easier for all parties
8 to follow the corrections.

9 HEARING OFFICER GEFTER: Thank you.

10 MS. SCHOLL: Okay, beginning on page
11 three under Question 4 there is a typo in the
12 question. There is an S after the citation of the
13 Hayward Municipal Code at the end and that's
14 struck out in the text.

15 The next correction is on page seven
16 under Answer 10. There is a reference to Exhibit
17 50 and that actually should be corrected to be
18 Exhibit 49.

19 On the same page -- actually I think
20 it's now moved to the following page. But under
21 A-11 there is missing quotations and close
22 quotations under a statement from the City of
23 Hayward City Manager letter. Those quotations
24 have been added back in.

25 BY MS. LUCKHARDT:

1 Q Could you please describe where those
2 quotations are.

3 A Beginning under response A-11 with the
4 sentence, "As the City Manager's letter puts it:"
5 The quotations are added beginning for the
6 sentence that reads: "Both the City's adopted 1984
7 Airport Master Plan" and continues to the end
8 quotes at the end of the sentence that ends after
9 "copy attached." And that ends on the top of page
10 eight. Also on page eight under Answer 12 the
11 exhibit reference to Exhibit 49 should be Exhibit
12 48. That concludes my changes, they are all
13 administrative.

14 HEARING OFFICER GEFTER: And thank you
15 for distributing all of that this morning.

16 MS. SCHOLL: Actually -- I apologize,
17 there is one -- I apologize. Also under Answer 10
18 halfway through the response it says: "As
19 confirmed in project owner's Exhibit --" what was
20 Exhibit 50. The sentence should now read:

21 "As confirmed in project
22 owner's Exhibit 49, City of Hayward
23 Resolution number 01-125 and
24 Exhibit 50, City of Hayward
25 Resolution number 01-104."

1 That concludes my corrections.

2 BY MS. LUCKHARDT:

3 Q With these corrections to your
4 testimony, insofar as your testimony contains
5 statement of fact are those facts true and correct
6 to the best of your knowledge?

7 A Yes they are.

8 Q Insofar as your testimony contains
9 statements of opinion do they represent your best
10 professional judgment?

11 A Yes they do.

12 Q Do you now adopt all these exhibits as
13 your sworn testimony?

14 A Yes I do.

15 MS. LUCKHARDT: And Ms. Scholl is
16 available for cross.

17 HEARING OFFICER GEFTER: You know, I
18 would like Ms. Scholl to indicate to us before we
19 move on to staff's witness why is it the applicant
20 believes that even if there are, even if the
21 project does not comply with certain LORS and
22 certain general plan provisions why you believe
23 that the project would be consistent in any event.

24 MS. LUCKHARDT: I guess my question is I
25 don't believe that correctly describes her

1 testimony but I'll let her respond.

2 HEARING OFFICER GEFTER: Well if that's
3 incorrect then I would like her to clarify. I
4 just want a little bit of clarification, please.

5 MS. SCHOLL: Hearing Officer Gefter, my
6 testimony does speak a bit, does speak to the
7 issue you have just raised. And basically based
8 upon the testimony that was received on December
9 18 with our panel of the aviation witnesses, in my
10 job as the land use task leader and in my job as a
11 regulatory specialist it is my job to review plans
12 and policies and information and basically use
13 that information to generate my own opinion.

14 And in that I believe and I support the
15 testimony of my colleagues regarding the fact that
16 we, I believe, demonstrated on December 18 that we
17 don't believe that there is any hazard to
18 aviation. And therefore if you can make the
19 finding that there is no hazard to aviation then
20 you can make a finding that the project is
21 consistent with plans and policies.

22 HEARING OFFICER GEFTER: And were you
23 here during the testimony of your noise witness on
24 December 18?

25 MS. SCHOLL: I was here on December 18,

1 yes.

2 HEARING OFFICER GEFTER: Because there
3 was some dispute about the existing LORS with
4 respect to the noise ordinance. And again when
5 you review your land use testimony do you also
6 believe that the project would comply with those
7 LORS as well, with the general plan LORS on noise?
8 Or do you believe that it is inconsistent but we
9 should not, we should override? What is your
10 analysis?

11 MS. SCHOLL: I believe and support the
12 testimony that was made during the hearing on
13 behalf of our witness, Farshad Farhang.

14 MS. LUCKHARDT: I think there is a
15 question about the interpretation of the
16 ordinance, not so much the ordinance itself when
17 it applies to noise.

18 MS. SCHOLL: And consistent with
19 Mr. Farhang's testimony we believe that the
20 project does comply with the ordinances with
21 respect to the noise limits.

22 HEARING OFFICER GEFTER: So is it your
23 position as the expert witness on land use for the
24 applicant that the project actually is not
25 inconsistent with the general plan but actually is

1 consistent with all the LORS and the local
2 ordinances?

3 MS. SCHOLL: Yes, correct.

4 HEARING OFFICER GEFTER: Off the record
5 for a minute.

6 (Whereupon a brief recess was
7 taken.)

8 HEARING OFFICER GEFTER: Ms. Scholl, in
9 your testimony could you indicate where you are
10 referring to the City's resolutions.

11 MS. SCHOLL: Yes, in my response to
12 Question number 10 in Answer 10 I refer to both of
13 these resolutions from the City of Hayward in the
14 sentence that is corrected to now read:

15 "As confirmed in project
16 owner's Exhibit 49, City of Hayward
17 Resolution number 01-125 and
18 Exhibit 50, City of Hayward
19 Resolution number 01-104."

20 HEARING OFFICER GEFTER: Okay, now in
21 Exhibit 404 from the City it talks about
22 Resolution 07-028. Is that the one that you were
23 -- Which one is that?

24 MS. GRAVES: The City is referring to
25 the Resolution specific to Eastshore, the

1 applicant is referring to resolutions related to
2 Russell City.

3 HEARING OFFICER GEFTER: I see. Do you,
4 Ms. Scholl, refer to the City Council's resolution
5 with respect to Eastshore in your testimony?

6 MS. SCHOLL: I do not.

7 HEARING OFFICER GEFTER: And that would
8 be Resolution 07-028. You do not? What is your
9 answer?

10 MS. SCHOLL: No, I do not refer to that
11 resolution in my testimony.

12 HEARING OFFICER GEFTER: Thank you, we
13 needed that clarification. And that resolution,
14 07-028, is Exhibit 404 from the City of Hayward.

15 MS. GRAVES: That is correct.

16 HEARING OFFICER GEFTER: All right,
17 thank you.

18 PRESIDING COMMISSIONER BYRON: I don't
19 have any other questions at this time. Let's just
20 go ahead and let the parties get their testimony
21 on the record.

22 HEARING OFFICER GEFTER: Now we're going
23 to go on to staff for the direct testimony. I
24 don't know how long it is going to take but if we
25 don't finish we'll do it after lunch, continue

1 after lunch.

2 MS. HOLMES: Thank you. Staff's witness
3 for land use is Shaelyn Strattan; she has already
4 been sworn.

5 HEARING OFFICER GEFTER: That's right,
6 from previous testimony, thank you.

7 DIRECT EXAMINATION

8 BY MS. HOLMES:

9 Q Ms. Strattan, did you prepare the land
10 use portion of Exhibit 200?

11 A Yes, along with my colleague, Jim Adams.
12 Along with my colleague, Jim Adams, I did, yes.

13 Q And is a statement of your
14 qualifications contained in that exhibit?

15 A No it is not.

16 Q Could you please give me a statement of
17 your qualifications for land use.

18 A I have approximately 30 years of
19 environmental work, ten years in CEQA review and
20 analysis, two years as a senior land use planner
21 for the County of Calaveras, and approximately six
22 years as an air traffic controller relating
23 directly to the aviation issue.

24 Q Have you prepared or been involved in
25 the preparation of other land use testimonies at

1 the California Energy Commission?

2 A Yes I have.

3 Q Thank you very much.

4 Do you have any corrections to make to
5 your testimony at this time.

6 A No I do not.

7 Q Are the facts contained in your
8 testimony true and correct to the best of your
9 knowledge?

10 A Yes they are.

11 Q And do the conclusions that you reach
12 represent your best professional judgment?

13 A Yes they do.

14 Q Could you please provide a summary of
15 your testimony.

16 A Yes I can. The primary purpose of a
17 land use analysis is to determine the
18 compatibility of the proposed project with
19 existing and planned uses in the general area.
20 Compatibility generally means that the project is
21 capable of existing and operating in harmony with
22 the existing system structures and surrounding
23 uses.

24 The Energy Commission staff has
25 concluded that from a land use perspective the

1 Eastshore Energy Center project would not
2 physically disrupt or divide the established
3 community, conflict with any applicable habitat or
4 natural community conservation plan, impact
5 existing or future agricultural zoning or
6 Williamson Act contracts or result in the
7 conversion of farmland to a non-agricultural use.
8 However, the Eastshore project is within the City
9 of Hayward's jurisdiction and would not be in
10 compliance with several of the city's LORS.

11 The purpose of the Hayward Airport
12 Approach Zoning Regulations Section 10-6 of the
13 Hayward Municipal Code is to prevent the creation
14 or establishment of airport hazards. It is also
15 intended to prevent the destruction or impairment
16 of the utility of the Hayward airport.

17 As noted during the traffic and
18 transportation portion of these hearings, Energy
19 Commission staff have concluded that operation of
20 the Eastshore project at the location proposed by
21 the applicant would create an aviation safety
22 hazard for aircraft arriving, departing or
23 maneuvering in the vicinity of the Hayward
24 Executive Airport.

25 This conclusion was corroborated by

1 representatives of the Federal Aviation
2 Administration in Exhibits 204, 206 and 411, and
3 Caltrans Aeronautics, Exhibit 203. It is also
4 supported by the City of Hayward as indicated in
5 its prehearing conference statement and testimony
6 during the traffic and transportation portion of
7 this hearing. And the Aircraft Owners and Pilots
8 Association's letter, Exhibit 731.

9 Additionally, mitigation normally
10 proposed to route pilots away from similar hazard
11 or self-imposed by pilots in an attempt to avoid a
12 potential hazard would interfere with the safe and
13 efficient use of the air traffic -- the safe and
14 efficient movement of air traffic and use of the
15 surrounding airspace. It would also further
16 complicate an already complex airspace and
17 increase traffic congestion in the only area that
18 is relatively unrestricted by noise abatement
19 procedures for the airport.

20 As a result the current and future
21 utility of the Hayward Airport would be
22 compromised. Both the FAA and Caltrans
23 Aeronautics have concurred with this conclusion.
24 The FAA has also advised the City of Hayward that
25 use of land adjacent to the Hayward Airport for

1 activities considered incompatible with normal
2 airport operations could jeopardize current and
3 future airport-related grants, further threatening
4 the future utility of the airport.

5 Because operation of the Eastshore
6 Energy Center at the proposed location would
7 create an airport hazard and would also
8 significantly impact the utility of the Hayward
9 Airport. The project is inconsistent with Section
10 10-6 of the Hayward Municipal Code and would
11 normally be prohibited by that ordinance.

12 Other sections of the Hayward Municipal
13 Code also regulate the compatibility of uses
14 within a zoning district. Section 10-1.140
15 excludes establishment of a non-permitted use if
16 that use is more objectionable or intense than
17 those permitted in the zoning district. Section
18 10-1.1320 and 10-1.3225 require a conditional use
19 permit for certain non-permitted uses. Because
20 the Eastshore Energy Center is a non-permitted use
21 in an industrial zoning district, and would also
22 require a conditional use permit if not for the
23 Energy Commission's exclusive authority, both code
24 sections are applicable.

25 Energy Commission staff have concluded

1 that the impairment to the utility of the Hayward
2 Executive Airport resulting from the operation of
3 the Eastshore project at the proposed location
4 would be more objectionable and create more of a
5 detriment to the Hayward Airport than other
6 permitted surrounding properties within the
7 industrial district.

8 The project would also not be in harmony
9 with Hayward's regulations and policies, which is
10 a prerequisite to approval for a conditional use
11 permit. Therefore the Eastshore Energy Center
12 project would not be consistent with Sections
13 10-1.140, 1620 and 3225.

14 Because operation of the Eastshore
15 Energy Center at the proposed location would
16 preclude, interfere with or unduly restrict
17 existing or future permitted uses it would also
18 constitute a significant adverse impact under CEQA
19 that cannot be mitigated below significance if the
20 project is developed at the proposed location.

21 Also because of the Eastshore's
22 proximity with the Russell City Energy Center its
23 operation at the proposed location would further
24 limit the airport's ability to respond to existing
25 and future demands. This would also constitute a

1 significant cumulative adverse impact under CEQA
2 that could not be mitigated below significance
3 with the project in the proposed location.

4 Finally, the Eastshore project location
5 is within the boundaries of the general referral
6 area or airport influence area for the Hayward
7 Executive Airport as it is identified in the
8 existing Alameda County Airport Land Use Policy
9 Plan. Safety compatibility policies contained in
10 this plan prohibit uses that could present a
11 hazard to air navigation. It is also inconsistent
12 with the intent of the plan to promote land uses
13 that would be incompatible with airport operations
14 and the safe, effective use of the airport's
15 airspace.

16 As indicated earlier Energy Commission
17 staff have concluded that the Eastshore project
18 would constitute an airport hazard, is
19 incompatible with the Hayward Airport operations
20 and is inconsistent with the safe, efficient
21 operation of the airport's airspace. The Alameda
22 County Airport Land Use Commission concurs with
23 this conclusion and has passed a resolution, it's
24 Exhibit 202, recommending the Eastshore project be
25 located at an alternative site outside the airport

1 influence area for the Hayward Airport. Therefore
2 the Eastshore project is inconsistent with the
3 Alameda County Airport Land Use Plan.

4 And that concludes our comments.

5 HEARING OFFICER GEFTER: Just one more
6 clarification. Exhibit 202, the old Exhibit 202
7 was replaced and I think now you're referring to
8 -- the resolution that you referred to is now a
9 different exhibit. I believe it is now Exhibit
10 513. Do you agree with that, Ms. Holmes?

11 MS. HOLMES: What was the number,
12 Ms. Gefter?

13 HEARING OFFICER GEFTER: I think 513 is
14 where we moved it to. It's the resolution of the
15 Airport Land Use Commission of Alameda County
16 dated October 17. Is that the same --

17 MS. STRATTAN: Yes, that is correct.

18 HEARING OFFICER GEFTER: That was the
19 original 202.

20 MS. STRATTAN: Yes.

21 HEARING OFFICER GEFTER: But we changed
22 it because it became a County exhibit. Thank you.

23 Your direct is completed?

24 MS. HOLMES: Yes.

25 HEARING OFFICER GEFTER: Thank you. I

1 do have several questions and one refers to your
2 CEQA analysis on the land use were you said it was
3 inconsistent with CEQA and could not be mitigated.

4 MS. STRATTAN: Yes.

5 HEARING OFFICER GEFTER: I would like to
6 hear more on that subject. Your CEQA analysis and
7 why you believe the inconsistency with local land
8 use LORS could not be mitigated.

9 MS. STRATTAN: One of the guidelines
10 that are presented for CEQA analysis has to do
11 with any type of land use that would preclude,
12 interfere with or unduly restrict existing or
13 future permitted uses. And as far as we can tell,
14 by identifying an aviation safety hazard that
15 would reduce the utility of the airport, we would
16 by approving this project we would be approving
17 the placement of an incompatible use that would
18 restrict the future utility of the airport. The
19 current and future utility of the airport.

20 Because the location is the primary
21 deciding factor in this case, it is not that the
22 Energy Center itself would cause a significant
23 adverse impact, it is the location of the Center.
24 If the location was outside the area of the
25 airport influence area then we wouldn't have the

1 same stance on this.

2 And because -- And that's why we put
3 that it could not be mitigated below significance
4 if the project location, if the project is
5 developed in the proposed location. We would
6 certainly, you know, if it was in a different
7 location we would have to evaluate it under those
8 circumstances.

9 But based on the current proposed
10 location and its placement immediately adjacent to
11 the traffic pattern zone, very close to within a
12 mile of the airport in an area that is overflowed
13 on a regular basis, then we have to believe that
14 it would preclude, interfere with or unduly
15 restrict existing or future permitted uses. The
16 existing use is the airport.

17 HEARING OFFICER GEFTER: So in other
18 words, you're finding that because of the location
19 itself that factor cannot be mitigated. And even
20 if, for example, the stacks were lower or the
21 stacks were spread out differently or the project
22 was configured differently it would still be the
23 actual location within the airport zoning area.

24 MS. STRATTAN: That's correct. The
25 plume is the -- In the sense that -- The fact that

1 the project generates a thermal plume identifies
2 the hazard. And the hazard would be there whether
3 it was reconfigured or not. So it would still be
4 present whether -- No matter what the level of
5 risk the hazard itself would actually still be in
6 place if it is permitted at that location.

7 HEARING OFFICER GEFTER: And you have,
8 as you indicated in your qualifications to
9 testify, you have worked on several cases
10 analyzing projects for CEQA, under CEQA.

11 MS. STRATTAN: Yes, I have done CEQA
12 analyses, primarily doing CEQA analyses for the
13 last ten years for the Energy Commission and for
14 various other state and county agencies.

15 HEARING OFFICER GEFTER: Have you ever
16 been in a situation where you have had to do a
17 CEQA analysis where the agency you worked for
18 found overriding considerations, even with respect
19 to a land use LOR that could not be, a violation
20 of a land use LOR that could not be mitigated?
21 Have you ever had any kind of situation like that
22 in your experiences?

23 MS. STRATTAN: Yes I have had instances
24 where there has been an override. I have also had
25 instances where the project was relocated to avoid

1 the situation.

2 HEARING OFFICER GEFTER: Also with
3 respect to your analysis on sensitive receptors,
4 which is part of your testimony at page 4.5-25.
5 Your review of the sensitive receptors in the
6 vicinity of the project, was that part of your
7 CEQA analysis or is that a land use LORS analysis?
8 How did you come to this discussion?

9 MS. STRATTAN: In my land use analysis.
10 It's part of the land use analysis. It is also
11 treated under hazardous materials, safety and
12 several other -- air quality and several other
13 sections. My emphasis has to do with the
14 compatibility in that sense. We are looking at
15 compatibility of land uses and whether or not they
16 are permitted or they are something that has been
17 grandfathered in because they existed prior to the
18 existing uses. We would still want to look at the
19 compatibility in that case.

20 HEARING OFFICER GEFTER: And you made a
21 statement early in your testimony that the project
22 was actually incompatible with other existing
23 facilities in the area and would require a
24 conditional use permit. Why would it require the
25 conditional use permit?

1 MS. STRATTAN: Let me get the reference
2 here.

3 MS. HOLMES: That discussion is on page
4 16 of staff's testimony.

5 MS. STRATTAN: At 4.5-16 under the
6 section heading of Section 10-1.320, conditional
7 use permits. And it has to do with the fact that
8 hazardous materials, group A hazardous materials
9 are used on-site. And as a requirement of the
10 City of Hayward, projects that use those materials
11 require a conditional use permit within the
12 industrial district. So on that basis it is
13 required that you then meet all four of the
14 findings A through D of that section. In our
15 determinations we were unable to meet all four of
16 those findings.

17 HEARING OFFICER GEFTER: Is there also a
18 height limitation issue in regard to a conditional
19 use permit requirement?

20 MS. STRATTAN: There is not a height --
21 There is a height requirement within that district
22 but this project does not exceed it. The height
23 of the transmission lines is excluded so that
24 doesn't come into play.

25 HEARING OFFICER GEFTER: And your

1 finding that it would not, you would not be able
2 to make those four findings with respect to the
3 hazardous materials requirement in the --

4 MS. STRATTAN: No, the hazardous
5 materials requirement simply requires the project
6 to be reviewed as for a conditional use permit.
7 Once it goes into the conditional use permit
8 process you look at all of these requirements. It
9 is not specific to hazardous materials. This is
10 why we were able to say, we had to say that we
11 felt that it was not in harmony with the city
12 policies that we have quoted previously. It just
13 triggers the requirement for the conditional use
14 permit if they use those kinds of materials.

15 HEARING OFFICER GEFTER: Off the record
16 for a minute, please.

17 (Whereupon a brief discussion
18 was held off the record.)

19 HEARING OFFICER GEFTER: Mr. Haavik is
20 going to present the direct testimony of his
21 witness, Mr. Jesus Armas.

22 MS. LUCKHARDT: I think there is room up
23 here if this would be an easier place.

24 MR. ARMAS: I can stand here.

25 MS. LUCKHARDT: Okay.

1 HEARING OFFICER GEFTER: There's also a
2 seat right here.

3 MR. HAAVIK: Thank you. I'd like to
4 call Jesus Armas, retired, so he can spend as much
5 time as he wants talking there. Thank you very
6 much for attending today.

7 Mr. Armas, in reference to Exhibit --

8 HEARING OFFICER GEFTER: Mr. Haavik,
9 Mr. Armas needs to be sworn, I don't believe he
10 has testified yet.

11 Whereupon,

12 JESUS ARMAS

13 Was duly sworn.

14 HEARING OFFICER GEFTER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HAAVIK:

17 Q In reference to Exhibit 310 which is
18 your testimony submitted. Did you in fact submit
19 that on November 19?

20 A Yes.

21 Q And to your understanding is it all true
22 and correct?

23 A Yes.

24 Q And could you please briefly give us
25 your background, not only educationally but also

1 work relations.

2 A Should I do that before one o'clock or
3 after? No. In summary, I have been involved in
4 local government for over 30 years. Educationally
5 I hold a bachelor's degree in political science
6 from Occidental College and a master's degree in
7 public administration from Cal State University
8 Los Angeles.

9 During my professional experience I
10 worked for numerous cities, both in Southern and
11 Northern California. In the last 20 years or so I
12 was city manager in South San Francisco and in
13 Hayward. In Hayward it was approximately 14
14 years.

15 Q Thank you very much. Do you feel as
16 though that you would be competent to provide
17 information in regards to land use from the City
18 of Hayward although you are now currently retired?

19 A Yes.

20 Q Could you please briefly describe your
21 encounter starting in June of 2006 in regards to
22 how this application actually started.

23 A Yes. An appointment was scheduled with
24 me with representatives from the Tierra Energy
25 Group indicating that they had something to

1 discuss with me about a project. Prior to our
2 face-to-face I was not aware of what the purpose
3 of the meeting was. It was not uncommon for
4 applicants who were looking at major projects to
5 seek an appointment with my office to understand
6 the lay of the land, if you will. So in June
7 Mr. Trewitt and some of his associates came to see
8 me relative to what subsequently became known as
9 the Eastshore Energy Center project.

10 Q And subsequent, after that meeting did
11 you do any investigation as to the situation
12 before you. You know, power plants coming to
13 town.

14 A Well the City had had considerable
15 experience dealing with power plants as the
16 Russell City Energy Center had already been
17 considered by the City, considered by the Energy
18 Commission and the initial application actually
19 certified by the Commission. So we had some
20 familiarity with the process and the particulars
21 associated with going through that effort.

22 One of the things I indicated to the
23 representatives from Tierra Energy was that unlike
24 Russell City they were coming in way after the
25 fact. The Russell City representatives had

1 actually made appointments and had done their due
2 diligence relative to the land use appropriateness
3 of the site that they were considering. That was
4 not the case with respect to Tierra Energy.

5 I would note that the Tierra Energy
6 representatives were quick to point out that they
7 had recently purchased the contract and were not
8 the original entity desiring to site the facility.
9 And while they were apologetic that they were
10 coming in after the fact nonetheless they had done
11 so after they had apparently entered into a
12 contract to purchase the project from Black Hills,
13 I believe.

14 Q Were you aware of the status of the RFO
15 or any of the contracts in regards to Black Hills/
16 Tierra?

17 A I had been monitoring the RFO process
18 insofar as the PUC was getting ready to certify
19 the recommendations and had actually listened to a
20 PG&E press conference in which PG&E announced all
21 the successful bidders. The reason for that, of
22 course, is the Calpine situation was a very
23 delicate one. They had gone through a bankruptcy.
24 It was unclear as to whether they were going to
25 actually proceed with their plant so we were

1 monitoring that interaction.

2 In the course of the press conference I
3 did hear an announcement of all of the sites.
4 Most of them, I believe the Black Hills was the
5 exception, had a geographic location associated
6 with them. It was clear to know where they were
7 to be sited. Black Hills did not have a
8 geographic location or I would have, I think, been
9 sensitive to the fact that Hayward was being
10 mentioned again.

11 Q During your conversations with the
12 Tierra representatives did you inform them
13 possibly of procedures and expectations of the
14 City in regards to land use zoning, the zoning
15 district and the appropriateness of the
16 possibility of siting this facility in Hayward?

17 A Yes, I made them aware in broad terms of
18 both our general plan and our zoning regulations
19 and also made them aware of the process that the
20 Russell City applicants had gone through in terms
21 of both going through a formal application with
22 the City to determine consistency with zoning and
23 then subsequently anticipating it would need to go
24 both before the Planning Commission and the City
25 Council for consideration.

1 Q Later on in that year, probably around
2 October of 2006, I believe Tierra filed an
3 application for certification. Had you already
4 developed that process with the land use
5 consideration or was that still pending?

6 A We indicated to the Tierra Energy
7 representatives that in order for the City to
8 engage in an evaluation of the site and the full
9 determination as to the appropriateness for siting
10 a peaker plant there they would need to go through
11 the application process. So we made them aware of
12 that. And I believe Mr. Trewitt met with one or
13 more of our planners to understand the application
14 components and then subsequently did submit an
15 application.

16 Q Do you remember what date the
17 application was submitted?

18 A I do not.

19 Q Thank you very much. Do you have
20 anything else to add at 12:42?

21 A I do not.

22 MR. HAAVIK: Thank you very much and
23 thank you for your time.

24 That is all I have for the witness.

25 HEARING OFFICER GEFTER: Thank you. So

1 we're going to save your cross examination for
2 later.

3 MR. ARMAS: Sure.

4 HEARING OFFICER GEFTER: Thank you very
5 much for being here and being so patient.

6 Off the record.

7 (Whereupon, the lunch recess
8 was taken.)

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1 AFTERNOON SESSION

2 HEARING OFFICER GEFTER: Before we
3 continue taking testimony on land use,
4 Ms. Hargleroad had a matter where she has a number
5 of exhibits that she admitted, we had admitted
6 them into the record for transportation. She also
7 would like to have them be considered in the land
8 use section as well and she is going to enumerate
9 those exhibits for us. They are already in the
10 record.

11 MS. HARGLEROAD: Yes, Exhibits 711, 712,
12 713, 714, 715, 727, 728, 729 and also 731 and 730.
13 And those were the AOPA letter. Which Bill Dunn's
14 declaration we have already -- and Terry Preston's
15 declarations we have served and docketed.

16 HEARING OFFICER GEFTER: Okay, thank
17 you.

18 MS. LUCKHARDT: On 730 and 731, I
19 believe that these were part of public comment, as
20 I recall. I would have no objection to them
21 coming as public comment. I don't see them as
22 being evidentiary in this instance.

23 MS. HARGLEROAD: Yes they are
24 evidentiary because these are organizations and
25 this is their position and their opinion. I

1 docketed and I have already submitted the
2 declarations of Bill Dunn and Terry Preston both
3 stating, attaching the letters which have already
4 been served on you and were already submitted
5 under public comment and stating simply that this
6 is the position and opinion of those organizations
7 under penalty of perjury.

8 MS. LUCKHARDT: I don't think we need a
9 declaration to accept this as the position of
10 these organizations. We don't need a declaration
11 to do that. We don't need a witness to do that.
12 This is a matter that is consistent with public
13 comment. It was brought in as public comment,
14 specifically referenced as public comment,
15 especially I think the Aircraft Owners and Pilots
16 Association letter if I'm recalling the correct
17 letter. And these can easily be accepted under
18 public comment.

19 There is no reason for them to come in
20 as an exhibit into evidence as testimony. And I
21 have no problem just stipulating to that the
22 position they articulate is the position of the
23 organization that is on the letterhead. But they
24 should not be admitted as a formal document for
25 testimony in this proceeding.

1 MS. HARGLEROAD: Well we disagree with
2 that and that's why we are submitting that with
3 declarations under penalty of perjury that that's
4 the opinion of these organizations which have
5 certain expertise in various areas concerning
6 this.

7 MS. LUCKHARDT: I would like to note
8 that the subject areas to which these letters
9 respond are areas of the record that have already
10 been closed, where testimony has already been
11 taken, and this is additional information that
12 showed up last week in these subject areas where
13 the record has been closed. Is there no point at
14 which this record will ever be closed?

15 HEARING OFFICER GEFTER: The record was
16 closed on those topics and these are considered
17 public comment. If Ms. Hargleroad wishes to offer
18 them as exhibits they will be considered public
19 comment. And it is very -- Even the position of
20 the organizations, the positions were submitted as
21 public comment and they will be treated --

22 MS. LUCKHARDT: Yes and I don't have a
23 problem --

24 HEARING OFFICER GEFTER: And they are
25 going to be treated as public comment in this

1 record.

2 MS. LUCKHARDT: And I don't have a
3 problem with that at all.

4 HEARING OFFICER GEFTER: Ms. Holmes.

5 MS. HOLMES: I think that you've
6 addressed my concern. My concern was the fact
7 that we didn't have a chance to voir dire some of
8 these people on their expertise as land use
9 experts. But if it's not land use testimony, if
10 it's public comment, then it is not an issue for
11 us.

12 HEARING OFFICER GEFTER: So 730 and 731,
13 although they are listed as Group Petitioners
14 exhibits will be treated as public comment in the
15 record.

16 MS. HOLMES: I guess then I do have
17 questions about the testimony of Carol Ford and I
18 can't remember the -- Jay White perhaps and
19 Sherman Lewis about whether or not they are land
20 use experts. We didn't have a --

21 MS. HARGLEROAD: Sherman Lewis was not
22 submitted in support of land use, he was submitted
23 in support of alternatives and I did not list him
24 for land use.

25 HEARING OFFICER GEFTER: I think we --

1 off the record.

2 (Whereas a brief discussion
3 was held off the record.)

4 HEARING OFFICER GEFTER: Mr. Massey from
5 Alameda County has an exhibit that he would like
6 to also be able to use in land use. Would you
7 tell us what number that is.

8 MR. MASSEY: It's Exhibits 511, 512,
9 513, 514, 515, 516, 517 and 521, although 521
10 appears to be duplicative.

11 HEARING OFFICER GEFTER: Okay. And you
12 can also do that again when you present your
13 testimony for your witnesses.

14 MR. MASSEY: Yes.

15 HEARING OFFICER GEFTER: Let's move on
16 now. We're going to take testimony from the City
17 of Hayward at this point because we had decided
18 that we would take direct testimony from all the
19 witnesses and then we'll have cross. So if the
20 City of Hayward is prepared to go forward
21 introduce your witness to us, please.

22 MS. GRAVES: We are. The City of
23 Hayward also would like to submit the testimony of
24 Robert Bauman, testimony on traffic and
25 transportation also applies to land use. And

1 those supporting exhibits, which are Exhibit 409,
2 410, 411, 413, 414, 416, 417 and 418.

3 HEARING OFFICER GEFTER: Thank you.

4 MS. GRAVES: And he will give brief
5 testimony. But just to have a more sensible order
6 I would like to have David Rizk the Planning
7 Manager testify first and he needs to be sworn.

8 MS. LUCKHARDT: So are you having
9 Mr. Bauman provide additional testimony in the
10 area of land use that is different from the
11 testimony he provided in the area of traffic and
12 transportation?

13 MS. GRAVES: It's the same testimony, we
14 can do it later. It's more redirect to respond to
15 Ms. Scholl's testimony.

16 MS. LUCKHARDT: I believe that
17 Mr. Bauman has already presented his testimony and
18 that further redirect at this point would be out
19 of order.

20 MS. GRAVES: His testimony though does
21 relate to land use in this instance and it's
22 responding to testimony from Ms. Scholl which was
23 not presented during the traffic and
24 transportation section.

25 MS. LUCKHARDT: I would have to object.

1 Our testimony has been prefiled, it has been
2 available the whole time, there is nothing
3 addition. What she is basically asking for is
4 another opportunity to provide --

5 MS. GRAVES: This is testimony that was
6 part of his pre-filed testimony. It is pre-filed
7 testimony that relates to land use and didn't
8 relate as directly to the more technical
9 discussions we had on traffic transportation. So
10 this is not new testimony.

11 MS. LUCKHARDT: It's already in the
12 record. All of his testimony is already in the
13 record. He's already been here, he has had an
14 opportunity to testify, he's been cross examined.
15 What we're talking about is giving this witness a
16 second chance and I object to that.

17 HEARING OFFICER GEFTER: Okay. I'll
18 take your objection under submission and we will
19 actually go forward now. Are you going to have
20 Mr. Rizk testify first or Mr. Bauman?

21 MS. GRAVES: Yes.

22 HEARING OFFICER GEFTER: Mr. Rizk?

23 MS. GRAVES: And actually I can ask the
24 Commission whether they would like Mr. Bauman
25 testify. I hadn't planned to have him testify.

1 What I would like him to briefly speak about is
2 the City's position and how they treated Russell
3 City versus Eastshore in the traffic pattern zone
4 map. That seemed to me to be an issue that had
5 come up and if you would like him to testify on
6 that then that's what we were willing to do. If
7 not then --

8 HEARING OFFICER GEFTER: Like I said,
9 we'll take the objection from Ms. Luckhardt under
10 advisement and the Committee Members here will
11 decide whether we want to hear the testimony. In
12 the meantime let's go forward with Mr. Rizk.
13 Whereupon,

14 DAVID RIZK

15 Was duly sworn.

16 HEARING OFFICER GEFTER: Thank you very
17 much. Okay, go forward with your direct.

18 MS. GRAVES: Thank you.

19 DIRECT EXAMINATION

20 BY MS. GRAVES:

21 Q Mr. Rizk, please introduce yourself and
22 your position with the City.

23 A My name is David Rizk, I am the Planning
24 Manager with the City of Hayward.

25 Q Was a statement of your qualifications

1 filed with your testimony?

2 A It was.

3 Q Do you have any changes to your
4 testimony?

5 A I do not.

6 Q Are you familiar with the exhibits
7 referenced in your testimony? They are Exhibits
8 401, which is his testimony, 403, 404, 405, 406,
9 407 and 408.

10 A Yes.

11 Q Are the statements of fact and opinion
12 in your testimony true and correct to the best of
13 your knowledge and professional judgment?

14 A They are.

15 Q Thank you. Could you please briefly
16 summarize your testimony.

17 HEARING OFFICER GEFTER: May we go off
18 the record.

19 (Whereas a brief discussion
20 was held off the record.)

21 HEARING OFFICER GEFTER: Back on the
22 record. Barbara Halliday, City Council Member is
23 here to address us this afternoon. She is present
24 now so we are going to hear from her right now in
25 the middle of Mr. Rizk's testimony. Thank you.

1 COUNCIL MEMBER HALLIDAY: Thank you very
2 much, I appreciate the accommodation. I also very
3 much appreciate that you have come here to Hayward
4 to have these hearings, I think that's really
5 important for our community. Although I was at
6 the last hearing and I think that there were some
7 people here who were a little confused about who
8 you were and so I appreciate also that you were
9 making it clear that you were not us.

10 I just wanted to come one more time, I
11 know that you have heard me once before on this
12 particular plant, just to make a final plea as a
13 representative of our community to you and I
14 wasn't going to be able to come tonight. I know
15 that you have been talking about land use today
16 and I think that's the big issue surrounding the
17 City of Hayward's early opposition to this plant.

18 We looked at this very carefully and it
19 alarms me to think that you would take our
20 position on the Calpine plant and say that that
21 also applies to this plant. They are totally
22 different locations. They are very different in
23 where they are. And I think that with the Calpine
24 plant there certainly were issues with the
25 proximity of the park. But otherwise the Calpine

1 plant is out by our sewage treatment plant.

2 Early on when the City of Hayward made
3 that decision there were other environmental
4 benefits that were supposed to come from that
5 plant, some of which have not materialized,
6 unfortunately. But I think we were looking at a
7 very different situation, something that was next
8 to our sewage treatment plant which obviously
9 isn't close to our residences and schools and, you
10 know, other types of work places.

11 Tierra the first time, I did meet with
12 the applicants early on before they actually
13 brought it to the City. I looked at the location.
14 I couldn't believe that they were talking about
15 putting something there of this nature considering
16 the location. The City of Hayward actually
17 temporarily had offices in a property right to
18 this while we were building this beautiful City
19 Hall facility.

20 And you've heard it, there are schools,
21 there are schools right across the street. When
22 we made a decision to put Life Chiropractic there
23 we were changing the nature of this area. We were
24 confirming what we were already seeing in the
25 changing nature of this area. Therefore I think

1 you have to agree that the decision made by the
2 City of Hayward was a valid decision that looked
3 to our general plan and our zoning ordinance and
4 that our decision saying this is not an
5 appropriate use in that location is very
6 consistent with our internal documents.

7 There are two specific issues that I
8 just think cry out for saying no to this plant as
9 far as, you know, our general plan goes. And on
10 top of what I think the overriding issues for me
11 are, the proximity of so many schools. Young
12 people are very vulnerable, or as in your
13 terminology, especially sensitive receptors. And
14 we have many of them in this area. You know, we
15 just should not be doing this, we should not be
16 jeopardizing their health.

17 You've heard a lot about our airport.
18 You know, our airport has its challenges because
19 of the proximity of the Oakland and San Francisco
20 Airports, the limitations placed on the airspace
21 by that. And also as in any airport, especially a
22 local community airport where the planes, you
23 know, are flying in fairly low, we've got housing
24 around there, we have a lot of complaints about
25 noise.

1 We've worked very hard to try to work
2 those out, to try to get, accommodate these
3 concerns of the residents but have the airport
4 open. And the pilots have been very cooperative
5 in voluntarily trying to comply and for the most
6 part limit their arrivals and departures to areas
7 that are less sensitive, over some of the
8 commercial and industrial area.

9 The FAA won't really let us make these
10 things mandatory. Safety is primary with the FAA
11 but the pilots have been cooperative. But if we
12 start really limiting -- And you have already, you
13 know, imposed one limitation with the Calpine
14 plant. If you put this in and put further
15 limitations, you know, I am not sure that we
16 really are going to be able to continue operating
17 that airport in the long run and that would be a
18 devastating blow, you know, to Hayward. It has
19 been there a long time. It really does provide a
20 good community service. So that's a big issue.

21 Air quality is just absolutely huge here
22 too. You know, especially I believe the
23 cumulative impacts. When Hayward -- One of the
24 considerations -- And I know, I wasn't on the
25 Council but I was on the Planning Commission when

1 Calpine was initially being reviewed. And I know
2 that one of the things that, you know, was part of
3 the thought process was yes, we will do our part
4 as a community to provide energy.

5 As I know you've heard that was a very
6 different time than we are in right now and a
7 different mind set as far as, you know, what we
8 should be doing in terms of energy, providing our
9 energy needs. What kind of energy we should be
10 focusing on. But, you know, that's a little bit
11 of the background.

12 I'd also like to say that from what I've
13 heard the mitigation being proposed is not
14 sufficient and it doesn't address our local area.
15 The fireplace retrofit is kind of ridiculous
16 really. We haven't used our own fireplace for a
17 few years because we know that it really isn't the
18 right thing to do for the air. I think there are
19 a lot of people like that. I smell less and less
20 smoke, even at the holidays in the air.

21 A lot has also been made of the
22 environmental justice issue. We are a very multi-
23 cultural community and we are very proud of that.
24 I don't want to over -- I know what the statistics
25 are, I know the case can be made legally. But you

1 know, we are a community of people of all income
2 levels and all racial and ethnic backgrounds, all
3 educational levels. We have everybody here and we
4 are all going to be affected by this, our entire
5 community. I just think that you are piling it on
6 here and it just shouldn't happen. We are a very
7 good community, we have a lot going for us. I
8 won't take your time up with all the things but
9 you've spent some time here so I hope you have
10 appreciated what a good community we are.

11 I don't know how much you know about the
12 history of the area. This is an area that some of
13 our very leading early citizens lived in.
14 Actually this area wasn't originally Hayward, it
15 was called Mount Eden. It was a separate town.
16 It has got an interesting history because of the
17 salt industry and most of the early settlers there
18 had both salt works on the Bay and farmland. Up
19 the bay there are still -- if you've gone out on
20 Hesperian there are still a few of the old houses
21 left and it's an area rich in history. The
22 Hayward area was its own town. And so I think --

23 As you may well know we have recently
24 annexed additional land out there and we are, you
25 know, we have plans to build a lot more housing

1 and in doing so we are going to be upgrading the
2 infrastructure in this area. I really worry that
3 should we be inundated with these power plants
4 that those plans may not be able to go forward. I
5 mean, I think we all are going to have to think
6 about putting a lot more people in an area that is
7 going to be spoiled with the kind of air pollution
8 these power plants will bring.

9 So, you know, that is my plea to you on
10 behalf of the community. Really consider this
11 community that you are talking about doing this
12 too. And finally, as a citizen of California and
13 the United States, you know, I just want to say,
14 what are we doing here. We all know that we have
15 to change our ways. You are putting, you know --
16 And I understand about Calpine and the, you know,
17 the replacement of old coal-burning plants with
18 better, you know, more efficient. It's not as
19 efficient as it should be, certainly.

20 But we know that we have to really make
21 some drastic changes. Here in Hayward we have a
22 wonderful opportunity to go solar in a big way I
23 think if you look at the roofs out there in the
24 industrial area. A lot of residents are coming to
25 this. Actually my husband and I are going to be

1 looking at it ourselves in the very near future,
2 you know, putting solar on our roofs. We need to
3 do this.

4 This is the kind of energy we need to
5 promote, not more, you know. Not building a
6 peaker plant which is going to allow us to
7 continue rather wasteful ways. We know we can do
8 a lot more to conserve and to look to alternative
9 sources. So I just think this is a bad policy
10 decision for the State as well as a very bad
11 decision for our local Hayward community. And
12 again, thank you very much for accommodating me
13 this afternoon.

14 HEARING OFFICER GEFTER: Thank you very
15 much for being here, Council Member Halliday. I
16 noticed that on that resolution where the City
17 Council unanimously voted to say that Eastshore is
18 inconsistent with your land use LORS and should be
19 sited elsewhere that you were the Council Member
20 who introduced that legislation, that resolution.
21 Your name was on that.

22 COUNCIL MEMBER HALLIDAY: Yes, I am very
23 proud of it too.

24 HEARING OFFICER GEFTER: And thank you
25 so much because the City and City staff have just

1 been so generous to all of us and so helpful and
2 we really appreciate that very much.

3 COUNCIL MEMBER HALLIDAY: Okay, well I'm
4 glad to hear that.

5 HEARING OFFICER GEFTER: Thank you very
6 much.

7 COUNCIL MEMBER HALLIDAY: Thank you.

8 HEARING OFFICER GEFTER: Well thank you.
9 After that inspiring speech now we're going to
10 take dry testimony.

11 MS. GRAVES: We'll see what David has to
12 offer.

13 HEARING OFFICER GEFTER: But hopefully
14 very informative, Mr. Rizk, right?

15 MR. RIZK: I hope so.

16 HEARING OFFICER GEFTER: I hope so too.
17 Thank you very much.

18 MR. RIZK: Thank you. I will be brief
19 and summarize the main points in my testimony,
20 what you have as Exhibit 401.

21 HEARING OFFICER GEFTER: Yes.

22 MR. RIZK: In sum, it is the City's
23 position that the proposed Eastshore Energy Center
24 does not comply with the City's general plan or
25 the zoning ordinance, primarily due to its

1 location. If I may I'd like to expand on that a
2 little bit.

3 Basically the Energy Center is proposed
4 in the eastern portion of the City's industrial
5 corridor, approximately 1,000 feet away from the
6 nearest residence. Also as I indicated in my
7 testimony, immediately adjacent to the proposed
8 power plant is Life Chiropractic College, Fremont
9 Bank Operations Center and the Crossroads Caf,.
10 Also in relative close proximity to the proposed
11 plant is the Eden Gardens residential community,
12 Ochoa Middle School, Eden Gardens Elementary
13 School and Chabot Community College.

14 It is the City's position that no
15 possible mitigation could remedy or offset the
16 fact that the energy plant is just proposed in the
17 wrong location. Under the general plan which was
18 adopted by the City in March of 2002, at least the
19 current version, there was a policy adopted that
20 established a policy to promote the transition of
21 the industrial area from a manufacturing-based
22 economy to an information-based economy.

23 HEARING OFFICER GEFTER: Could I ask you
24 to give us the exact citation. I know it's -- is
25 it Exhibit 406 and could you tell us where that

1 policy is found in there.

2 MR. RIZK: It's 406 and it's in the land
3 use element of the general plan. And it's on page
4 2-19 of the general plan.

5 HEARING OFFICER GEFTER: Thank you.

6 MR. RIZK: You're welcome.

7 PRESIDING COMMISSIONER BYRON: Excuse me
8 and I apologize, Mr. Rizk. Did you say that was a
9 2002 plan?

10 MR. RIZK: That's when the current plan
11 was adopted, March of 2002.

12 PRESIDING COMMISSIONER BYRON: But the
13 exhibit we're referring to is 406? Okay, I see,
14 evidence. I'm sorry, I'm reading two dates, I'm
15 sorry. Okay, thank you.

16 MR. RIZK: You're welcome.

17 It is the city's position that siting
18 the Eastshore Energy Center in the proposed
19 location where we are trying to eliminate heavy
20 manufacturing uses will undermine the policy that
21 I referenced.

22 Also if the project were processed here
23 in the City it would require an administrative or
24 a conditional use permit given, as we heard
25 before, the type and quantities of hazardous

1 materials proposed. For a conditional use permit
2 or an administrative use permit there are four
3 findings that have to be made, they are similar,
4 in order for those permits to be granted. One of
5 the purposes of having conditional uses and a
6 conditional use permit process is to ensure that a
7 proposed use -- that there is a community need for
8 that use and that such use is in harmony with the
9 area and City policies.

10 Just highlighting those four findings,
11 which the Council has indicated previously
12 determined could not be made. First, the proposed
13 power plant is not desirable for the public
14 convenience or welfare. As indicated previously
15 in the Final Staff Assessment, there are other
16 locations in the Bay Area where such power could
17 be provided that would not have the same
18 detrimental impacts on the City of Hayward.

19 Secondly, the proposed use will impair
20 the character and integrity of the zoning district
21 and surrounding area. The key words in this
22 finding in our opinion is surrounding area. The
23 fourteen 70 foot stacks would be significant. It
24 would clearly be visible from residential and
25 public areas along the eastern edge of the

1 industrial corridor. Next the --

2 HEARING OFFICER GEFTER: I want to stop
3 you right there because there was some
4 inconsistency. When I asked the staff witness
5 about the height limitation in the industrial zone
6 she testified, and I may be wrong, that this
7 particular project doesn't, would not be
8 inconsistent with the height limitation in this
9 zone and you just indicated there was some concern
10 about the height. But maybe you are going more to
11 the visual impacts rather than the actual LORS
12 requirement.

13 MR. RIZK: That's true, I am looking at
14 it from in the heading of LORS, the conditional
15 use permit findings and the discretion that is
16 found in those findings.

17 HEARING OFFICER GEFTER: So you are
18 saying that the height of the stacks would impact
19 visual resources but not necessarily inconsistent
20 with the height limitation in the industrial zone.

21 MR. RIZK: Yes.

22 HEARING OFFICER GEFTER: What is the
23 height limitation?

24 MR. RIZK: There is no height limit in
25 the industrial zone.

1 HEARING OFFICER GEFTER: Thank you.

2 MR. RIZK: The next finding, the
3 proposed use in our opinion would be detrimental
4 to the public health, safety or general welfare.
5 As indicated previously it is the City's position
6 that the local air quality impacts cannot be
7 mitigated and that the use of emission reduction
8 credits would not offset those local air quality
9 impacts.

10 Lastly, the proposed use is in harmony
11 with applicable City policies and the intent and
12 purpose of the zoning district. Again we do not
13 find that that finding can be made. The policy
14 which envisions a future development standpoint in
15 terms of moving from a manufacturing-based economy
16 to an information-based economy. We find that
17 this proposed use at this site would be
18 inconsistent with that policy and the industrial
19 zoning district purpose to promote a desirable and
20 attractive working environment with the minimum of
21 detriment to surrounding properties.

22 In summary, the Hayward City Council
23 unanimously adopted Resolution 07-028 in March of
24 last year finding that development of the
25 Eastshore Energy Center is incompatible with the

1 City's general plan and zoning ordinance. This --

2 HEARING OFFICER GEFTER: And that is --

3 I'm sorry. That is Exhibit 404 in the record?

4 MR. RIZK: Yes ma'am.

5 HEARING OFFICER GEFTER: Thank you.

6 MR. RIZK: This doesn't represent a bias
7 against power plants. The problem in the City's
8 opinion is that Eastshore in its location is
9 contrary to the general plan policy and zoning
10 ordinance standards. Thank you.

11 HEARING OFFICER GEFTER: And pardon me
12 for interrupting you and asking for the exhibit
13 numbers. But when I look at the transcript it is
14 confusing to me unless you actually cite me to the
15 actual document that you are referring to.

16 MR. RIZK: I understand.

17 HEARING OFFICER GEFTER: Thank you. Do
18 you have additional direct for your witness?

19 MS. GRAVES: That's all we have for
20 David on direct.

21 HEARING OFFICER GEFTER: I know that you
22 wanted to put on Mr. Bauman. I am going to take
23 his testimony subject to the objection of
24 Ms. Luckhardt and then the Committee will decide
25 whether or not we need to have that testimony in

1 the record. Because I know that he has already
2 filed his declarations and they were submitted.
3 But if he has anything to add that would
4 illuminate the City's position that would be
5 helpful to us.

6 MS. GRAVES: Thank you.

7 HEARING OFFICER GEFTER: Thank you.

8 DIRECT EXAMINATION

9 BY MS. GRAVES:

10 Q Bob, for the record could you please
11 restate your name and position with the City.

12 A Yes. My name is Bob Bauman, I am the
13 Public Works Director for the City of Hayward.

14 HEARING OFFICER GEFTER: And Mr. Bauman
15 is still under oath.

16 MS. GRAVES: And if you could just give
17 the briefest as possible testimony about the
18 City's evaluation of Eastshore as it compares to
19 Russell city under the City's 10-6 Airport
20 Approach Zoning Regulation.

21 DR. BAUMAN: Yes. I think I just wanted
22 to clarify because there seems to have been some
23 question as to what was the basis from at least
24 the airport zoning regulations and whether the
25 same basis was applied for both Eastshore as for

1 Russell City.

2 And what I specifically wanted to point
3 out, and this particular exhibit I was trying to
4 put it up on the screen, is also Figure 5 in the
5 FSA. It is basically an extract from our master
6 planning document, as I previously reported.

7 HEARING OFFICER GEFTER: I want to stop
8 for a moment. One thing is there is a piece of
9 paper over the map. And then secondly, when you
10 say Figure 5 in the FSA. Could you be more
11 specific as to the page number in the FSA where
12 you find this.

13 DR. BAUMAN: I had it in my other book.

14 MS. HOLMES: It's Figure 5 that's at the
15 end of the traffic and transportation portion of
16 Exhibit 200.

17 HEARING OFFICER GEFTER: Thank you.

18 MS. HOLMES: And land use as well.

19 MS. GRAVES: The land use section is the
20 purpose that we're citing it from.

21 DR. BAUMAN: And specifically we applied
22 the same criteria as far as the distance from the
23 traffic pattern zone. And it is this traffic
24 pattern zone, not the document that is referenced
25 in our ordinance that we applied. Because I think

1 there was a reference document which the City
2 submitted on Russell City which specifically said
3 that this is appropriate for today because we
4 simply haven't modified the airport zoning
5 ordinance.

6 And so what I wanted to say is that we
7 applied the same criteria. We applied the
8 distance from the traffic pattern zone, which as I
9 previously reported is about -- and by distance I
10 mean perpendicular distance from the outside edge
11 of the airport traffic pattern zone. And it is
12 about 3500 feet to Russell City, and as we
13 previously reported, it is less than 500 feet or
14 very close to the location of Eastshore.

15 We did use the same criteria. We did
16 find that it was appropriate because of the
17 location and the type of aircraft that were using
18 it. They were not in the airport landing pattern.
19 That it would be appropriate for mitigation for
20 Russell City where is that is not appropriate for
21 Eastshore.

22 HEARING OFFICER GEFTER: And you
23 referred to an ordinance. Could you give me that
24 citation and where I can find it in the exhibits.

25 MS. GRAVES: It's Exhibit 409 and it is

1 the Airport Approach Zoning Regulation number 10-6
2 of the City's zoning code.

3 HEARING OFFICER GEFTER: That's the
4 current version of that zoning ordinance?

5 DR. BAUMAN: It is the current version
6 but it has not be updated in some 20 years. But
7 the master plan has been updated twice in that
8 time period.

9 MS. GRAVES: The version of this map
10 that's in the zoning ordinance shows a larger
11 traffic pattern zone. There was some discussion
12 in the Russell City case about that larger traffic
13 pattern zone and applicant has cited some of the
14 resolutions also from Russell City made by the
15 City of Hayward's City Council approving Russell
16 City.

17 So all I wanted Bob's testimony to
18 demonstrate was that regardless of the map that
19 the City has adopted into their 10-6 ordinance,
20 the official map which is different than the map
21 that's in the FSA Figure 5, the City has applied
22 this map, the FSA figure map, to its analysis of
23 both projects. And this map has the smaller and
24 factually correct traffic pattern zone. So this
25 just goes towards consistency of the City's

1 approach to both facilities.

2 HEARING OFFICER GEFTER: Let me
3 understand this. The City is using the map that
4 appears in the FSA in both projects.

5 DR. BAUMAN: That is correct.

6 HEARING OFFICER GEFTER: And where did
7 you get that map from?

8 DR. BAUMAN: That map is in our master
9 plan. It is another document that's referenced
10 which is --

11 MS. GRAVES: The Airport Master Plan is
12 Exhibit 410.

13 HEARING OFFICER GEFTER: And when was
14 that adopted?

15 DR. BAUMAN: That was adopted in 2002.

16 HEARING OFFICER GEFTER: So that is
17 Exhibit 410, adopted in 2002.

18 DR. BAUMAN: Yes.

19 HEARING OFFICER GEFTER: But you used
20 that also in Russell City as well as in this case?

21 DR. BAUMAN: Yes, as far as airport
22 operations.

23 HEARING OFFICER GEFTER: So if I were to
24 look for this map it would appear in Exhibit 410
25 as well as in the FSA?

1 DR. BAUMAN: That is correct. The one
2 that I have down here that is not projecting very
3 well up onto the screen is actually from the
4 master plan, it is Figure 5-B.

5 HEARING OFFICER GEFTER: Thank you,
6 Figure 5-B.

7 DR. BAUMAN: And when we provided it to
8 your staff it came from the master plan. That's
9 how it ended up being Figure 5 in the FSA.

10 HEARING OFFICER GEFTER: And you are
11 showing us this to distinguish it from a previous
12 map?

13 DR. BAUMAN: To distinguish it from any
14 confusion that we are using any different map or
15 analysis for Eastshore and Russell City.

16 HEARING OFFICER GEFTER: Thank you.

17 MS. GRAVES: The City has nothing
18 further on direct.

19 HEARING OFFICER GEFTER: Let's go on to
20 Alameda County and take your direct testimony,
21 thank you.

22 MR. MASSEY: Thank you. First I would
23 call up Cindy Horvath. We'll just pass the mic
24 back and forth.

25 HEARING OFFICER GEFTER: Ms. Horvath, do

1 you want to be sworn?

2 Whereupon,

3 CINDY HORVATH

4 Was duly sworn.

5 HEARING OFFICER GEFTER: Thank you.

6 DIRECT EXAMINATION

7 BY MR. MASSEY:

8 Q Ms. Horvath, was a statement of
9 qualifications included with your declaration?

10 A Yes.

11 MS. LUCKHARDT: I just have a question
12 here. You're sponsoring Ms. Horvath as a new
13 witness based on what you handed out this morning,
14 correct? She was not listed as a witness previous
15 to now. Her information was not available as a
16 witness to be cross examined until this morning,
17 until you provided the package of information,
18 correct?

19 MR. MASSEY: We provided Ms. Horvath
20 only to authenticate that the exhibit, which is
21 the December 2007 draft airport plan -- In other
22 instances exhibits have been offered without
23 witnesses. If there is an objection to the
24 witness but you're willing to allow in the
25 exhibit, we were doing this out of an abundance of

1 caution, really.

2 MS. LUCKHARDT: I guess my only request
3 is that if we are going to allow this draft plan
4 version in that we should allow the entire earlier
5 draft, the July '07 draft, in as well as opposed
6 to just the excerpts that we originally provided.
7 If you are going to now sponsor the new draft plan
8 we would like both drafts in their entirety
9 admitted into the record.

10 MR. MASSEY: We'd object to that. The
11 July 2007 draft was never supposed to be released.
12 It got out, it got into the Russell City
13 proceedings, we understand that. But it is not
14 something we intended for public distribution. It
15 was an internal document. It has been replaced.
16 It has no evidentiary value.

17 MS. LUCKHARDT: Actually I would object
18 to that, I believe it does have evidentiary value.
19 There have been some changes, and granted our
20 review was limited to over lunch, but there have
21 been some significant changes directed directly at
22 this project. And in order to show those we need
23 both drafts in to be able to show the changes.
24 And I believe that that is very important.

25 HEARING OFFICER GEFTER: Ms. Luckhardt,

1 I am not clear what the relevance is when it's a
2 working document. It's a working document, it's a
3 draft. What is the relevance in that there have
4 been changes?

5 MS. LUCKHARDT: Well the changes --

6 HEARING OFFICER GEFTER: What does that
7 have to do with --

8 MS. LUCKHARDT: The changes are directed
9 directly at this project where they have added
10 language for this project or projects like it.
11 They have added language now that was not there
12 before regarding thermal plumes. They have added
13 a new zone, I think it's called Zone 7, planning
14 area that was not previously in the plan that this
15 project is now in that it was not formerly in. So
16 I believe it is pertinent.

17 If this Commission is going to allow
18 local governments to make changes to their general
19 plans during siting cases that could significantly
20 impact the processing of an application I believe
21 that this Commission deserves to have the
22 information showing those changes. This is a
23 state agency that has been put into place to
24 provide state siting to exactly address some of
25 the issues that we are dealing with today and on

1 many siting cases. So I think it is very
2 important that this Commission have all of that
3 information in order to make a good decision on
4 this siting case.

5 MR. MASSEY: I would object to that
6 characterization of what has occurred, the
7 implication that the Airport Land Use Commission
8 saw Eastshore coming and said, let's quickly
9 change the Airport Land Use Policy Plan so we can
10 stop them. That is not what occurred.

11 Yes, there have been -- there was the
12 proposed Russell City plant. In reaction to that
13 the Airport Land Use Commission said, this is an
14 issue, power plants, we need to look at that as
15 part of the Airport Land Use Policy Plan updating
16 process which had been going on for quite some
17 time. That's why you see the changes. And it's a
18 change you will see in all of the affected airport
19 plans. So it is not just the Hayward plan, it is
20 also the Livermore Airport plan. It's all the
21 airports that are affected by the Alameda County
22 Land Use Policy Plan.

23 So I would object to that
24 characterization of what had happened. That
25 somehow this local government was trying to pull a

1 fast one or something like that. It's a case of
2 an administrative body reacting to changing
3 circumstances. Looking at the issue and trying to
4 come up with sensible land use policies to protect
5 health and safety.

6 MS. LUCKHARDT: Well in looking at what
7 you filed today, on page two you say, the draft
8 Hayward plan includes new sections that directly
9 address the siting of power plants and facilities
10 emitting thermal plumes. Issues that are central
11 to the Eastshore AFC. So I don't think there is
12 any way we can say that it does not impact this
13 project regardless of the intent. And we cannot
14 testify as to the intent but I think we need to be
15 able to show the changes regardless of the intent.

16 HEARING OFFICER GEFTER: So are you
17 suggesting that the applicant relied on the
18 previous draft?

19 MS. LUCKHARDT: No, I just believe that
20 it is important for the entirety of this record
21 that we be able to show the changes that were made
22 in response to the information that the Land Use
23 Commission has learned about this project and the
24 Russell City project or any other project. And
25 that we need to be able to show that those changes

1 are new and were not in the plan previous to these
2 projects being proposed.

3 HEARING OFFICER GEFTER: It sounds like
4 what you're arguing is exactly what Mr. Massey is
5 denying happened. And also I am not sure --

6 MS. LUCKHARDT: But he is saying that
7 directly in the information that he has provided
8 if you look at page two of what he has filed. He
9 says specifically that there are new sections in
10 this plan addressing the siting of power plants
11 and facilities.

12 MR. MASSEY: That's true.

13 MS. LUCKHARDT: So I don't know, I don't
14 know why there would be an objection then to
15 showing the changes.

16 HEARING OFFICER GEFTER: And this
17 document we have been talking about is the Hayward
18 Executive Airport Land Use Compatibility Plan,
19 which would be Exhibit 534.

20 MR. MASSEY: Correct.

21 HEARING OFFICER GEFTER: That would be a
22 new exhibit. Can you tell us when this plan will
23 be voted on by the full Commission.

24 MR. MASSEY: Wednesday.

25 HEARING OFFICER GEFTER: And is it the

1 Board of Supervisors or is it the Airport Land Use
2 Commission that adopts this?

3 MR. MASSEY: It's the Airport Land Use
4 Commission, which is separate from the County.
5 It's staffed by the County but it is really a
6 creature of state law.

7 HEARING OFFICER GEFTER: Okay.

8 MS. LUCKHARDT: And is this, are they --
9 Just for my information, are they adopting the
10 draft, formally adopting the draft to go out for
11 public review or are they adopting it as final?

12 MR. MASSEY: They are putting it out for
13 public review on Wednesday with a view to adoption
14 at their meeting next month.

15 HEARING OFFICER GEFTER: Mr. Massy, are
16 you intending to argue that once this document has
17 been adopted, say in 30 days from the date it is
18 voted on, then the Commission, the Energy
19 Commission should follow this new plan because
20 this is the existing LORS for the Airport Land Use
21 Commission?

22 MR. MASSEY: Yes. We do think --

23 HEARING OFFICER GEFTER: Are you
24 planning, in other words, to argue that it should
25 apply in the process of our decision-making?

1 MR. MASSEY: It should, keeping in mind
2 the limited role of an Airport Land Use
3 Commission. But yes, once you have a new Airport
4 Land Use Plan there is no sense in looking at one
5 that has been superseded. And that is the same
6 issue with the July 2007 draft.

7 HEARING OFFICER GEFTER: And that seems
8 to be what Ms. Luckhardt is concerned about. So I
9 think in order to be fair to everybody we will go
10 ahead and accept the draft from, is it July, the
11 entire draft from July, and we will also accept
12 534, your proposed 534. So that we'll have both
13 documents in the record and the parties can argue
14 the relevance of each or both to us in your
15 briefs. I don't know who has a copy of the full
16 document. Do you have that, Ms. Luckhardt, of the
17 previous draft?

18 MS. LUCKHARDT: Someone does so we will
19 provide that.

20 HEARING OFFICER GEFTER: You'll provide
21 it.

22 MS. LUCKHARDT: Someone on our team
23 does.

24 HEARING OFFICER GEFTER: So that will be
25 another exhibit and you will be providing It's a

1 July '07 draft?

2 MS. LUCKHARDT: Yes.

3 HEARING OFFICER GEFTER: Okay. We'll
4 get that in even though the County says that it
5 was not meant to be provided. Apparently it was
6 provided in Russell City so it's probably
7 available to the public. And we will also accept
8 534, which is the new draft. It's still a draft
9 until it's adopted by the Commission. By the
10 Airport Land Use Commission, not this Commission.

11 MR. MASSEY: Absolutely.

12 HEARING OFFICER GEFTER: Okay, all
13 right. So you are going to ask Ms. Horvath to
14 validate or to authenticate Exhibit 534, correct?

15 MR. MASSEY: Correct.

16 HEARING OFFICER GEFTER: Okay.

17 BY MR. MASSEY:

18 Q Ms. Horvath, you provided two
19 attachments to your declaration. Can you please
20 identify those two attachments.

21 A Attachment 1 is the Draft Hayward
22 Airport Land Use Compatibility Plan dated December
23 2007 and Attachment 2 is the meeting notice for
24 the regular Airport Land Use Commission meeting
25 and the agenda for the meeting Wednesday, January

1 16.

2 Q Are attachments 1 and 2 true and correct
3 copies of the documents you have described?

4 A Yes.

5 Q There's been some discussion of
6 Attachment 1, the airport plan, that it's a draft
7 plan. Can you explain the process in which the
8 earlier draft was proposed and how we got to the
9 draft today.

10 A The earlier draft was submitted to the
11 Airport Land Use Commission in the Summer of 2007;
12 it's dated July 2007. Since that time there have
13 been a number of changes to that document in
14 addition to those that concern this Commission's
15 proceedings. But we thought it was relevant that
16 we would include since the applicant included the
17 earlier draft, and particularly Table 2-2 that
18 deals with the safety zone compatibility criteria.
19 We thought that it was particularly relevant to
20 submit the updated December 2007 draft that has
21 had some significant changes to that table.

22 MR. MASSEY: Thank you. As a
23 housekeeping matter, would the Commission be
24 interested in receiving a copy of the entire 1986
25 plan that is currently in effect? I know that

1 portions of it were cited by the staff in the
2 staff report and that was good enough for our
3 purposes. But if that is something of interest to
4 you we can, we can arrange for that.

5 HEARING OFFICER GEFTER: You know we
6 actually, we can take administrative notice of it
7 since it was adopted by the Alameda County Land
8 Use Commission in 1986. You don't need to submit
9 it as an exhibit unless somebody wants to provide
10 it.

11 MS. HOLMES: Hearing Officer Gefter, I
12 would just, this is just a comment. I tried to
13 find that document on-line and was not able to do
14 so. So perhaps it would be a good idea to at
15 least have it docketed and maybe even posted so
16 that people could take a look at it because it is
17 difficult to find.

18 HEARING OFFICER GEFTER: Okay.

19 MR. MASSEY: It's pre-Internet so.

20 MS. HOLMES: As am I.

21 HEARING OFFICER GEFTER: So then if you
22 could provide copies to the parties and docket it.
23 Because we had a version of it that we had but I
24 don't know if it's actually complete. So that
25 would be handy.

1 MR. MASSEY: Sure, we can arrange for
2 that.

3 HEARING OFFICER GEFTER: Okay, and that
4 would be the next Exhibit in order, 535.

5 MR. MASSEY: Yes. And I believe that
6 concludes Ms. Horvath's testimony. We also have
7 Eileen Dalton as a witness. She is speaking on
8 redevelopment. I don't know in terms of topic
9 continuity if you want to continue to other
10 witnesses if there are any or if you'd like to
11 take Ms. Dalton's testimony at this time.

12 HEARING OFFICER GEFTER: Yes, let's go
13 ahead and take her testimony.

14 MR. MASSEY: Thanks.

15 HEARING OFFICER GEFTER: Everyone just
16 keep track of your cross examination questions.

17 MR. MASSEY: Ms. Dalton needs to be
18 sworn.

19 Whereupon,

20 EILEEN DALTON

21 Was duly sworn.

22 HEARING OFFICER GEFTER: Thank you.
23 There is also a chair if you would like to sit
24 down.

25 MS. DALTON: This is fine.

1 DIRECT EXAMINATION

2 BY MR. MASSEY:

3 Q Ms. Dalton, did you present a statement
4 of qualifications along with your declaration in
5 this matter?

6 A I did.

7 Q You presented Exhibits 504, 505, 506,
8 507, 508, 509 and 510. Do you adopt these
9 exhibits as your testimony in this matter?

10 A Yes I do.

11 Q And does your testimony reflect your
12 best professional opinion?

13 A Yes.

14 Q Can you briefly summarize your testimony
15 in this matter.16 A Sure. Briefly, I am the Redevelopment
17 Director for the Redevelopment Agency for the
18 County of Alameda. Our primary function for the
19 Redevelopment Agency is to provide economic
20 revitalization, blight elimination and ensure that
21 property values are maintained and improved. The
22 Redevelopment Agency's funding is directly linked
23 to property value and property taxes.24 We are responsible for two redevelopment
25 project areas in the urban unincorporated Alameda

1 County. Those communities include Ashland,
2 Cherryland, Castro Valley, Hillcrest Knolls, San
3 Lorenzo and Mount Eden. The two areas that have
4 the closest proximity to the proposed Eastshore
5 Energy Center are Mount Eden, which is about a
6 half a mile, and San Lorenzo, which is about two-
7 and-a-half miles.

8 The Redevelopment Agency has initiated a
9 variety of redevelopment programs in these areas
10 ranging from major public improvements to facade
11 improvements, home repairs and other development
12 projects. In San Lorenzo specifically we are
13 engaged in a \$100 million redevelopment of the 19
14 acres in downtown San Lorenzo. In the Mount Eden
15 area, which is really the closest, has partially
16 been annexed by the City of Hayward although half
17 of it is still within the jurisdiction of the
18 County and the Redevelopment Agency.

19 But it is these two areas that have the
20 Agency's greatest concern about the negative
21 perception of a power plant in the neighborhood
22 and communities surrounding these areas,
23 specifically the negative perception of air
24 quality and safety of the neighborhood surrounding
25 a power plant and the resulting negative impact to

1 property values in those two communities.

2 Property values again being the specific
3 source of funding for our redevelopment efforts.
4 Specifically in Mount Eden, the Redevelopment
5 Agency is funding a tremendous amount of public
6 improvements to help facilitate not only the
7 annexation but a large residential development
8 that will help pay for public improvements in
9 Mount Eden.

10 And with the proximity of the Eastshore
11 Energy Center so nearby both the sale and resale
12 of those residential homes could have a negative
13 impact on their property values, which in turn
14 will affect the financing and funding of the
15 improvements for the current development plan and
16 also for the future. Our redevelopment projects
17 in the future also include providing affordable
18 housing opportunities to people within those
19 communities that I mentioned.

20 That generally summarizes my testimony.

21 Q Thank you, Ms. Dalton. Do you have
22 anything else to add?

23 A No.

24 MR. MASSEY: She is available for cross
25 examination.

1 HEARING OFFICER GEFTER: Thank you.

2 Before you go.

3 MR. DALTON: Sure.

4 HEARING OFFICER GEFTER: And also if you
5 could stay for cross examination later.

6 But with regard to the Mount Eden
7 redevelopment plan that you have. You said it was
8 about a half a mile from where the Eastshore site
9 is proposed.

10 MS. DALTON: Yes.

11 HEARING OFFICER GEFTER: Is that in the
12 county or in the city, the city limits?

13 MS. DALTON: Both.

14 HEARING OFFICER GEFTER: Both?

15 MS. DALTON: It's a very unique
16 situation where we have these non-contiguous
17 islands that are wholly surrounded by --
18 unincorporated islands wholly surrounded the City
19 of Hayward. A portion or half of those islands
20 has already been annexed to the City of Hayward,
21 the other half remains in the County's
22 jurisdiction. The City has initiated an
23 annexation plan for the remainder of those areas.

24 The redevelopment authority for all of
25 those areas will be maintained by the County of

1 Alameda and not transferred to the City so it is
2 sort of a unique situation where the County
3 Redevelopment Agency maintains its redevelopment
4 authority even though the land has been annexed.

5 HEARING OFFICER GEFTER: By the City.

6 MS. DALTON: By the City.

7 HEARING OFFICER GEFTER: Then is that
8 considered the sphere of influence of the City or
9 a sphere of influence of the County. How does
10 that work?

11 MS. DALTON: The City of Hayward will
12 have land use authority on those communities once
13 it's adopted and annexed into the City and the
14 Redevelopment Agency will have its redevelopment
15 authority. And all of our legislative
16 requirements relating to redevelopment and
17 affordable housing will be maintained and required
18 to be fulfilled by the County.

19 HEARING OFFICER GEFTER: So if this is a
20 housing development a half-mile from the proposed
21 site for the Eastshore project is it the City
22 zoning ordinance that would apply rather than the
23 County's?

24 MS. DALTON: If it is within the portion
25 of Mount Eden that is being annexed or proposed to

1 be annexed it will be the City's zoning
2 designations and land use authorities that will
3 apply, yes.

4 HEARING OFFICER GEFTER: And this is
5 residential areas or is it residential/commercial?
6 What are you planning there?

7 MS. DALTON: It's both residential and
8 mixed industrial but the change in this community
9 is going towards residential from what was fairly
10 undeveloped or underdeveloped.

11 HEARING OFFICER GEFTER: What is there
12 now in the Mount Eden area?

13 MS. DALTON: A combination of small lots
14 -- small houses on large lots, industrial uses,
15 storage, wrecking yards, residential. So it's
16 very mixed.

17 HEARING OFFICER GEFTER: And what is the
18 zoning there now, do you know?

19 MS. DALTON: I don't know the zoning.

20 HEARING OFFICER GEFTER: We'll find out
21 from the City, okay. Thank you very much.

22 MS. DALTON: You're welcome.

23 HEARING OFFICER GEFTER: If you don't
24 mind staying for a little bit longer for have
25 cross examination.

1 MS. DALTON: Sure, I will.

2 HEARING OFFICER GEFTER: Do you have
3 additional witnesses, Mr. Massey?

4 MR. MASSEY: We don't.

5 HEARING OFFICER GEFTER: Okay. Now I
6 know Chabot College does not have witnesses on
7 this topic.

8 MS. KACHALIA: Correct.

9 HEARING OFFICER GEFTER: And group
10 petitioners?

11 MS. HARGLEROAD: We had our discussion.
12 If staff indicated that they were interested in
13 voir diring Carol Ford to admit her earlier
14 testimony, which has already been submitted under
15 transportation also under land use she is now
16 available.

17 HEARING OFFICER GEFTER: She is present.
18 Okay, thank you.

19 MS. HARGLEROAD: She is back from the
20 doctor's.

21 HEARING OFFICER GEFTER: Welcome here,
22 Ms. Ford. And then Mr. Haavik, you don't have any
23 witnesses on this topic, on land use, except for
24 your direct on Jesus, Mr. Armas.

25 MR. HAAVIK: No.

1 HEARING OFFICER GEFTER: Okay. So what
2 we'll do now is we will open it up to cross
3 examination. I think each party can then sort of
4 identify which witness you want to cross examine.
5 Let's start with Ms. Luckhardt and you can just go
6 through the entire group with your cross
7 examination. Thank you.

8 MS. LUCKHARDT: Okay, beginning with
9 Ms. Strattan.

10 CROSS EXAMINATION

11 BY MS. LUCKHARDT:

12 Q Is it your testimony that staff's
13 determination of LORS non-conformity is solely a
14 result of staff's conclusion that the Eastshore
15 location would cause a potential aviation hazard?

16 A No, not solely. Aviation hazard is the
17 primary reason but also the utility, an impact on
18 the utility of the airport.

19 Q Earlier in your conversation with
20 Ms. Gefter you made some comments about your
21 concern about the location. Is that based -- and
22 how any configuration you would see as a problem
23 at that specific location. I believe I'm
24 characterizing that correctly, if not please
25 correct me. Is that because you believe that any

1 thermal plume from that facility would be a
2 problem to aviation?

3 A An aviation hazard, both the FAA,
4 Caltrans Aeronautics and several other agencies
5 have identified thermal, high-velocity thermal
6 plumes as a hazard to aviation. So any, in this
7 case the plant at that -- any plant at that
8 location that was generating high-velocity thermal
9 plumes would be viewed as an aviation hazard.

10 Q Is there some threshold at which you
11 would define a high-velocity thermal plume?

12 MS. HOLMES: I think I am going to
13 object to this question. This strikes me as
14 something that went more to traffic and
15 transportation I think.

16 HEARING OFFICER GEFTER: I think the
17 witnesses on that topic were able to answer that
18 question. Let's try another question of this
19 witness.

20 BY MS. LUCKHARDT:

21 Q Further, in your previous discussion
22 where you talked about other facilities, and I
23 believe it was in relation to previous CEQA
24 analyses you may have done, that there were some
25 other facilities that you were aware of that

1 avoided this situation. Have you ever experienced
2 a power plant that has moved or have you ever
3 licensed a power plant or reviewed or evaluated a
4 power plant that has moved because of thermal
5 plume impacts to an airport?

6 A No, I have not.

7 CROSS EXAMINATION

8 BY MS. LUCKHARDT:

9 Q Ms. Horvath, can you let us know what
10 date the document, the new draft plan that you
11 were sponsoring became available to the public.

12 A That document was mailed out to the
13 Airport Land Use Commission on Friday and it was
14 publicly noticed. We are asking on Wednesday at
15 the regular meeting for the Commission to approve
16 all three airport draft plans for public
17 circulation and public hearing.

18 Q So then in accordance with --

19 HEARING OFFICER GEFTER: I'm sorry,
20 That's exhibit 534 that you're describing.

21 BY MS. LUCKHARDT:

22 Q Okay, Exhibit 534, does that mean that
23 that's Friday, January 11, consistent with Brown
24 Act requirements that it became available?

25 A Yes.

1 Q Okay.

2 CROSS EXAMINATION

3 BY MS. LUCKHARDT:

4 Q Ms. Dalton.

5 A Yes.

6 Q Have you completed any studies of the
7 potential impacts of this project on property
8 values in the area?

9 A No.

10 MS. LUCKHARDT: Thank you. That's all.

11 HEARING OFFICER GEFTER: Hold on one
12 second. Was the reporter able to hear Ms. Dalton
13 standing back there? Thank you, yes.

14 Go ahead.

15 MS. LUCKHARDT: Okay.

16 CROSS EXAMINATION

17 BY MS. LUCKHARDT:

18 Q Mr. Rizk.

19 A Yes.

20 Q So you can move the mic.

21 In your testimony you say that the
22 Eastshore project is contrary to the definition of
23 an information-based economy or does not fit
24 within the definition of an information-based
25 economy; is that correct? I'm referring to page

1 five of your testimony, lines 14 and 15.

2 HEARING OFFICER GEFTER: That number of
3 that exhibit is?

4 MS. LUCKHARDT: Exhibit 401, I believe.

5 HEARING OFFICER GEFTER: Thank you.

6 MR. RIZK: Yes.

7 BY MS. LUCKHARDT:

8 Q You further mention that high-tech and
9 information technology includes such things as
10 computer chip manufacturing. That's further down.

11 A Yes.

12 Q Isn't it true that computer chip
13 manufacturers require access to a highly reliable
14 supply of electricity?

15 A I don't know if I am in the position to
16 answer that, I'm not really an expert. I would
17 assume they have, they need to have some access to
18 that but how high I don't know.

19 Q You mention a general plan objective in
20 your testimony regarding development of campus-
21 style high-tech uses. I'm looking at page five
22 again, lines five through seven.

23 A Yes.

24 Q If you turn to the general plan, that's
25 City of Hayward Exhibit 406. I'm looking at page

1 2-12. And if you look at the -- Let me know when
2 you get there. The first paragraph under
3 industrial corridor. I'm wondering if you can
4 read the last sentence in that paragraph. It
5 begins, to further aid.

6 A "To further aid in this
7 transition the City is looking at
8 ways to better accommodate the
9 differing needs of new campus-style
10 high-tech uses and traditional
11 manufacturing and warehousing uses,
12 perhaps through the establishment
13 of separate zoning districts."

14 Q Thank you. And it says the City is
15 looking at different options, correct?

16 A Yes.

17 Q And that perhaps through establishing
18 separate zoning districts, correct?

19 A Yes.

20 Q At this point that concept remains an
21 objective; is that accurate to say?

22 A I would say it's an objective as well as
23 a policy strategy that is referenced later in that
24 element.

25 Q Now the City has not established

1 separate zoning districts; isn't that correct?

2 A Not in the industrial zoning district.

3 Q And this objective has never been
4 adopted by the City Council as an ordinance, has
5 it?

6 A It hasn't as an ordinance but as I said,
7 it is adopted strategy that is listed under a
8 policy later in this element.

9 Q In the general plan but not as a
10 separate zoning district.

11 A Correct.

12 Q Now some of these high-tech information
13 technology uses the City wants to attract, they
14 use toxic materials, correct?

15 A Some do, yes.

16 Q In fact, if you refer to that same
17 exhibit, 406, at the bottom of page or near the
18 bottom of page 2-14 it talks about the use of
19 highly toxic or corrosive gases; isn't that
20 correct?

21 A Yes.

22 Q In addition you say that if those
23 hazardous materials aren't properly stored,
24 handled or monitored they can pose a threat to the
25 community.

1 A Yes.

2 Q In your testimony on page five starting
3 at line 19 you mention that these high-tech
4 information technology uses but you don't identify
5 any specific uses that have been sited on the -- I
6 guess it would be north side of 92.

7 A I'm not really sure I understand your
8 question about the north side of 92.

9 Q Okay. You don't identify any specific
10 uses that have been sited in the eastern portion
11 of the City in your testimony, do you?

12 A Correct.

13 Q Turning to page eight of your testimony,
14 lines 9 to 12. You state that the stacks at
15 Eastshore would be clearly visible from
16 residential and public areas along the eastern
17 edge of the industrial corridor, correct?

18 A Yes.

19 Q Did you submit any analysis of the
20 visual impacts of the project?

21 A I did not.

22 Q Okay, do you have a copy of Mr. Haavik's
23 Exhibit 307 handy?

24 A Yes.

25 Q I'm looking at page three, line four of

1 Exhibit 307, which you reference on page three,
2 line four of your testimony.

3 MS. GRAVES: Are you looking at page
4 three?

5 MS. LUCKHARDT: I'm looking at Exhibit
6 307.

7 MS. GRAVES: Right, but there's several
8 different things in Exhibit 7, the Hayward City
9 Council staff report.

10 MS. LUCKHARDT: Yes.

11 MS. GRAVES: Are you looking at -- which
12 date are you looking at, the March 6? February 7?

13 MS. LUCKHARDT: It's the staff report.

14 MS. GRAVES: Is it the report dated
15 February 15, '07? There's two agenda reports that
16 I have in that exhibit. The date is on the top
17 right of the first page of the report.

18 MS. LUCKHARDT: Okay, the one I'm
19 looking at is 3/6/07.

20 MS. GRAVES: Okay. So where again on
21 the page are you referring?

22 MS. LUCKHARDT: And that is a City of
23 Hayward agenda for March 6, correct?

24 MS. GRAVES: Yes.

25 MS. LUCKHARDT: Are you answering?

1 Sorry about that.

2 MR. RIZK: It's an agenda report.

3 BY MS. LUCKHARDT:

4 Q Correct. Did you prepare that report?

5 A Yes. I mean, I was one of the preparers
6 for it.

7 Q If you look at the first full paragraph
8 on the last page of that report.

9 A Yes.

10 Q Third sentence. You assert that it is
11 clear to staff that the 70 foot tall stacks would
12 be visible from the residential areas.

13 A Yes.

14 Q And yet you completed no visual analysis
15 of the project, correct?

16 A I didn't submit any analysis. I've been
17 out to the area many times and looked in the
18 direction of the power plant but I haven't
19 submitted any specific analysis.

20 Q Did you conduct, did you create visual
21 simulations to see what would be visible from
22 different locations?

23 A No.

24 MS. LUCKHARDT: I have nothing further.

25 HEARING OFFICER GEFTER: Do you have any

1 cross for any other witness, Ms. Luckhardt?

2 MS. LUCKHARDT: I'm just checking the
3 witnesses to make sure that I don't.

4 HEARING OFFICER GEFTER: Because there's
5 so many of them --

6 MS. LUCKHARDT: Yes. Nothing further.

7 HEARING OFFICER GEFTER: Okay.

8 Ms. Holmes, do you have cross of other witnesses?

9 MS. HOLMES: I just would like to ask
10 Carol Ford a couple of questions.

11 HEARING OFFICER GEFTER: Okay.

12 Ms. Ford, if you don't mind coming forward or
13 using the microphone over there. Why don't you
14 pass the microphone. And Ms. Ford was sworn at
15 the previous hearing so she is still under oath.
16 Thank you.

17 MS. HOLMES: Thank you.

18 CROSS EXAMINATION

19 BY MS. HOLMES:

20 Q Good afternoon, Ms. Ford.

21 A Hi.

22 Q Hi. Are you a land use expert?

23 A No but I am an alternate on the Airport
24 Land Use Commission for San Mateo County.

25 Q Have you ever prepared a land use

1 analysis for an environmental document?

2 A No.

3 Q Are you familiar with the CEQA
4 guidelines Appendix G that the staff has testified
5 that it refers to to evaluate land use impacts?

6 A I am not sure, I might.

7 MS. HARGLEROAD: Can you tell us what
8 those guidelines are since she doesn't have the
9 guidelines in front of her.

10 MS. HOLMES: I'm asking her if she knows
11 what they are.

12 MS. HARGLEROAD: All guidelines?

13 MS. HOLMES: No, Appendix G.

14 MS. HARGLEROAD: Okay can you tell,
15 refer, refresh her recollection and tell her what
16 Appendix G.

17 MS. HOLMES: To the CEQA guidelines.
18 Are you familiar with Appendix G to the CEQA
19 guidelines.

20 MS. HARGLEROAD: We don't have Appendix
21 G in front of us.

22 MS. HOLMES: I'm asking her if she's
23 familiar with it.

24 MS. HARGLEROAD: I'm going to object
25 because if she doesn't, you are not providing

1 Appendix G, you are not telling her what the
2 contents of G represents and just asking her to
3 recall what G may be without having the actual
4 language in front of her that's not an appropriate
5 question.

6 BY MS. HOLMES:

7 Q Are you familiar with the CEQA statute?

8 A Yes.

9 Q Which sections have you read?

10 A Many.

11 Q Have you read the CEQA guidelines?

12 A Probably.

13 Q Have you read them or not?

14 A Well I have read some, I don't know
15 which specific ones you mean.

16 Q Do you know whether there are any
17 sections of the CEQA regulations that refer to
18 land use?

19 A Yes.

20 Q Can you tell me which sections those
21 are?

22 A No.

23 MS. HOLMES: Thank you. Those are all
24 my questions.

25 HEARING OFFICER GEFTER: Thank you. Do

1 you have any cross of any other witness?

2 MS. HOLMES: No.

3 HEARING OFFICER GEFTER: Okay, thank
4 you. Mr. Haavik, do you have any cross
5 examination of anybody?

6 MR. HAAVIK: Is it on? I think so.
7 Just two witnesses. First Ms. Horvath.

8 CROSS EXAMINATION

9 BY MR. HAAVIK:

10 Q In regards to Exhibit 534 and your
11 testimony a few moments ago. I believe I heard
12 something to the effect that you were going to
13 have a meeting on Wednesday the 16th.

14 A That is correct.

15 Q And that you are submitting this plan
16 for approval to be disseminated amongst the
17 public; is that correct.

18 A That's correct.

19 Q Did you also say there were other plans
20 involved?

21 A Yes, the Airport Land Use Commission has
22 jurisdiction over all the public use airports in
23 Alameda County and that would be the Oakland
24 International Airport, Hayward Executive and the
25 Livermore Municipal Airport. So the process is

1 that all these plans at the same time are being
2 updated in the same process and we hope to go
3 Wednesday to the public for the public circulation
4 portion of the project.

5 Q In reference to those other plans, both
6 the Oakland plan and the Livermore plan. Do they
7 have similar sections that were updated as was
8 updated in the Hayward plan from I guess a working
9 plan of July '07 specifically to plumes,
10 specifically to safety in aviation?

11 A Yes they do and in fact all three plans
12 have the same Table 3-2 which is the safety zone
13 compatibility criteria and they all have the same
14 section 3.3.3.5, Other Flight Hazards. And
15 there's text in the latter portion of the document
16 that has specific language and that is common to
17 all three.

18 Q So as referenced by the applicant then
19 you can feel -- do you feel confident that you are
20 equally covering this information in all three
21 plans?

22 A Yes we are.

23 MR. HAAVIK: Thank you.

24 I have one question for Mr. Rizk,
25 please.

1 CROSS EXAMINATION

2 BY MR. HAAVIK:

3 Q In reference to your letter that you co-
4 authored, as asked by Ms. Luckhardt. I'll
5 reference back to the same second page, last
6 paragraph. You indicated also, although no
7 specific analysis has been done it is clear to
8 staff that 70 foot tall stacks would be visible
9 from residential areas; is that correct?

10 A Yes.

11 Q Then it also goes on to say, and
12 inconsistent with the heights of structures in the
13 area. Are there any other types of tall stacks
14 immediately in that area which would be considered
15 the eastern industrial area?

16 A I'm not aware of any stacks that high.

17 Q Which stack would be equivalent to this
18 that would be closest to the area? Do you know?

19 A Well the only stack of a significant
20 height that I am aware of is at the Rohm & Haas
21 chemical plant, which is several hundred feet to
22 the southwest.

23 Q In distance or height?

24 A Distance.

25 Q Do you know how high that stack is?

1 A I don't know exactly how tall it is. I
2 think it's certainly more than 70 feet.

3 Q And how many stacks are there?

4 A One at that site.

5 Q One. Do you know how many stacks are
6 proposed at the Eastshore site?

7 A Fourteen.

8 Q And do you know how many stacks ar
9 proposed at the Russell City site?

10 A Two if I recall.

11 MR. HAAVIK: Okay, thank you very much.
12 That's all I have.

13 MS. GRAVES: I just have one question
14 for Ms. Strattan.

15 CROSS EXAMINATION

16 BY MS. GRAVES:

17 Q It says in the FSA on page 4.5-11 that
18 the proposed project would not hinder the
19 transition of other properties in the industrial
20 area from a manufacturing base to information
21 technology. And I was wondering if the staff has
22 any knowledge of businesses that have requested
23 being sited adjacent to the proposed Eastshore
24 Center?

25 A No, we have no knowledge of it.

1 Q Did staff receive any input from
2 existing businesses surrounding the site such as
3 the Fremont Bank Operations Center?

4 A I believe there may have been a comment
5 made during the comment sessions, I am not
6 familiar with any written correspondence that we
7 received. I know there is a bank immediately
8 adjacent to it along with the Berkeley Farms
9 facility across the street.

10 Q So you didn't factor into your analysis
11 any correspondence you may have received from
12 Fremont Bank regarding the proposed site?

13 A I am not familiar with any
14 correspondence that I received regarding that site
15 from the Fremont Bank.

16 MS. GRAVES: Thank you. Nothing
17 further.

18 MR. MASSEY: I have a few questions for
19 Ms. Scholl.

20 CROSS EXAMINATION

21 BY MR. MASSEY:

22 Q Am I pronouncing your name correctly?

23 A Correct, Jennifer Scholl.

24 Q Scholl, okay. I just want to make sure.
25 People mispronounce my name all the time.

1 I want to direct you to your testimony,
2 Exhibit 17, specifically your response A-15. And
3 In it you provide an opinion and you indicate the
4 opinion is based on the Alameda County Compatible
5 Land Use Plan, CLUP, Draft July 2007. Just to
6 start us off, you're aware that there is now the
7 December 2007 plan as well, draft plan?

8 A Yes.

9 Q And I don't know if you had an
10 opportunity to review it during the break.

11 A I had an opportunity, a very short one,
12 very limited, during lunch.

13 Q Okay. The July 2007 plan, when you were
14 using it in the preparation of your testimony, did
15 it include a Zone 7?

16 A I don't recall, I am not aware that
17 there was one. When I read the new plan, the
18 December 2007 plan, I recall my initial reaction
19 was that there was a new Zone 7 that was not
20 originally included in the July 2007.

21 Q So when you did your analysis using the
22 July plan it was only based on the six zones?

23 A That's correct.

24 Q So it's conceivable that the inclusion
25 of Zone 7 in the December plan would alter the

1 analysis you provide in Answer 15? I'm not asking
2 you for what the analysis would be but it is
3 conceivable that the inclusion of a Zone 7 would
4 alter the analysis you provided in Answer 15.

5 A Let me say that in reviewing Table 3-2
6 in the new plan that there is a line item in that
7 table regarding power plants. And at the bottom
8 of Table 3-2, a table called Safety Compatibility
9 Criteria on page 3-20. And it says in that Zone 7
10 that power plants are allowable if no other
11 suitable site outside the airport influence area
12 is available. As well there is a shaded box
13 noting by the key that the use is conditional.
14 It's a conditional use and use is considered
15 acceptable if listed conditions are met.

16 Now I have not been able to do enough
17 research within the new plan to fully understand
18 what those new conditions are. But it is my
19 understanding that the Airport Land Use Commission
20 doesn't issue permits so I am assuming it falls
21 back to the City of Hayward's underlying land use
22 plans and policies and the requirements in the
23 zoning ordinance.

24 Q Okay. And by the same token your
25 answers to A-16 and A-17, those are also based on

1 the July plan with the six zones.

2 A Well both of those refer to that plan,
3 but as noted, the same table from the airport plan
4 that is included as Figure 5 in the Final Staff
5 Assessment shows the traffic pattern zone and it
6 shows that the site is located approximately, you
7 know, less than a half-mile or a short distance
8 from the traffic pattern zone.

9 So it's both that as well under my
10 response to Answer 7 with respect to my, the
11 question about compatibility. I also reemphasize
12 the points that were made by my colleagues on the
13 aviation panel with respect to thermal plumes.
14 Quoting that thermal plumes from Eastshore will
15 not endanger the takeoff, landing or maneuvering
16 of aircraft.

17 Q And turning to part C of your testimony,
18 which is on page ten. In the course of providing
19 the answers in Section C did you review the final
20 Eden Area Redevelopment Plan marked Exhibit 506?

21 A I'm just confirming in my binder here to
22 make sure. I reviewed all of the Alameda County
23 exhibits including Exhibit 506. And 506 is the
24 Redevelopment Plan for the Eden Area Redevelopment
25 Project dated July 11, 2000.

1 Q Did you review that in the course of
2 providing the answers in your testimony in Section
3 C?

4 A Yes I did.

5 Q Did you -- And where do you discuss the
6 Eden Area Redevelopment Plan in your answers in
7 Section C?

8 A At this point I know when I looked at
9 it. I don't know why it isn't summarized here off
10 the top of my head but my recollection is that the
11 same types of discussion occurs within this plan
12 as within the others where the site as shown on
13 the map included as Attachment 2 of my testimony
14 where it shows the proximity of our site to the
15 other planning areas within Alameda County and
16 that our site is not part of any of those planning
17 areas.

18 Q What you're referring to is -- I don't
19 know if it's Attachment 1 or 2, it's kind of
20 flipped around through time. But the location of
21 Eastshore Energy Center in proximity to the County
22 of Alameda Eden Area general plan planning areas.

23 A Correct.

24 Q Is that the map you're referring to?
25 But you didn't look at the redevelopment, the

1 final Eden Area redevelopment?

2 A I did review that plan, it is just not
3 summarized. The relevance of the plan is not
4 summarized in my response A-18.

5 Q Okay. How about the map of all the
6 redevelopment sub-areas marked Exhibit 507? Is
7 that something you reviewed in the course of
8 preparing your responses in Section C?

9 A Yes, I reviewed this in development of
10 the map that I prepared in my own testimony.

11 Q And the Eden Area Redevelopment Project
12 Five Year Implementation Plan marked 508. Did you
13 review that in the course of preparing Section C?

14 A Yes I did.

15 Q The Joint Redevelopment Project Five
16 Year Implementation Plan marked Exhibit 509?

17 A Yes I did.

18 Q And the Redevelopment Plan for the
19 Alameda County City of San Leandro Redevelopment
20 Project marked Exhibit 510?

21 A Yes I did.

22 Q But do you discuss any of these
23 Exhibits, 506, 507, 508, 509 or 510 anywhere in
24 your testimony?

25 A I do not but I discussed those plans

1 that I felt were of the most relevance to planning
2 efforts in the area of the Eastshore Energy
3 Center.

4 Q Is it fair to say that the testimony you
5 provide doesn't actually discuss any of the
6 County's redevelopment efforts? As distinguished
7 from its general plan efforts or its economic
8 planning efforts.

9 A I believe that the discussion in my
10 response 18 as well as 19 includes document that
11 are very interrelated and in many cases they
12 reference each other within the text of the
13 discussions in the plans themselves. But the
14 redevelopment plans are not listed.

15 MR. MASSEY: Okay, that concludes my
16 cross examination.

17 HEARING OFFICER GEFTER: Do you have any
18 cross?

19 MS. KACHALIA: No, I don't have any
20 questions.

21 HEARING OFFICER GEFTER: Okay.
22 Ms. Hargleroad.

23 MS. HARGLEROAD: I just have a couple of
24 Ms. Strattan just for clarification purposes to
25 follow up.

1 CROSS EXAMINATION

2 BY MS. HARGLEROAD:

3 Q Ms. Strattan, aren't proposals to locate
4 thermal gas power plants near airports fairly
5 recent phenomena starting with the Blythe Airport?

6 A I don't know how recent the actual
7 location of these types of plants are on airports.
8 It wasn't something that was brought to our
9 attention regarding an aviation safety hazard, the
10 Energy Commission's attention, until the Blythe
11 project. Nationwide or beyond the State of
12 California I don't know.

13 Q But as far as what is within the
14 jurisdiction of the CEC, the Blythe -- the siting
15 of the Blythe power plant near the Blythe Airport,
16 did that generate complaints?

17 A There were pilot reports that were given
18 to the airport as well as the Commission regarding
19 problems at that airport due to thermal plumes,
20 especially with small aircraft. It was the first
21 time that it was really brought to the attention
22 of the Commission that there may be aviation
23 safety hazard concerns related to the thermal
24 plumes.

25 Q One second. Isn't also the Blythe

1 Airport located in a more remote area? Is that
2 correct?

3 A That's correct.

4 Q Okay. Compared to this area which is
5 urban and you have the San Francisco Airport, the
6 Oakland Airport, lots of airports.

7 A The airport, the Blythe Airport is
8 basically in the desert. There's a lot of room
9 for the aircraft to maneuver without encountering
10 other restrictions to flight.

11 MS. HARGLEROAD: Okay. I think this
12 goes to the City issues. And I just wanted for
13 clarification so I am not sure who is, what
14 witness, Ms. Graves do you have Exhibit 410? Who
15 is offering Exhibit 410?

16 MS. GRAVES: That's Mr. Bauman.

17 MS. HARGLEROAD: Mr. Bauman.

18 Mr. Bauman, I just had a quick question on Exhibit
19 410. This is the Hayward Executive Airport Plan.

20 MS. LUCKHARDT: You know, I am going to
21 object to additional questions of Mr. Bauman on
22 the Hayward Executive Airport Plan unless it
23 relates to the specific issue on which he provided
24 additional testimony today. This is not an
25 opportunity to reopen discussion of items that

1 have previously been taken under traffic and
2 transportation.

3 MS. HARGLEROAD: I do not -- And maybe
4 Ms. Graves can correct me. I do not understand or
5 I don't recall whether or not was the airport plan
6 offered as an exhibit under transportation in
7 addition to land use?

8 MS. GRAVES: Yes it was.

9 MS. HARGLEROAD: Under 410?

10 MS. GRAVES: Yes.

11 MS. HARGLEROAD: Okay, all right. Well
12 this goes to -- The problem is is this goes to
13 land use specifically on the benefits of the
14 airport that don't directly relate to
15 transportation air traffic patterns and things
16 like that.

17 HEARING OFFICER GEFTER: Okay, go ahead
18 and ask the question subject to objection.

19 MS. HARGLEROAD: Thank you.

20 MS. LUCKHARDT: I think this is part of
21 traffic and transportation.

22 HEARING OFFICER GEFTER: It may very
23 well be, let's hear the question.

24 MS. HARGLEROAD: Well maybe we can hear
25 what the question is first before we make that

1 determination.

2 HEARING OFFICER GEFTER: Okay, state the
3 question, please.

4 MS. LUCKHARDT: And 410 is specifically
5 listed under the City of Hayward as a traffic and
6 transportation exhibit.

7 MS. HARGLEROAD: Mr. Bauman, going to
8 Table 1. It's page B-5. It's the summary of
9 economic benefits for 1999.

10 MS. LUCKHARDT: We're going back to
11 airport and traffic and transportation issues.

12 MS. HARGLEROAD: We are going to an
13 exhibit that is also being offered under land use
14 that I would like to ask Mr. Bauman a question
15 about.

16 MS. LUCKHARDT: You know what, the
17 document is --

18 MS. HARGLEROAD: Can we hear what the
19 question is first?

20 HEARING OFFICER GEFTER: I know, I know,
21 Ms. Luckhardt. It takes more time to argue it.
22 The document speaks for itself. If you are going
23 to ask him to read us the document we can read it.

24 MS. HARGLEROAD: No, I have a question
25 specifically about the document.

1 HEARING OFFICER GEFTER: Ask the
2 question. Okay, ask the question.

3 MS. HARGLEROAD: Thank you. This table
4 is dated 1999.

5 HEARING OFFICER GEFTER: We can read
6 that, why don't you ask the question.

7 CROSS EXAMINATION

8 BY MS. HARGLEROAD:

9 Q It is now 2008, Happy New Year. Has the
10 airport grown since 1999?

11 A Yes.

12 Q Okay, thank you, Mr. Bauman.

13 HEARING OFFICER GEFTER: Anything else?

14 MS. HARGLEROAD: No, that's fine, thank
15 you.

16 HEARING OFFICER GEFTER: That's all you
17 have, okay. The Committee has some questions of
18 our witnesses. I think Commissioner Byron has a
19 few questions.

20 PRESIDING COMMISSIONER BYRON: Thank you
21 all very much for introducing all this evidence.
22 We're going to do a little tag team right here.
23 Gabe, you can ask some questions too.

24 I want to make sure I understand what
25 was reviewed in the applicant's testimony for land

1 use.

2 HEARING OFFICER GEFTER: That's Exhibit
3 17, Ms. Scholl's testimony.

4 PRESIDING COMMISSIONER BYRON: So
5 Ms. Scholl, in your response to Question 2 you say
6 that the project is in compliance with the City of
7 Hayward's and Alameda County's LORS as they apply
8 to the Eastshore Energy Center. But if I
9 understand correctly, did you address the recent
10 City ordinance -- Do you have the date on that
11 ordinance? I'm sorry, resolution. The recent
12 City resolution against the Eastshore Energy
13 Center.

14 MS. SCHOLL: Yes I did.

15 HEARING OFFICER GEFTER: That's Exhibit
16 404.

17 PRESIDING COMMISSIONER BYRON: So
18 Exhibit 404. But yet wouldn't that be in
19 contradiction to your statement, your answer in
20 A-2?

21 MS. SCHOLL: No, because that is not my
22 opinion, that is the opinion of the Hayward City
23 Council. I was present during that hearing. I
24 managed the preparation of the AFC. I wrote my
25 land use testimony here. What I reviewed as part

1 of -- that was one of the items in my
2 participation as an observer during those
3 hearings. It also went into developing my
4 testimony.

5 But irregardless of the resolution
6 passed by the City Council I also reviewed all the
7 other plans and policies from the City and I also
8 read and spoke extensively with our other team of
9 witnesses that presented their testimony with
10 respect to aviation issues on December 18. And in
11 doing that I came to the conclusion that there is
12 not an incompatibility with the City of Hayward,
13 an independent conclusion.

14 PRESIDING COMMISSIONER BYRON: Thank
15 you, I understand your point. Has anyone
16 introduced into evidence a zoning map? Have I
17 missed it? Do we know where the zoning boundaries
18 are here?

19 MS. STRATTAN: Yes, the zoning map is
20 attached to the FSA and it was also in the AFC.
21 The AFC provided a zoning map and also land use.
22 Let's see, zoning is Land Use Figure 2.

23 PRESIDING COMMISSIONER BYRON: Okay
24 good, thank you, Ms. Strattan.

25 HEARING OFFICER GEFTER: Can you tell us

1 the page number on that.

2 MS. STRATTAN: Those pages weren't
3 numbered. They're at the back of the land use
4 testimony for the AFC.

5 HEARING OFFICER GEFTER: Yes, we have
6 it.

7 PRESIDING COMMISSIONER BYRON: Okay, as
8 long as it's there that's fine.

9 Now maybe the City could help me here.
10 What is the zone for the proposed location of the
11 Eastshore Energy Center? What is it zoned as?

12 MR. RIZK: Industrial.

13 PRESIDING COMMISSIONER BYRON: And do
14 you have different classifications for industrial
15 within the City?

16 MR. RIZK: We do not have different
17 classifications within the industrial zoning
18 district as related to some of the policy language
19 in the general plan as previously read. We do
20 have other zoning districts such as LM, light
21 manufacturing, BP, business park. But in terms of
22 multiple zoning districts within the industrial
23 district, we don't.

24 PRESIDING COMMISSIONER BYRON: So this
25 proposed site is zoned as manufacturing or as

1 industrial?

2 MR. RIZK: It's industrial.

3 PRESIDING COMMISSIONER BYRON:
4 Industrial. And it's adjacent to residential
5 zoning; is that correct?

6 MR. RIZK: The industrial zoning
7 district is adjacent to residential zoning.

8 PRESIDING COMMISSIONER BYRON: Okay. Is
9 it R-1 do you know?

10 MR. RIZK: It's a variety of zoning
11 districts. RS, which is similar to R-1, which
12 would be single-family residential, RM, medium
13 density residential.

14 PRESIDING COMMISSIONER BYRON: Okay.

15 MR. RIZK: We also have a PD zone which
16 is planned development which is a residential
17 zone.

18 HEARING OFFICER GEFTER: We're looking
19 at figure 2 to the FSA on land use.

20 PRESIDING COMMISSIONER BYRON: Okay. It
21 will take a little while to study that so I'll
22 just move on then. Has the zoning changed at all
23 in recent years for this particular area where the
24 proposed Eastshore Energy Center is?

25 MR. RIZK: No.

1 PRESIDING COMMISSIONER BYRON: Okay. I
2 was expecting some different answers so I don't
3 have any more questions.

4 HEARING OFFICER GEFTER: There has been
5 some confusion over the course of these hearings
6 about the 2002 general plan because apparently
7 when the Russell City was initially approved by
8 the Energy Commission it was in '01 or '02 prior
9 to the 2002 general plan. Is that an accurate
10 understanding of the facts, Mr. Rizk?

11 MR. RIZK: Yes.

12 HEARING OFFICER GEFTER: And then
13 subsequently the 2002 general plan was adopted by
14 the City, correct?

15 MR. RIZK: Yes.

16 HEARING OFFICER GEFTER: So when the
17 applicant tells us that they -- this applicant
18 tells us they relied on what happened with Russell
19 City and they assumed the same thing would happen
20 with Eastshore, they were talking about a
21 different general plan. Is that your
22 understanding?

23 MR. RIZK: Well I don't know to what
24 they were referencing but there certainly was a
25 different general plan in effect when Russell City

1 was originally approved.

2 HEARING OFFICER GEFTER: There was a
3 different general plan at that time?

4 MR. RIZK: Yes.

5 HEARING OFFICER GEFTER: So was Russell
6 City grandfathered into the old plan or was it
7 sited under the new plan?

8 MR. RIZK: I know when the Council
9 approved an agreement with the Russell City folks
10 or the Russell City entity, which was post-2002
11 adoption of the plan, the Council was aware of
12 obviously the new general plan. So that action in
13 my opinion affirmed, you know, support for the
14 Russell City plant. And it was obviously post-
15 March 2002.

16 HEARING OFFICER GEFTER: But the
17 Eastshore project came in under the 2002 general
18 plan that was already in effect in '06 when they
19 first filed their AFC.

20 MR. RIZK: Yes.

21 HEARING OFFICER GEFTER: Okay. And then
22 you have stated that the project is zoned, is in
23 the industrial zone and the industrial zone then
24 extends all the way from where Eastshore is, the
25 Eastshore site, all the way to where the Russell

1 City site is. Is that all industrial or is that
2 separate industrial zones?

3 MR. RIZK: That area that you just
4 described is all industrial zoning district.

5 HEARING OFFICER GEFTER: It's the whole
6 thing. And how large is that in terms of
7 diameter? Is it several miles of industrial zone?

8 MR. RIZK: Well the industrial zoning
9 district is in that area as well as the south and
10 southeast portion. I believe it's 3500 acres in
11 total. I'm not sure of the diameter. It's
12 several hundred feet, several hundreds of feet
13 wide.

14 HEARING OFFICER GEFTER: And then in the
15 '02 general plan where they adopted this concept
16 that the eastern portion of the industrial zone
17 would be dedicated to high-tech properties or a
18 different type of heavy industry than in the
19 western zone; is that correct?

20 MR. RIZK: I don't recall there was any
21 specificity of eastern versus western. It was
22 just a general policy to move from a
23 manufacturing-based to an information-based
24 technology.

25 And given the proximity of some of the

1 more sensitive areas, residential and taking
2 advantage of the freeway access to 92 along the
3 Clawiter corridor with the expected number of
4 employees with some of those higher-tech companies
5 it would make sense to have it in the eastern
6 portion of the industrial district.

7 HEARING OFFICER GEFTER: So did the City
8 undertake some sort of a promotion to encourage
9 these high-tech companies to move to Hayward and
10 that part of the City?

11 MR. RIZK: Our economic development
12 staff does send out information and that type of
13 marketing. We're looking to be obviously more
14 aggressive. But we have had several higher-tech
15 companies, biotech et cetera, in recent years move
16 into the City along that Clawiter corridor.
17 Primarily around the 92, State Route 92
18 intersection.

19 HEARING OFFICER GEFTER: It was stated
20 in the general plan though that that was the
21 preference of the City to encourage the high-tech
22 industry into that area?

23 MR. RIZK: Yes.

24 HEARING OFFICER GEFTER: Because I think
25 what's happened is that over the course of this

1 process you know it's kind of been mixed up with
2 what happened in Russell City and trying to maybe
3 bootstrap in what the City decided on Russell
4 City. So what I am trying to find out
5 specifically is what applies to this project and
6 how is that different from what happened with
7 Russell City. Could you explain that to us.

8 MR. RIZK: Well I think the biggest
9 issue is location. And even though they are both
10 power plants they are different types of power
11 plants. Their locations in the City's opinion are
12 different locations given the proximity of those
13 two sites to adjacent residential areas, et
14 cetera.

15 And I also want to talk about the
16 policies in the general plan are more a future and
17 what the City envisions for the future. Moving as
18 it says, transforming into an information-based
19 industry versus a manufacturing-based industry.

20 HEARING OFFICER GEFTER: I have a
21 question for Mr. Armas and I am not sure whether
22 it is relevant or not but we might as well put it
23 in the record.

24 MR. ARMAS: Sure.

25 HEARING OFFICER GEFTER: which is,

1 Mr. Armas, while you were the city manager and you
2 first spoke with the representatives of the Tierra
3 company, Tierra LLC about this project, what was
4 it that you explained to them about the zoning
5 requirements under the general plan? If you in
6 fact discussed that with the applicant.

7 MR. ARMAS: I wonder if I might offer a
8 context before doing so since some of the
9 questions you were asking of Mr. Rizk were part
10 and parcel of the deliberations taking place while
11 I was city manager.

12 The City began to see a real push from
13 the Silicon Valley, both from the Peninsula and
14 then from the South Bay moving north and moving
15 west. So we began to see some cluster of biotech
16 and high-tech businesses occurring in the vicinity
17 of Clawiter and 92.

18 So we experienced some growth in some
19 biomedical businesses, we experienced some growth
20 in some high-tech businesses and that is what
21 prompted a discussion about taking a look from a
22 general plan and a policy and strategy point of
23 view of some different objectives and strategies
24 along that corridor.

25 With that in mind then, what we began to

1 realize when the Russell City came in, that folks
2 were also then taking a look both at the policies
3 but also then the specific zoning designation. In
4 the Russell City area it's at the western end of
5 the industrial section that Mr. Rizk was speaking
6 to.

7 As Council Member Halliday testified
8 earlier today there is a chemical treatment plant
9 nearby, Rohm & Haas, there is a wastewater
10 treatment plant across the street, an enormous
11 number of wrecking yards. So the context was one
12 where we were seeing some of the more heavy,
13 industrial use of Hayward's past, quite frankly.

14 When Mr. Trewitt and company came in we
15 began to alert them to the fact that what was
16 deemed appropriate to Russell City might not be
17 appropriate for Eastshore. We needed to look at
18 the context proximity to other uses.

19 I recall mentioning to them that the
20 City had at an earlier point actually occupied the
21 building that Fremont Bank now occupies. That was
22 our temporary City Hall before this one was
23 constructed. And I mentioned to him from my
24 concern I thought there would be some issues. I
25 alerted him to the fact that I thought Chabot

1 College might raise some issues and some of the
2 residential uses nearby.

3 Also Life Chiropractic College had been
4 approved, Heald Business College had been approved
5 and so the traditional character of an industrial
6 area was really undergoing some change. And it is
7 for that reason that in my testimony I made note
8 that the zoning ordinance is exclusionary, meaning
9 that unless it specifies a use it is not allowed
10 unless you go through a certain process.

11 And that is the process that we expected
12 to take place with respect to their application so
13 that a determination could be made as to whether
14 it was appropriate not only in the general plan
15 but also in the zoning given surrounding uses.
16 And so that kind of information was shared with
17 representatives of Tierra Energy.

18 HEARING OFFICER GEFTER: I know
19 Mr. Trewitt is here and so he also attended that
20 meeting that you had with him. So at the time
21 that you first heard about this power plant
22 project had it already been, as far as you knew,
23 already been part of the RFO process and the site
24 had been approved by PG&E? Is that the first you
25 heard about this?

1 MR. ARMAS: Yes. Actually I was -- To
2 be forthright here, I was quite disturbed that
3 they were coming in so late in the process. And
4 Mr. Trewitt and his associates said that they too
5 were a little disturbed that they were coming in
6 after the contract had been awarded. They related
7 to me that it is their company practice to consult
8 local agencies in advance rather than after the
9 fact. But that they were not the predecessor
10 company, another company was.

11 HEARING OFFICER GEFTER: I understand.
12 And was there any discussion about a good neighbor
13 policy at those initial meetings?

14 MR. ARMAS: I'm not sure I understand
15 the phrase of good --

16 HEARING OFFICER GEFTER: Where a
17 developer would provide benefits to the local
18 community where they're going to put in a big
19 project.

20 MR. ARMAS: I don't know if that came up
21 at that meeting; it did come up at subsequent
22 meetings. The former president of Tierra Energy
23 did indicate that they would be attentive to that
24 and wanted to look at where there were
25 opportunities to partner with other public

1 agencies. And I indicated that it was important
2 to first look at whether the location was an
3 appropriate one.

4 HEARING OFFICER GEFTER: So this has
5 been an issue from the very beginning as far as
6 you knew.

7 MR. ARMAS: Yes.

8 HEARING OFFICER GEFTER: The location.

9 MR. ARMAS: Yes. I was concerned as it
10 subsequently became much more explicit that there
11 would be issues in the community around an
12 additional power plant located in Hayward when
13 there were objections to all of our neighbors from
14 the north and the south and the east to any
15 ventures by other energy companies to site
16 something there. And felt that one of the issues
17 that would emerge was whether it was appropriate
18 for one community to bear an undue burden relative
19 to the others.

20 PRESIDING COMMISSIONER BYRON: Forgive
21 me, there was a little bit of uncertainty when we
22 were talking at lunch. Your initial meeting with
23 Tierra was in June of '06 or '07?

24 MR. ARMAS: In '06.

25 PRESIDING COMMISSIONER BYRON: Okay,

1 thank you.

2 MR. ARMAS: Anything else?

3 HEARING OFFICER GEFTER: Not right now
4 but we might come up with something in a few
5 minutes.

6 MR. ARMAS: Sure.

7 HEARING OFFICER GEFTER: We are trying
8 to -- And I just want to include all the parties
9 in this conversation. Land use seems to be the
10 key issue here in addition to the aviation
11 questions that we talked about in traffic and
12 transportation.

13 We are going to move on in a few minutes
14 to the override discussion and that is more of a
15 legal issue but I think before we get there we
16 really need to be clear as to which ordinances and
17 which portions of the general plan that both the
18 staff and the City and the County consider to be
19 the project inconsistent with these ordinances and
20 general plan sections. Because unless we know
21 which ordinances and LORS we are requested to
22 override we can't even go forward with that
23 override discussion.

24 I still feel that we haven't identified
25 the areas where there are alleged inconsistencies.

1 Because what I have in the record so far is that
2 applicant is saying that there are no
3 inconsistencies, that the project is consistent
4 with LORS. But on the other hand, if not, we
5 should override.

6 And then we have staff's analysis which
7 actually states that there are several
8 inconsistencies but you still don't completely
9 agree with the City.

10 Then I have the City who is telling me,
11 well all of these various land use LORS are
12 inconsistent.

13 And then the County is coming along and
14 saying, well not only that but inconsistent with
15 the Airport Land Use Commission's policy and also
16 because of the Redevelopment Agency's work in the
17 nearby Mount Eden area.

18 To me nothing is very specific or clear.
19 And maybe land use is -- it always is very squishy
20 sometimes but I really would like the parties to
21 go through step by step and tell me where you find
22 that the project is inconsistent.

23 And actually I'll start with the
24 applicant because you have stated, your position
25 is that the project is not inconsistent. So I am

1 going to give you another opportunity, another
2 bite at the apple, to explain to us why you
3 believe that.

4 Because Ms. Scholl in answer to
5 Commissioner Byron's question regarding the City
6 resolution finding that the project was
7 inconsistent and your opinion that it's not. Why
8 do you think that your opinion as a project
9 manager for a developer should carry more weight
10 than the actual agency that interprets its own
11 LORS? I know that's a difficult question but we
12 really need to get that on the record.

13 MS. SCHOLL: Hearing Officer Gefter and
14 Commissioner Byron, as I am not the decision-maker
15 on this case, I am just a land use task leader who
16 I believe as Hearing Officer Gefter will attest,
17 has been in front of her numerous times as a land
18 use task leader on many cases.

19 It is my job to take a look at all of
20 the information that is before me to render my own
21 professional opinion and to pass that on to my
22 client, the applicant in this case.

23 So I found in all cases that the
24 underlying issues with respect to whether or not
25 the project was consistent with the City of

1 Hayward's plans and policies, as both interpreted
2 by the City and as interpreted by the Energy
3 Commission, both -- let me stop. The City's
4 interpretation, as they've discussed, is two-part.
5 It is both related to aviation concerns as well as
6 the concerns that they restate and reemphasize
7 today related to the change or their perceived
8 strategy to change the look of the industrial
9 corridor.

10 And in taking a look at that in the area
11 where the Eastshore Energy Center is proposed to
12 be constructed I look at other uses even adjacent
13 to our site. Across the street on Clawiter and I
14 look at Berkeley Farms and I think from a
15 planner's perspective, intensity of use, and I
16 think that perhaps -- I believe that a milk
17 processing facility is as or more industrially
18 intensive than a peaker plant.

19 In addition I want to reemphasize and
20 point to the figure in the FSA for ease that shows
21 the zoning for the project, Figure 1, and you will
22 note -- I mean granted we prepared the figure as
23 part of preparing the AFC and it was used for the
24 FSA. This figure shows the industrial corridor in
25 conjunction with the other uses in our one-mile

1 study area boundary.

2 And you will note that that peach shaded
3 area is the industrial corridor. It's
4 approximately six feet wide. So the industrial
5 corridor -- I'm sorry, 6,000 feet wide. Sorry.
6 You know, I think that even emphasizes more that
7 this area is, you know, zoned for industrial uses.

8 Further reiterating some of the points
9 that are presented in my testimony related to
10 aviation findings which is basically the basis for
11 the CEC's determination of non-conformity as well
12 as the City's. And I will refer you back to the
13 testimony of my colleagues presented on December
14 18 at which point we showed that the project is
15 outside of the traffic pattern. The testimony
16 from Don Blumenthal clearly showed the types of
17 turbulence and thermal plume issues one would see
18 in the test flights that they did when they flew
19 300 feet over the Berrick facility.

20 And further reemphasizing from FAA's own
21 safety risk analysis that this type of facility
22 would cause no navigation hazard because it
23 concluded that the risk associated with overflight
24 of an industrial plume is on the order of one in a
25 billion or almost zero.

1 So while I am not the decision-maker and
2 I don't hold myself higher than the City Council
3 of the City of Hayward I do believe that I have
4 spent almost -- well, I have spent more than 20
5 years of my career working on complex land use
6 cases and the last ten almost solely working on
7 applications before the California Energy
8 Commission. That it is my professional opinion
9 that the project is consistent as I just
10 discussed.

11 MS. LUCKHARDT: And if I might just
12 elaborate one thing. Ms. Scholl, did the City of
13 Hayward have the benefit of a typical CEQA
14 analysis when they made their decision on this
15 project?

16 MS. SCHOLL: They did not.

17 MS. LUCKHARDT: Can you explain what
18 they had.

19 MS. SCHOLL: The City of Hayward --
20 well. The City of Hayward had the benefit of our
21 application for certification, which does as many
22 know look somewhat like a CEQA document. But as
23 the Energy Commission's process dictates, it is
24 the staff's analysis that is what constitutes the
25 CEQA-equivalent portion of the proceeding. And

1 the Preliminary Staff Assessment was not available
2 at the time when both the Planning Commission and
3 the City Council made their determinations on the
4 compatibility issues.

5 MS. LUCKHARDT: How is that different?
6 How is that different from how the City made a
7 decision on Russell City? Did the City even look
8 at environmental impacts when they analyzed
9 Russell City and made their finding of consistency
10 on Russell City?

11 MS. SCHOLL: Can you clarify? Are you
12 talking about the 2001 case or the amendment?

13 MS. LUCKHARDT: The 2001 case.

14 MS. SCHOLL: I am not aware of the time
15 line presented in that.

16 MS. LUCKHARDT: Okay, that's fine.

17 HEARING OFFICER GEFTER: Thank you very
18 much Ms. Scholl. Actually that was very, very
19 helpful. Appreciate your discussion about that.
20 You presented it very well, thank you very much.

21 Ms. Strattan, I wanted to ask the staff
22 again to reiterate where, which ordinances, which
23 other land use LORS you find is the project
24 inconsistent with and just go over it again with
25 us please, thank you.

1 MS. STRATTAN: All right. Very briefly,
2 we find that the project is inconsistent with
3 Section 10-6, which is the airport approach zoning
4 regulations. With Section 10-1.140, which is the
5 exclusionary zoning requirement.

6 HEARING OFFICER GEFTER: One minute.

7 MS. STRATTAN: Yes.

8 HEARING OFFICER GEFTER: Could you
9 explain that again. I know that Mr. Armas
10 mentioned that. Could you explain what that
11 means, exclusionary zoning.

12 MS. STRATTAN: It means -- I have to get
13 my notes now.

14 MS. HARGLEROAD: Madame Hearing Officer,
15 maybe Table 4 I think is quite useful. If maybe
16 we could refer to in the Final Staff Assessment
17 Table 4 that's got the list of all of the various
18 laws which staff has identified either as
19 consistent or inconsistent. That might be
20 helpful.

21 PRESIDING COMMISSIONER BYRON: Is your
22 microphone on, Ms. Hargleroad?

23 MS. HARGLEROAD: Sorry about that.

24 HEARING OFFICER GEFTER: Yes, we know
25 about Table 4, thank you. We're going to go on

1 because I know what you're saying.

2 MS. HARGLEROAD: Well just for the rest
3 of the --

4 HEARING OFFICER GEFTER: For the record.

5 MS. HARGLEROAD: So we're all on the
6 same page here during this discussion.

7 HEARING OFFICER GEFTER: Right.

8 MS. HARGLEROAD: That might be helpful.

9 HEARING OFFICER GEFTER: Thank you.

10 Exclusionary.

11 MS. STRATTAN: Exclusionary. That
12 basically says that if a use is more objectionable
13 or more intensive than those uses that are
14 normally permitted in a zoning district, in this
15 case the industrial district, then they are
16 excluded from being allowed.

17 HEARING OFFICER GEFTER: Is there
18 something in the zoning ordinance that talks about
19 a power plant being excluded?

20 MS. STRATTAN: A power plant is not
21 specifically excluded. What this refers to is it
22 is not, the power plant is not a permitted use.
23 So this ordinance speaks specifically to non-
24 permitted uses. Perhaps Mr. Armas has something
25 he wants to add at this point.

1 MR. ARMAS: I just wanted to clarify
2 that I would not use the threshold of more or less
3 objectionable. What it really means is unless it
4 is, unless it is specified it is not allowed and
5 it has to go through an evaluation process. It
6 may or may not be objectionable, that is not
7 determined until later. But it is simply to offer
8 guidance to a prospective applicant that unless it
9 is specified do not assume it's okay.

10 Additionally it also specifies that to
11 the extent that it is not enumerated there will be
12 some evaluation performed both by the staff and
13 potentially the City Council and the Planning
14 Commission depending on the nature of the
15 application.

16 HEARING OFFICER GEFTER: Thank you, that
17 is very helpful.

18 MS. STRATTAN: And in the case of the
19 staff taking -- in our authority. We did that
20 evaluation and determined that the power plant,
21 basically because of the aviation hazard and also
22 the impact to the utility of the airport, would be
23 more objectionable to surrounding uses than
24 Berkeley Farms, for example, or the college or
25 some of the other surrounding uses that are also

1 within that industrial zone.

2 Then the next one that is inconsistent
3 is Section 10-1 and it is actually two together,
4 1620 and 3225. And that has to do with the
5 requirements for a conditional use permit. The
6 1620 identifies the need for a conditional use
7 permit if the project is using hazardous
8 materials. And 3225 identifies the findings that
9 have to be made if a conditional use permit is
10 going to be approved.

11 And as we noted in our summary and in
12 the FSA we did not believe that those findings,
13 the four findings could be met. And I believe
14 that the City also came to that conclusion, that
15 those findings could not be met. So under normal
16 circumstances except for our authority a
17 conditional use permit would not be approved for
18 this project.

19 There is also, we also found that there
20 is inconsistency with the existing Airport Land
21 Use Policy Plan, that is the 1986 policy plan, and
22 also with the draft December 2007 Airport Land Use
23 Compatibility Plan that was introduced into
24 evidence today.

25 HEARING OFFICER GEFTER: When you say it

1 is inconsistent with that plan. Did you have a
2 draft when you wrote your FSA or is that --

3 MS. STRATTAN: No, this is based on what
4 we have heard in the testimony today.

5 HEARING OFFICER GEFTER: So based on
6 what you heard. This is actually added on to your
7 FSA testimony. That you find --

8 MS. STRATTAN: Yes.

9 HEARING OFFICER GEFTER: -- it is
10 inconsistent with the proposed plan.

11 MS. STRATTAN: With the proposed plan,
12 yes. Then we had a discussion regarding the City
13 had the ordinance or the recommendation that it is
14 inconsistent with the general plan. The staff
15 provided an objective analysis of existing
16 codified City LORS and we were not able to find in
17 the code anything that would support the
18 inconsistency with the general plan.

19 However, in deference to the City's
20 interpretation of those LORS there are subjective
21 considerations and plans, development goals and so
22 forth, that are not necessarily codified as has
23 been testified today. And we could not use that
24 to speculate on those intentions so that would
25 certainly be under the purview of the City Council

1 and the Planning Department. We wouldn't have
2 that information and couldn't incorporate it into
3 our analysis.

4 HEARING OFFICER GEFTER: Okay, thank
5 you. So that actually explains the discrepancy
6 between what the staff is saying that you find
7 inconsistent and what the City is saying because
8 the City can actually exercise those subjective
9 views of their own plan.

10 And then I want to ask Mr. Rizk then and
11 also the County, the City and County. Mr. Rizk,
12 when the City actually adopted that resolution
13 404, Exhibit 404 where they unanimously voted that
14 the project was inconsistent with existing LORS,
15 did they exercise their own subjective use too
16 since it is within their jurisdiction and their
17 authority? Could you explain how they came to
18 that decision to adopt that resolution.

19 MR. RIZK: Yes, let me answer directly
20 that question. Certainly there is discretion. I
21 think when you -- I know when you talk about
22 conditional uses those by definition are
23 conditional and involve discretion and findings.
24 So unlike primary uses that are permitted by
25 right, administrative or conditional uses involve

1 some form of discretion.

2 Can I elaborate a little bit and give it
3 some more context? That's what we all want, I
4 guess, more context.

5 I think there's two points I'd like to,
6 at least two points I'd like to make. One is in
7 terms of referencing some of the existing uses in
8 that area. Again I want to emphasize the general
9 plan as a vision future document. It talks about
10 what the City envisions in the future in
11 transforming from one industry base to another.
12 So it is not just looking at existing uses, it is
13 also looking at the policies which relate to the
14 future and what the City hopes to see in the
15 future.

16 Again, as indicated in my declaration, a
17 conditional use permit or an administrative use
18 permit based on the amount and type of hazardous
19 materials proposed would be required. And those
20 four findings as we've seen directly relate to the
21 issue of location. And being able to analyze a
22 use in the context of location is absolutely
23 critical. And this case I think is paramount.

24 So I want to emphasize that the findings
25 that state that the City Council would need to

1 determine that a proposed use is desirable for the
2 public convenience or welfare, we don't believe
3 that's the case as described. We think there are
4 other locations where the objective, the general
5 objective of providing power that would primarily
6 serve the Bay Area, even the East Bay, could be
7 met. It may not be in as timely a manner as this
8 project.

9 That the proposed use will not impair
10 the character and integrity of the zoning district
11 and surrounding area. I want to talk a little bit
12 about the surrounding area. Since the last
13 general plan, I mean prior to 2002, was adopted,
14 which I think was in the late '80s, several of the
15 areas in the western portion of the residential
16 area, in other words that boundary between the
17 industrial district and some of the residential
18 areas, were not residential. They weren't
19 developed. There used to be a lot of agricultural
20 uses, nurseries and what-not.

21 The Waterford apartment complex, which
22 is now high-density residential. A lot more
23 residential has been added. So the ability to
24 analyze and consider these findings in the context
25 of uses that may not have existed back when the

1 old general plan was in effect is, again,
2 absolutely critical and it makes it even more of
3 an issue in the City's opinion to look at that
4 boundary and that transition area.

5 So we feel that, as stated in my
6 declaration and as stated in the resolution from
7 the City Council that the findings that are
8 required, that would normally be required for a
9 use of this type could not be made. And that the
10 policy that encourages -- in the general plan that
11 encourages transformation, that this project is
12 inconsistent with that as well.

13 I also want to talk about the Russell
14 City again. That was reviewed under the current
15 general plan. In other words, when the agreement
16 that I referenced that was adopted by the City in
17 2005. That obviously was done in the context of
18 the current general plan. And again, the issue of
19 location. As Mr. Armas described, the context in
20 the surrounding area out at the end of Enterprise
21 Avenue in the western part of the industrial
22 zoning district is very different, in our opinion.
23 About not only what exists but more importantly
24 what the City envisions to exist in the future.

25 And I would conclude to say that every

1 conditional use is reviewed on a case-by-case
2 basis and it involves things like location and
3 impacts on the surrounding area.

4 I've been reminded, this relates to my
5 issue of Berkeley Farms in terms of existing uses.
6 Some of the uses out there were developed and
7 approved prior to the 2002 general plan. GILLIG
8 Corporation, Berkeley Farms are two of those uses.

9 HEARING OFFICER GEFTER: And just one
10 other thing. You had mentioned earlier there was
11 one very tall stack in the vicinity of the
12 Eastshore site that you didn't know what the
13 height was. Could you name that project again or
14 that particular facility and how long it has been
15 there.

16 MR. RIZK: It's the Rohm & Haas plant
17 and it is more in the vicinity of Russell City
18 versus Eastshore. I don't know how long it has
19 been there but it has been several years. That
20 height, I don't know the exact height but it is
21 approaching 200 feet.

22 HEARING OFFICER GEFTER: And that is
23 closer to Russell City. In other words it is more
24 westerly in the industrial zone.

25 MR. RIZK: Yes.

1 HEARING OFFICER GEFTER: Mr. Taylor here
2 has some questions for the City.

3 ADVISOR TAYLOR: I did have a couple of
4 questions for the City concerning the general plan
5 and the implementation of the general plan. If
6 you could just walk me through this once more, how
7 the City implements these provisions in the
8 general plan. Specifically I am looking at, let's
9 Exhibit 406 page 2-19, 2-19. It has a couple of
10 see, points there under the heading, promote the
11 transition from a manufacturing-based economy to
12 an information-based economy in the industrial
13 areas.

14 MR. RIZK: Yes.

15 ADVISOR TAYLOR: So you said that a
16 conditional use permit is granted on a case-by-
17 case basis for any application within the
18 industrial zone.

19 MR. RIZK: Within any zone.

20 ADVISOR TAYLOR: Within any zone, okay.
21 And specifically within the industrial zone, since
22 2002 adoption of this general plan, there has been
23 a transition to approve a different type
24 consistent with this section?

25 MR. RIZK: A different type of?

1 ADVISOR TAYLOR: A different type of
2 application from manufacturing to information-
3 based.

4 MR. RIZK: Yes. The number of
5 applications we've received since 2002 are limited
6 in that general vicinity. But yes, for any use
7 permit we look at the general plan policies as one
8 of the, related to one of the findings.

9 HEARING OFFICER GEFTER: I just wanted
10 to follow up on that question which is, you just
11 said that since the City adopted the 2002 general
12 plan and you have received applications for
13 development in the eastern portion of your
14 industrial zone have you tried to limit those
15 types of applications to more of the high-tech
16 development?

17 MR. RIZK: We have. As I said, some
18 uses are permitted by right and so those uses we
19 don't have any discretion in terms of use. But
20 those that are conditional uses, particularly
21 those that have higher impacts potentially in
22 terms of visual, hazardous materials, noise, et
23 cetera, we certainly look at those policies.

24 ADVISOR TAYLOR: What types of
25 applications are permitted by right?

1 MR. RIZK: What types of uses?

2 ADVISOR TAYLOR: Of uses.

3 MR. RIZK: The industrial zoning
4 district, certain types of office uses, certain
5 types of commercial uses.

6 ADVISOR TAYLOR: Lower impact uses?

7 MR. RIZK: Yes.

8 ADVISOR TAYLOR: Okay. Are you aware of
9 any specific projects that have been denied a
10 conditional use permit based on being a
11 manufacturing as opposed to an information-based?

12 MR. RIZK: I am not. We typically seek
13 to meet with an applicant, as was stated
14 previously, to give them guidance before they
15 submit a formal application and before it gets to
16 a hearing level. To avoid the situations where we
17 are not going to support a project and let the
18 applicant know up front before they invest too
19 much.

20 ADVISOR TAYLOR: Okay. Are there any
21 other specific parts of the general plan that you
22 would point to that would support your position on
23 this? I guess support the resolution.

24 MR. RIZK: The resolution that the
25 Council -- related to Eastshore Energy Center you

1 mean?

2 ADVISOR TAYLOR: Yes, that would be
3 Exhibit 404.

4 MR. RIZK: There are also some issues or
5 some language in the economic development chapter
6 in Exhibit 407. And as stated in my testimony,
7 trying to attract uses that create employment
8 opportunities. And this particular use has a very
9 low number of employees and we would hope to
10 attract uses and businesses that have a higher
11 number of employees, particularly, you know,
12 higher paying jobs and what-not related to
13 information-based technology.

14 MS. LUCKHARDT: There is just one point
15 I guess I would like to make. We just did a
16 Google Earth on Rohm & Haas. And it is west but
17 it appears to be about 3,000 feet from either
18 facility.

19 HEARING OFFICER GEFTER: It's halfway
20 in-between.

21 MS. LUCKHARDT: It is of equidistance.

22 HEARING OFFICER GEFTER: Equidistant.

23 MR. ARMAS: This is apparently one of
24 the -- This is apparently one of the exhibits from
25 the AFC so let me give you an orientation. This

1 orange that you can see here -- and it should be
2 in front of the monitors.

3 HEARING OFFICER GEFTER: Why don't we
4 identify it because in the transcript I won't know
5 which document you're talking about so let's
6 identify it. I know it's a figure from the FSA.
7 Does it say at the top what figure it is?

8 MR. ARMAS: Yes. It says Land Use
9 Figure 1.

10 HEARING OFFICER GEFTER: Okay, so it's
11 attached to the land use testimony in the FSA,
12 thank you.

13 MR. ARMAS: It says the source is AFC
14 Figure 8.4-1.

15 HEARING OFFICER GEFTER: Okay, fine,
16 thank you.

17 MR. ARMAS: The orange is the Eastshore
18 site. This is Clawiter. This is the Eastshore
19 site. This is the City's wastewater facility.
20 Russell City as part of the amendment is proposed
21 to be located here.

22 HEARING OFFICER GEFTER: That is west of
23 the wastewater site?

24 MR. ARMAS: Yes. To the south and
25 slightly east, about here, if the Rohm & Haas

1 facility.

2 HEARING OFFICER GEFTER: So it's in the
3 southern portion of the industrial area.

4 MR. ARMAS: Yes, and this is Highway 92.

5 HEARING OFFICER GEFTER: So it's right
6 above Highway 92 but towards the southern portion
7 of the industrial area.

8 MR. ARMAS: Yes.

9 HEARING OFFICER GEFTER: All right.

10 MR. ARMAS: And the transformation that
11 we are seeing is some information, biotech, high-
12 tech around here.

13 HEARING OFFICER GEFTER: Wait, say
14 where. When you say here you mean south of 92?

15 MR. ARMAS: I'm sorry. South of 92 is
16 one location and the other location is in the
17 vicinity of Industrial and Clawiter. There are
18 some high-tech, biotech companies situated there
19 as well.

20 HEARING OFFICER GEFTER: In the area
21 where the Eastshore site is proposed.

22 MR. ARMAS: Right, and that is one of
23 the concerns as it relates to the general plan.
24 Again, here is the wastewater plant, here is
25 Russell City. Context again. You have all of

1 this area that is presently devoted to wrecking
2 yards.

3 HEARING OFFICER GEFTER: That area is
4 north of the Russell City and wastewater sites.

5 MR. ARMAS: Correct.

6 MS. LUCKHARDT: I guess I just have a
7 question. What do you consider to be high-tech
8 that is over by Clawiter and Industrial?

9 MR. ARMAS: We are seeing, or were
10 seeing I should say since I now have to speak in
11 the past tense, some biotech companies that were
12 doing some lab work and also beginning to do some
13 manufacturing. And some earlier high-tech that
14 were involved in the computer industry who I think
15 became casualties of the dot-com.

16 But certainly being pushed by activity
17 in the Peninsula. Land values are more attractive
18 here and pushed by activity in the South Bay.

19 MS. LUCKHARDT: Is anything in operation
20 there?

21 MR. ARMAS: Yes. I don't recall the
22 names since I have not monitored that of late.

23 HEARING OFFICER GEFTER: Mr. Taylor has
24 more questions.

25 ADVISOR TAYLOR: Just to be perfectly

1 clear. The City uses this section of the general
2 plan, that's Exhibit 406 page 2-19, uses it as
3 general guidance when issuing conditional use
4 permits.

5 MR. RIZK: If it's applicable.

6 ADVISOR TAYLOR: Okay, all right and
7 thank you very much.

8 I have some questions for the applicant
9 then, for the applicant's land use witness. That
10 same section of the general plan. Can you please
11 explain to us why you think this permit
12 application is consistent with this general plan.

13 MS. SCHOLL: Zoning ordinances implement
14 the goals and policies and strategies of a general
15 plan. As there is no codified zoning -- there is
16 no codified zoning ordinance requirements for any
17 of that then to me as a land use planner, having
18 reviewed lots of documents, I look at that as it
19 just being more of a political situation where it
20 could actually end up changing because it could be
21 somewhat speculative.

22 So I am looking to see whether or not
23 there's actual, you know, local agency LORS or
24 what's in effect at the time. There was nothing
25 within the zoning ordinance that would enforce

1 anything like that from the general plan. So
2 therefore because it wasn't codified I just read
3 it as, you know, an advisory note as one would a
4 goal from a general plan which are usually kind of
5 high. Ten thousand foot views of what the land
6 use ideals are from more of a decision-maker or
7 City Council perspective.

8 ADVISOR TAYLOR: Okay, expanding on that
9 slightly and referring to the resolution, the City
10 resolution, it's Exhibit 404. The City points out
11 two specific points that they appear to cite as
12 being inconsistent with the general plan. And
13 that would be -- I would like you to comment on
14 how you view those.

15 The 70 foot tall stacks. The City
16 states that they are not compatible with the
17 heights of other structures in the vicinity. From
18 a land use perspective and as a land use expert do
19 you refute that? Do you agree with that or
20 disagree?

21 MS. SCHOLL: I disagree with the finding
22 of the City Council for several reasons. First of
23 all in the analysis that we prepared as part of
24 the AFC and in responses to subsequent data
25 requests from Energy Commission staff we provided

1 additional information to support air quality
2 emissions as well as visual simulations associated
3 with the stacks from different viewing locations.

4 And we spent quite a bit of time working
5 with CEC staff at a very specific meeting in
6 Sacramento where we agreed to provide additional
7 simulations to make sure that the staff had
8 adequate information to support their analysis
9 regarding visual issues and subsequently issues
10 associated with land use compatibility. That's
11 point number one.

12 Do you want me to talk about point
13 number two or do you have another question?

14 ADVISOR TAYLOR: Point number two is
15 item four on the resolution. The City states that
16 such use would have a -- let's see. They talk
17 about the difference between the number of
18 employees at a proposed other use. Do you have
19 that before you?

20 MS. SCHOLL: Yes, number four on the
21 second page.

22 ADVISOR TAYLOR: Can you please expand
23 on why you disagree with item number four on the
24 City's resolution, Exhibit 404.

25 MS. SCHOLL: Well I can't dispute

1 because it's actually fact, the number of
2 employees that will be at the site as part of
3 operations of the facility.

4 But getting back to the discussion of
5 the fact, beginning in point number four about the
6 power plant not being in harmony with the general
7 plan and the business technology corridor. I
8 believe that I have already discussed my
9 professional opinion about those items and the
10 intensity of uses in that portion of the
11 industrial corridor. And if you would like me to
12 expand upon that I am happy to do that.

13 ADVISOR TAYLOR: I think that's fine at
14 this time.

15 MS. SCHOLL: Okay.

16 ADVISOR TAYLOR: Thank you very much.

17 I have one question for the staff.

18 Ms. Strattan, you mentioned the airport approach
19 zoning regulations, that's Article 6.

20 MS. STRATTAN: Yes.

21 ADVISOR TAYLOR: Chapter 10. That's
22 Exhibit 409. You mentioned that the staff's
23 analysis finds that this application is not
24 consistent with Article 6. Can you please point
25 us to a specific section of Article 6. I've

1 scanned through there a number of times, it's only
2 two pages long, it's a couple of pages long. Is
3 there a specific section in there that you --

4 MS. STRATTAN: There are a couple of
5 sections. At the beginning the Section .00 speaks
6 to the purpose of the airport approach zoning
7 ordinance which is:

8 "To promote the health, safety
9 and general welfare of the
10 inhabitants of the City of Hayward
11 by preventing the creation or
12 establishment of airport hazards,
13 thereby protecting lives and
14 property of users of the Hayward
15 Air Terminal, now the Hayward
16 Executive Airport, and of the
17 occupants of the land in their
18 vicinity and preventing destruction
19 or impairment of the utility of the
20 airport and the public investment
21 therein."

22 So the purpose, it explains two
23 purposes. One, to protect the utility of the
24 airport and the Hayward City's investment in the
25 same and also to avoid the creation or

1 establishment of airport hazards. That's the
2 first.

3 The second has to do in 10-6.12 which
4 defines an airport hazard. And it says any
5 airport hazard means, and I am going to skip. It
6 is:

7 "Any use of land which
8 obstructs the airspace required for
9 the flight of aircraft in landing
10 or taking off or is otherwise
11 hazardous to any landing or taking
12 off of aircraft. Which goes back
13 to defining that it would create,
14 that the thermal plume would create
15 a hazard."

16 It then goes on in 10-6.20. It talks
17 about the airport zones, which identifies the
18 location of the airport in reference to other
19 surrounding areas. And based on the map that was
20 quoted in this ordinance the Eastshore facility
21 would actually be within the turning zone.
22 However, based on the map that Mr. Bauman has
23 indicated is included in the 2002 master plan it
24 would be immediately outside of the traffic
25 pattern zone.

1 Then it comes back to the final section
2 which is Section 10-6.35, use restrictions. And
3 it says:

4 "Notwithstanding any other
5 provisions no use may be made of
6 land within an airport approach
7 zone, turning zone or transition
8 zone in such a manner as to
9 create --"

10 And there's a variety of things. But basically
11 that would otherwise endanger the landing, takeoff
12 or maneuvering of aircraft. And this was what we
13 used as the basis for determining that the
14 creation of the airport hazard and also the
15 diminishment of the utility would be in conflict
16 with the requirements and the purpose of this
17 particular ordinance.

18 ADVISOR TAYLOR: Just to clarify one
19 point there. I'd like to be certain whether or
20 not the facility site is within or -- is in or out
21 of the airport zone.

22 MS. STRATTAN: The turning zone.

23 ADVISOR TAYLOR: The turning zone.

24 MS. STRATTAN: Yes.

25 ADVISOR TAYLOR: The AFC Figure 5 shows

1 it I think just outside the traffic pattern zone.

2 MS. STRATTAN: There's actually two maps
3 that are referenced. In the actual code it
4 references -- and this is in traffic and
5 transportation and that is Figure 6 of the traffic
6 and transportation section.

7 HEARING OFFICER GEFTER: Of the FSA?

8 MS. STRATTAN: Of the FSA, yes. and
9 that is the approach zoning plan map that is
10 actually referenced in that regulation. And you
11 can see on that figure it shows the project site
12 within what is the turning zone for that.

13 As Mr. Bauman testified earlier, the
14 City considers that this particular map has been
15 superseded by the traffic pattern zone which is I
16 believe Figure 5-B in the 2002 airport master
17 plan. And that is shown in Figure 5 of the land
18 use and the traffic and transportation section.
19 If that figure is used, if that zone is used then
20 the Eastshore site is immediately outside that one
21 mile, approximately one mile traffic pattern zone
22 immediately to the south.

23 Does that answer your question or
24 totally confuse everybody?

25 HEARING OFFICER GEFTER: You mentioned

1 several --

2 ADVISOR TAYLOR: So traffic and
3 transportation Figure 5 from the FSA should be the
4 most current representation of this --

5 MS. STRATTAN: That is what the City is
6 using as their, as their reference point for the
7 current regulations.

8 ADVISOR TAYLOR: Does the City concur?

9 MR. RIZK: Yes.

10 ADVISOR TAYLOR: Thank you.

11 HEARING OFFICER GEFTER: I just want to
12 clear that up because you mentioned several
13 different figures. And I just want to say that we
14 then -- The City and the staff and therefore
15 that's what the record shows, Figure 5, which is
16 part of the traffic and transportation section of
17 the FSA, is the most current map of the flight
18 zones.

19 MS. STRATTAN: That is the traffic
20 pattern zone. It's one of six zones within it.
21 But that's the one that we are referencing in
22 conjunction with this ordinance, yes.

23 HEARING OFFICER GEFTER: Thank you.

24 ADVISOR TAYLOR: I'm sorry to belabor
25 this point but if that is the case then why does

1 Exhibit 409 Section 10-6 apply?

2 MS. STRATTAN: Why does it apply?

3 Because an airport hazard is created and it is
4 inconsistent with the purpose of this regulation.
5 The regulation hasn't actually been changed. And
6 if we use the map that's codified it's within that
7 area so we have to consider it. But it is
8 inconsistent with the purpose, whether we use this
9 map or we use the traffic pattern zone map. It is
10 inconsistent with the purpose of that ordinance.

11 ADVISOR TAYLOR: I'm sorry, you had me
12 for a minute and now you lost me again. I thought
13 we just agreed that Figure 5, the map from the
14 FSA, is the most current map so the site is
15 outside the turning pattern. If it's outside the
16 turning pattern then the airport zone in Section
17 10-6 should not find --

18 MS. STRATTAN: There is no longer a
19 turning pattern that has been established.
20 Basically the turning patterns no longer exist
21 even though they remain codified. So in that case
22 when we look at the traffic pattern zone as a
23 general indicator of where the aircraft are going
24 to fly we also need to look at the purpose.
25 Because of this conflict, look at the purpose of

1 the ordinance. And the purpose of the ordinance
2 is to avoid the creation of airport hazards and to
3 protect the utility of the airport. And that was
4 the approach that we took in this case.

5 ADVISOR TAYLOR: Okay, thank you.

6 HEARING OFFICER GEFTER: Ms. Hargleroad,
7 do you have a question?

8 MS. HARGLEROAD: Yes. Can you hear me?

9 HEARING OFFICER GEFTER: Yes.

10 MS. HARGLEROAD: Just for clarification
11 purposes and I have also got Jay White here too.
12 And both of us recall that during -- this is on
13 Figure 5, referring to the traffic and
14 transportation.

15 The testimony I think was fairly clear
16 in that section and Mr. White has confirmed also
17 as a seasoned flyer that this is not a hard and
18 fast line. This is a fluid line that depends upon
19 the size and the speed of the aircraft. So you
20 should not rely upon this line and view it as like
21 a racetrack course that the boundary -- what's in
22 and what's out.

23 Because it is completely dependant upon
24 the size of the aircraft, the speed of the
25 aircraft and it is a generalized area identified.

1 So if it just falls outside that line that's
2 meaningless because really the line is a fluid
3 line and that's what the testimony I think in
4 retrospect will show you also or confirm.

5 HEARING OFFICER GEFTER: Thank you.
6 Indeed, Ms. Strattan, you just said that even
7 though there is a turning pattern that had been
8 codified there were actually in effect no turning
9 patterns that apply.

10 MS. STRATTAN: The City has decided they
11 will no longer use the map that is actually in the
12 regulations. And that puts us in a position of
13 having to look at the purpose and the intent and
14 the remainder of the regulations.

15 HEARING OFFICER GEFTER: When did the
16 City decide that they were not going to use that
17 map? Was that map in the 1986 planning?

18 DR. BAUMAN: The map is quite old. It
19 was at a point in time that the airfield actually
20 had a cross-wind runway. And whenever you have a
21 cross-wind runway you end up with a big round
22 circle rather than an oval that is aligned with
23 the runway. I believe that changed in the '70s
24 but the map was never changed.

25 HEARING OFFICER GEFTER: Thank you.

1 DR. BAUMAN: But there is still the
2 area, and I think it was brought up in regard to
3 the Airport Land Use Commission, there is also the
4 airport influence area. We have to look at
5 anything that might be a hazard within that
6 airport influence area, irregardless of what is
7 codified.

8 HEARING OFFICER GEFTER: Thank you.
9 Let's go off the record.

10 (Whereupon a brief discussion
11 was held off the record.)

12 HEARING OFFICER GEFTER: I have a couple
13 of more questions for Alameda County on the
14 Redevelopment Agency concerns regarding the Mount
15 Eden redevelopment area because that is about a
16 half-mile from where the project site is proposed.
17 I am not clear where the County feels that there
18 is an inconsistency with the Redevelopment Agency
19 plan for that area and with the development of
20 this site with a power plant. And could you tell
21 us where this document is found.

22 MS. DALTON: Maybe this will help just a
23 little bit. This map shows the Mount Eden
24 redevelopment area, all of the --

25 HEARING OFFICER GEFTER: And which

1 exhibit is this located in, this map?

2 MS. HARGLEROAD: Is this attached to
3 your declaration?

4 MS. DALTON: No, I don't believe this is
5 an exhibit.

6 HEARING OFFICER GEFTER: Was this part
7 of your declaration?

8 MS. DALTON: No.

9 MR. MASSEY: Is this the Final Eden Area
10 Redevelopment Plan?

11 MS. DALTON: This is part of, this is
12 the map.

13 MR. MASSEY: The map of all the
14 redevelopment.

15 MS. DALTON: This is not the exact map
16 in the exhibit but it is a map of the Mount Eden
17 sub-area redevelopment plan which can be found in
18 Exhibit 506. Not in this exact form but it's in
19 that exhibit. But it shows the County
20 unincorporated areas that made up the Mount Eden
21 redevelopment sub-area. As you can see there's
22 multiple unincorporated islands. The two areas up
23 here have been annexed by the City of Hayward.

24 HEARING OFFICER GEFTER: Okay, now you
25 have to tell us east, west, north, south.

1 MS. DALTON: Oh sure.

2 HEARING OFFICER GEFTER: Because the
3 transcript can't see where you're pointing.

4 MS. DALTON: These areas up here run
5 along, let's see. Here's the -- This is Clawiter
6 and this is Depot Road here. This is basically
7 the site of the proposed Eastshore Energy Center
8 and Russell City is over here. These dark areas
9 are still under the jurisdiction of the County.
10 All of this territory is within the jurisdiction
11 of the Redevelopment Agency and will remain after
12 the proposed annexation is complete.

13 HEARING OFFICER GEFTER: Post-annexation
14 by the City?

15 MS. DALTON: By the City of these
16 unincorporated islands, which has been a long-term
17 goal for both the County and the City. Also near
18 this, which is not on the map, is the rest of the
19 redevelopment area. Again, which can be found in
20 Exhibit 506. Actually 507 is the exhibit of all
21 the maps for the redevelopment area.

22 And again, these are unincorporated
23 communities adjacent to Hayward, urbanized very
24 much like a city but they happen to be
25 unincorporated and most of that area is within the

1 jurisdiction of the Redevelopment Agency. Our
2 redevelopment project area boundaries. Thank you.

3 HEARING OFFICER GEFTER: Is that from
4 Exhibit 507?

5 MS. DALTON: This is Exhibit 507.

6 HEARING OFFICER GEFTER: Thank you.

7 MS. DALTON: Mount Eden down here, San
8 Lorenzo in the blue. The redevelopment plan for
9 these areas. The main purpose of redevelopment
10 for these areas is to revitalize the community,
11 eliminate blight, make improvements.

12 Specifically in Mount Eden the land uses
13 have transitioned to substantial residential
14 development of which tax increment generated from
15 that residential development is going to pay for
16 the huge infrastructure needs in this area. Which
17 is part of the reason why it stayed unincorporated
18 for so long.

19 And so the Redevelopment Agency's
20 concern with this particular project and land use
21 application is its potential negative impact on
22 the efforts of the Redevelopment Agency on our
23 redevelopment program for both Mount Eden and for
24 San Lorenzo.

25 HEARING OFFICER GEFTER: And what are

1 the impacts that you foresee?

2 MS. DALTON: My concern is in
3 redevelopment my work is -- and I've done this for
4 19 years -- is a lot of times based on perception
5 of the community that it has on their
6 neighborhood. Most of the time that's what I get
7 faced with with land use issues. You know, if
8 you're in a community where you feel like
9 something negative is being imposed on your
10 community that spreads and actually sticks for
11 quite a long time.

12 And people tend to associate something
13 like a power plant as a negative land use and
14 they'll worry about air quality and air traffic
15 and things that may or may not have concern for
16 them but still the perception is there. And that
17 perception can then turn to economic degradation
18 where people won't continue to pay a higher price
19 for a new home.

20 Again this is just my experience in
21 redevelopment and what my concern would be for
22 these areas.

23 HEARING OFFICER GEFTER: Thank you.

24 MS. DALTON: You're welcome.

25 HEARING OFFICER GEFTER: Thank you very

1 much. Mr. Massey, you said you had another item
2 on the airport issue? I'm not sure what it was.

3 MR. MASSEY: You had started off this
4 discussion about which specific LORS are at issue
5 here.

6 HEARING OFFICER GEFTER: Correct.

7 MR. MASSEY: With redevelopment that is
8 not a LOR that needs, that is subject to an
9 override or a negative finding but we do think it
10 is something that the Commission should take into
11 consideration. Particularly because when you get
12 into the override discussion it's a weighing of
13 costs and benefits that's different from the
14 findings you make on the AFC itself.

15 With respect to the ALUC. With the 1986
16 plan that was brought up by the staff and we agree
17 with the staff's analysis on the 1986 plan. Under
18 the 1986 plan there were only six zones. However
19 there is still the airport influence area which
20 defines the Airport Land Use Commission's
21 jurisdiction.

22 And within the airport influence area
23 the Airport Land Use Commission has jurisdiction
24 to look at safety concerns. And that is what they
25 did here because the Eastshore site is not within

1 any of the 1986 plan zones where the Airport Land
2 Use Commission would make land use decisions.

3 However when you get to the December
4 2007 draft the rewriting of the draft creates a
5 new Zone 7 which extends from Zone 6, which is
6 roughly the same as what Zone 6 was before, all
7 the way to the outer edge of the airport influence
8 area. And it creates land use decision-making
9 within that area where under the 1986 plan there
10 was no land use decision-making.

11 So that becomes an issue now for the
12 override decision. Because based on my discussion
13 with you, Commissioner Byron, during the break
14 that you were sitting on nine committees, if the
15 Airport Land Use Commission's plans for adopting
16 the December 2007 draft go forward chances are
17 that will be the active Airport Land Use
18 Commission plan for the Hayward Executive Airport
19 at the time you are making your decision. So that
20 is why we thought it was crucial that the December
21 2007 plan be introduced as an exhibit.

22 Keeping in mind that the Airport Land
23 Use Commission is mostly an advisory body it makes
24 a preliminary land use decision based on whether
25 the proposed use is compatible with the zone in

1 which it is proposed. Ultimately the land use
2 authority in the area can override that decision.
3 So in this case it would be the City of Hayward.
4 If the City of Hayward disagreed with a finding
5 made on the compatibility of a proposed land, by a
6 vote of its City Council it could override what
7 the Airport Land Use Commission decides.

8 But that is a land use decision and
9 therefore we would request a finding with respect
10 to the policy as identified by the staff on the
11 1986 plan and a finding with respect to the land
12 use compatibility in the December 2007 plan. And
13 I hope that distinction is made clear, the
14 changing nature of the airport land use plan and
15 how that changes the kind of authority the Airport
16 Land Use Commission has over particular areas
17 within the airport influence area.

18 HEARING OFFICER GEFTER: And we'll ask
19 you to actually make that request in your brief,
20 that we make certain findings. And you can give
21 us the findings and conclusions that you would
22 like to see the Commission find.

23 MR. MASSEY: Of course. Thank you.

24 HEARING OFFICER GEFTER: All right. At
25 this point we are going to wind down on land use

1 unless there are any other questions from our
2 Committee Members.

3 Ms. Hargleroad, I see you have your hand
4 up.

5 MS. HARGLEROAD: I just want to, for
6 purposes of clarification, because we have some
7 thoughts. We generally agree with staff's
8 analysis in the Final Staff Assessment.

9 HEARING OFFICER GEFTER: Okay, but we
10 are just going to close down on testimony right
11 now, okay.

12 MS. HARGLEROAD: Okay, well I just --

13 HEARING OFFICER GEFTER: We are going
14 to --

15 MS. HARGLEROAD: There has been a whole
16 line of questions concerning where is the
17 inconsistency and which one is inconsistent. And
18 so if that's an issue you want to talk about with
19 respect to briefing as a matter of law that's
20 fine. But as long as, as long as our testimony is
21 coming in, because I think our transportation and
22 traffic testimony directly applies. And that also
23 goes to the federal and the state Aeronautics Act
24 also.

25 HEARING OFFICER GEFTER: Okay, thank

1 you. All right, we are going to close down land
2 use on testimony now.

3 We'll go off the record.

4 (Whereupon a brief discussion
5 was held off the record.)

6 MS. LUCKHARDT: We move our exhibits on
7 local system effects, alternatives and land use.
8 Would you like me to identify the exhibit numbers
9 or to -- okay. So I am looking at the local
10 system effects. I am looking at Exhibits 5, 6, 8,
11 9, 13, 14 and 51. Those sections that have not
12 been moved in.

13 On alternatives I am looking at the
14 alternative sections of Exhibit 1, 2, Exhibit 10,
15 the alternative section of Exhibit 13, Exhibit 16
16 and 47.

17 In the area of land use I am looking at
18 -- I am offering exhibits 1, 3, 7, 9, 13, 17, 40,
19 49, 50, 51. And I believe there is one additional
20 exhibit that has yet to be numbered and that was
21 the July 2007 draft plan.

22 HEARING OFFICER GEFTER: Right, which we
23 would call 56.

24 MS. LUCKHARDT: Fifty-Six.

25 HEARING OFFICER GEFTER: And that you

1 are going to make copies for everyone and make
2 sure it is docketed.

3 MS. LUCKHARDT: We'll docket it and
4 serve it.

5 HEARING OFFICER GEFTER: Thank you. At
6 this point there should be no objection to the
7 applicant's --

8 MR. MASSEY: We had previously
9 identified the 1986 plan. I'm sorry. Okay, it
10 was the 1986 plan.

11 HEARING OFFICER GEFTER: Right, we're
12 talking about the July '07 draft.

13 MR. MASSEY: Okay.

14 HEARING OFFICER GEFTER: And the
15 applicant wanted to submit that into the record.
16 And having discussed all these exhibits previously
17 with no objection we'll accept them all into the
18 record at this point.

19 MS. HARGLEROAD: We did object to any
20 references -- We did have the standing objection
21 to any references concerning the PG&E contract
22 with the applicant. And I think that that came
23 out -- the RFO does not identify, is not site
24 specific. It does not identify the Eastshore
25 substation. The contract does. And we have a

1 standing objection concerning the contract and
2 that reference to that.

3 HEARING OFFICER GEFTER: Right, but that
4 was not one of the questions regarding the
5 exhibits that were just admitted.

6 MS. HARGLEROAD: Well it came in during
7 the discussion of the local systems impact.
8 Mr. Trewitt's testimony also.

9 MS. HOLMES: I think Ms. Hargleroad
10 raises a good point. Is there going to be a
11 discussion at the end of this about potential
12 objections? Because I believe there are a number
13 of --

14 HEARING OFFICER GEFTER: There are a lot
15 of them, a fair number that are pending, right.

16 MS. HOLMES: So these are coming in
17 pending the objections. We should just get them
18 all identified and then the parties can go through
19 their objections.

20 HEARING OFFICER GEFTER: Exactly, right.

21 MS. HOLMES: Thank you.

22 MS. HARGLEROAD: I just want to make
23 sure that that's --

24 HEARING OFFICER GEFTER: You just wanted
25 to remind us that you had a concern about the RFO

1 process.

2 MS. HARGLEROAD: Well I didn't want to
3 hear that they were admitted without objection.

4 HEARING OFFICER GEFTER: Thank you.
5 Let's get through the staff's exhibits. I believe
6 they have been admitted.

7 MS. HOLMES: I believe Exhibit 200 has
8 already been admitted as well as the other staff
9 exhibits with the exception of Exhibit 210, which
10 is a copy of an e-mail from Brewster Birdsall of
11 the air quality staff to Bill Pfanner, project
12 manager. That was docketed December 24 I believe
13 and served and had been previously identified as
14 Exhibit 210. So I would move that it be entered
15 at this time.

16 HEARING OFFICER GEFTER: I don't feel
17 like there should be any objection to that since
18 that was requested by everybody at the time of the
19 air quality discussion.

20 MS. HOLMES: And if any of the other
21 staff exhibits were not entered I would ask that
22 they be entered at this time.

23 HEARING OFFICER GEFTER: I think that
24 everything else was in so 210 is now received into
25 the record.

1 MS. HOLMES: Thank you.

2 HEARING OFFICER GEFTER: And Mr. Haavik
3 do you want to move your exhibits?

4 MR. HAAVIK: Yes, I'd like to offer
5 Exhibit 301, 303, 304, 305, 306, 307, 308, 309 and
6 310 as exhibits for land use.

7 HEARING OFFICER GEFTER: Thank you.

8 MR. HAAVIK: Three-ten is the testimony
9 of Mr. Armas.

10 HEARING OFFICER GEFTER: Thank you.
11 Again I hadn't heard any objections previously and
12 I don't know if there are any at this point.
13 Hearing no objections your exhibits are received
14 into the record. City of Hayward?

15 MS. GRAVES: I would like to move into
16 evidence Exhibits 401, 403, 404, 405, 406, 407 and
17 408 under land use. And the exhibits we
18 previously moved in under traffic and
19 transportation have been received into evidence
20 but we would also like them to apply to land use.
21 Do I need to separately move them in again?

22 HEARING OFFICER GEFTER: No, you can
23 just indicate in your brief which exhibits go to
24 which factual position that you are asserting.

25 MS. GRAVES: Thank you.

1 HEARING OFFICER GEFTER: Thank you.

2 Okay, hearing no objection to the City of
3 Hayward's exhibits they are admitted into the
4 record, thank you. County?

5 MR. MASSEY: And for the County exhibits
6 504, 505, 506, 507, 508, 509, 510. I previously
7 identified several exhibits that were already
8 admitted in traffic and transportation so I won't
9 repeat them. Exhibits 534 and 535 which we will
10 get to docketing right away.

11 HEARING OFFICER GEFTER: And serve on
12 all the parties.

13 MR. MASSEY: Of course.

14 HEARING OFFICER GEFTER: Thank you very
15 much.

16 MR. MASSEY: Thank you.

17 HEARING OFFICER GEFTER: Okay, hearing
18 no objection to Alameda County's exhibits --

19 MS. LUCKHARDT: I guess the only
20 objection is that --

21 HEARING OFFICER GEFTER: Is there an
22 objection?

23 MS. LUCKHARDT: It was provided when we
24 walked in this morning so we did the best we could
25 with the time we had. But I do find it quite

1 difficult to adequately prepare when a document is
2 issued, it is not really even out for public draft
3 until it's adopted by the Commission which will
4 be, I guess, Wednesday of this week. And so I
5 just would like to note for the record that the
6 barrage of last-minute documents makes it very
7 difficult.

8 HEARING OFFICER GEFTER: I understand
9 that it is difficult for the parties and we have
10 tried to cut off the admission of new documents
11 and it keeps happening. So hopefully this will be
12 the end of it.

13 MS. LUCKHARDT: Well at some point I
14 think we do need to have an end.

15 HEARING OFFICER GEFTER: Yes, we do need
16 to have an end. Thank you. Except for
17 Ms. Luckhardt's concern about Exhibit 534, which
18 we are going to receive anyway, all the other
19 exhibits mentioned by Alameda County will be
20 received right now.

21 And then I have Chabot College.
22 Actually all of your exhibits were received before
23 but I don't have the docket dates for any of them.
24 So if you could provide that to us by e-mail in
25 the next week or so we'd appreciate that.

1 And then group petitioners. All of your
2 exhibits were filed.

3 MS. HARGLEROAD: There is the additional
4 testimony of Sherman Lewis, 716. They have
5 already been -- Except for 716 they have been
6 admitted under traffic and transportation but we
7 also offer them under land use.

8 And additionally I would point out that
9 we would be happy to substitute what we presently
10 docketed, which is Sherman Lewis' declaration and
11 his letter, with the specific testimony summary
12 that he refers to concerning the 2007 CEC
13 integrated report. I don't know if, Madame Chair,
14 if you want us to identify it as an exhibit, the
15 2007 integrated report or simply --

16 HEARING OFFICER GEFTER: No, we can take
17 administrative notice --

18 MS. HARGLEROAD: Administrative notice,
19 okay.

20 HEARING OFFICER GEFTER: -- of the IEPR,
21 the IEPR as we call it.

22 MS. HARGLEROAD: Okay, so we don't need
23 to identify it as an exhibit.

24 MS. LUCKHARDT: So are we offering in
25 then the document that you sent, that you handed

1 around this morning or the one that you filed and
2 served earlier?

3 MS. HARGLEROAD: Either, we can do
4 either. I think that it would be probably most
5 productive simply to substitute the one that I
6 provided this morning which attached portions of
7 the 2007 integrated report.

8 MS. LUCKHARDT: Again I just have to
9 express objections and frustration with documents
10 coming in the day of with new information. This
11 is in an area of testimony that has already --
12 well, I guess it hadn't closed until today. But I
13 just find it practically impossible to prepare.

14 MS. HARGLEROAD: Well I would simply
15 suggest that the 2007 report is a CEC document
16 which is virtually equivalent to the Final Staff
17 Assessment.

18 MS. LUCKHARDT: I am not talking about
19 the --

20 HEARING OFFICER GEFTER: Ms. Luckhardt
21 is not concerned about the IEPR, she is concerned
22 about Sherman Lewis' new testimony that you served
23 today.

24 MS. HARGLEROAD: I would submit that is
25 not new testimony.

1 HEARING OFFICER GEFTER: That you had
2 filed that previously?

3 MS. HARGLEROAD: Absolutely. If the
4 letter that was attached to Sherman Lewis'
5 declaration concerning Russell City, one of the
6 parties did not receive that. It was clearly
7 referred to in his declaration. And if there was
8 non-receipt of that you've had it at least since
9 December 7 and nobody has ever bothered to tell me
10 that the attachment to the declaration that they
11 received was missing. We simply would have been
12 happy to provide it.

13 HEARING OFFICER GEFTER: Okay, well your
14 description doesn't include an attachment so no
15 one would have known.

16 MS. HARGLEROAD: I believe the
17 declaration refers to his letter.

18 HEARING OFFICER GEFTER: All right,
19 okay. Mr. Lewis testified today so his
20 declaration can come in. Exhibit 716 would be
21 received. And you had a chance to cross examine
22 the witness.

23 Then the other two exhibits,
24 Ms. Hargleroad, that you offered were 730 and 731
25 which are public comment, so they are going to be

1 part of public comment. You can --

2 MS. HARGLEROAD: I understand --

3 HEARING OFFICER GEFTER: -- offer them
4 as exhibits but they will be considered public
5 comment.

6 MS. HARGLEROAD: Well we would object to
7 a ruling precluding it as testimony because we
8 have provided those declarations of those persons.
9 And in fact in an earlier e-mail I had offered to
10 make Terry Preston available, she certainly could
11 have been here, and also Bill Dunn is in Maryland
12 and we would have certainly made arrangements to
13 have him appear by telephone if necessary.

14 HEARING OFFICER GEFTER: But today we're
15 doing land use. This is not on land use.

16 MS. HARGLEROAD: Well it's offered under
17 land use because it directly relates to the
18 airport.

19 MS. LUCKHARDT: That is absolutely
20 incorrect actually. The testimony that is
21 provided is for traffic and transportation. The
22 testimony in the Sierra Club includes issues like
23 air quality and other items. I have to
24 strenuously object to this continued barrage of
25 additional information and additional testimony on

1 areas, subject areas that have been closed.

2 HEARING OFFICER GEFTER: Sympathetic to
3 your concerns, Ms. Luckhardt, we are accepting 730
4 and 731 as public comment only.

5 Okay, I think that's it.

6 And then Mr. Sarvey's exhibits,
7 everything was received when he provided his
8 testimony on air quality. I don't know if he is
9 going to be here today or not so we'll just go
10 ahead.

11 I think at this point we'll recess and
12 come back at six for public comment.

13 (Whereupon, a recess was
14 taken.)

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1 PUBLIC COMMENT SESSION

2 HEARING OFFICER GEFTER: It is now time
3 for public comment in the evidentiary hearing on
4 the Eastshore Energy Center. This is our third
5 day of evidentiary hearing and we have set aside
6 another two hours for public comment if people
7 would like to address us. We are asking everyone
8 to fill out a blue card before you come up here
9 and then I'll call you by name.

10 What we would like to do is we have had
11 a lot of people come and speak to us over the
12 course of these proceedings and so we'd like to
13 hear from people who haven't addressed us first.
14 What we're going to do is set a timer for about
15 five minutes per person. If we haven't heard from
16 you before we'll be able to let you speak a little
17 bit longer if we haven't heard your comments.
18 Those of you who have been here before, unless you
19 have something new to say we're going to try to
20 limit it to five minutes.

21 But before we even start on that process
22 Alice Lai-Bitker, I hope you're pronouncing your
23 name correctly, Alameda County Supervisor, please
24 come on up. We'd like to have you come first.
25 Did you already give a business card to our

1 reporter so that she --

2 SUPERVISOR LAI-BITKER: I did not leave
3 a business card.

4 HEARING OFFICER GEFTER: Okay, we'll
5 just have to spell your name.

6 SUPERVISOR LAI-BITKER: Okay.

7 HEARING OFFICER GEFTER: I'm so sorry
8 that I did not pronounce it correctly.

9 SUPERVISOR LAI-BITKER: You did, you
10 pronounced it correctly.

11 PRESIDING COMMISSIONER BYRON:

12 Supervisor Lai-Bitker, thank you for being here
13 today and of course we welcome your comments. We
14 welcome all the comments of members of the public
15 that are here. This is the period that we set
16 aside for public comment.

17 We don't want to restrict public comment
18 in any way but the purpose of our being here is
19 evidentiary hearing and we are trying to get
20 through this day. We have some more work to do
21 after the public comment is over. So we will not
22 be limiting anybody's comments unless you have
23 commented before and you are not really giving us
24 new information. Then we'll probably ask you to
25 keep your comments short.

1 Thank you for being here.

2 SUPERVISOR LAI-BITKER: Commissioner
3 Byron, thank you. Thank you for having this
4 opportunity to speak in front of you. My name is
5 Alice Lai-Bitker. I am the County Supervisor that
6 serves District 3, which is comprised of part of
7 Oakland, Alameda, San Leandro and San Lorenzo
8 community, which is just right neighboring to this
9 siting for the Eastshore power plant.

10 It is with that I am coming to speak in
11 front of you because for the last few months many
12 of my constituents, numerous constituents have
13 contacted my office through e-mail, through phone
14 calls, expressed their concerns about power plants
15 being sited in a really urban area. And
16 particularly with Eastshore because -- Primarily
17 there are really two very serious concerns, one is
18 the air quality and the other one is the whole
19 issue about the safety of aviation.

20 In terms of the air quality issue, they
21 really are concerned about the emissions. They
22 feel that nearby residents should not have to
23 shoulder the cumulative burden of the air
24 pollution from two power plants. There was also
25 concern about this whole issue about emission

1 credits and they feel that, you know, the local
2 area, the near-Hayward area, should not be the
3 site for dumping or having all the Bay Area
4 pollutions to be just in this area.

5 So basically you have heard from many of
6 our staff and some of the constituents before.
7 I'm sure you understand the whole issue about air
8 quality and emissions in that concern.

9 And the whole issue about aviation
10 safety. As you probably know with the proposed
11 plant of the Russell City, this thermal plume is
12 going to affect the flight pattern. So there are
13 two concerns with it. One is if you have another
14 power plant you limit the airspace even further
15 and there will be real concern in terms of safety.

16 And my constituents who live in San
17 Lorenzo are very concerns about the noise transfer
18 as well because right now the flight pattern is
19 really over the industrial area. But now with
20 these power plants being located there it's going
21 to transfer the noise to the residential area.

22 And I know that this morning you heard
23 testimony from our other county employees like the
24 Redevelopment Agency Director talked to you about
25 some of the concerns in terms of property values,

1 in terms of redevelopment opportunities. I think
2 those are really valid concerns.

3 And the whole issue about public health
4 and environmental justice. And when you think
5 about it to have two power plants sited in such a
6 urban area is a real concern. So I really urge
7 you to consider those issues. Listen to FAA, what
8 their concern about airport safety. And listen to
9 the staff in terms of they have reservations about
10 this as well.

11 We feel that the Commission, with your
12 selection criteria or process, you don't really
13 have effectively incorporated environmental
14 justice concerns. So if you do there's no reason
15 to site two power plants in Hayward.

16 So that's really what my concern -- and
17 I appreciate the opportunity to speak in front of
18 you today and hope that you will really take all
19 these concerns I expressed to you from residents,
20 from our county staff and all these experts.
21 Thank you.

22 HEARING OFFICER GEFTER: Thank you very
23 much for being here tonight.

24 I have a number of cards from people who
25 would like to address us. What I would like to do

1 is maybe have people line up a little bit so that
2 we don't have to wait. The first person is David
3 Fouquet or Fouquet from Chabot College. And then
4 Martha Perez and Connie Jordan and then maybe
5 Michael Toth to kind of line up and then more
6 people will line up after these folks. Thank you.
7 So Mr. Fouquet, could you spell your name for the
8 record and tell us who you are.

9 MR. FOUQUET: It's F-O-U-Q-U-E-T is the
10 last name.

11 HEARING OFFICER GEFTER: First name
12 David.

13 MR. FOUQUET: David. My name is Dave
14 Fouquet and I am now in my 16th year as a math
15 professor at Chabot College where I have held
16 tenure since 1996. I am a homeowner in the Eden
17 Gardens neighborhood in West Hayward. I am also a
18 provider of energy to PG&E as I operate a solar PV
19 array at my property that backfeeds 2.3 kilowatts
20 into the grid at peak hours during the summer
21 months.

22 Right or wrong, my impression of this
23 process is that licensure seems fairly easy to
24 obtain as long as legal regulations are satisfied.
25 And it is with this in mind that I would refer to

1 that map from the staff assessment documents that
2 is labeled Public Health Figure 8, the Cumulative
3 Acute Hazard Isopleths. And that is the thing
4 that indicates that the combined impact of the two
5 projects, Russell City and Eastshore, on West
6 Hayward air quality would be within acceptable
7 limits.

8 And I just want to say I am not an
9 environmental health expert, I am just a
10 mathematician. But regardless, my understanding
11 is the map indicates the max receptor, and it
12 shows that as a green arrow that terminates right
13 over the Chabot College athletic fields, is
14 receiving exposure at a level that says it's about
15 3.7. It's not exactly quantified on that but you
16 can look at the little isopleth on there that's a
17 constant amount and it's max so it's beyond. I'm
18 guessing 3.37 on an index that is normalized such
19 that 1.0 is the max acceptable limit.

20 Now supposing that Eastshore's possible
21 approval could be predicated on a calculation like
22 this, or maybe this very calculation, and thus my
23 purpose here is to express my worries that that
24 index seems to be based upon regulations that are
25 inadequate. This concern has two major components

1 to it.

2 First, as far as I can tell, the law
3 permits the exclusion of substances that are known
4 to be harmful. The biggest, single offender here
5 is a chemical called acrolein, or acrolein, I'm
6 not sure how to pronounce it, which is a byproduct
7 of natural gas combustion and it is also cited as
8 a major cigarette-related lung cancer agent. And
9 that would be in the Proceedings of the National
10 Academy of Science in October 17, 2006.

11 Now a neighbor of mine had asked me
12 review the tables in Appendix B of the BAAQMD
13 computations of total health risk and that was
14 specifically for the Eastshore project. And those
15 tables show computations of health risks for
16 multiple emissions factors, both where acrolein is
17 included and another set specifically where
18 acrolein is not included. And my key point here
19 is that when acrolein is included the total risk
20 comes out approximately seven times higher.

21 And further I have been told the BAAQMD
22 does not require acrolein to be incorporated into
23 the final assessment figures. So given that, of
24 course, it seems like then what you need to do is
25 to multiply the numbers on that other map by

1 seven. And when you do that, that number, which
2 is about 3.7 over the athletic fields, now looks
3 like about 2.5, or two and a half times what would
4 be considered the max acceptable level. So that I
5 find to be unambiguously worrisome.

6 Now I am not privy to how the actual
7 index is figured but my question is still a
8 serious one. Given the quantitative results in
9 the tables in Appendix B, can the staff explain
10 why the combined receptor number at Chabot College
11 would not be .37 but rather 2.5 on that index?
12 And I have asked this question, though not
13 verbatim, of the BAAQMD rep at the informational
14 hearing at Chabot College that was held in
15 October. And I realize that this is a complicated
16 issue but that rep was not able to give a
17 satisfactory answer to that question at that time.
18 So I certainly hope that the Commission does not
19 let such a critical question go unanswered.

20 The second component of my stated
21 worries has already been addressed by other
22 participants in these hearings. And specifically
23 that there may not yet exist an adequate
24 scientific or regulatory basis upon which to
25 properly account for the synergistic effects of

1 the proposed power plants as emissions are taken
2 in tandem with those from the freeways and
3 industrial facilities that already impact the air
4 quality in Hayward.

5 So given these inadequacies in
6 regulations I cannot help but wonder, does
7 certification to build a power plant include
8 license, direct or implied, to continue operating
9 such a plant as regulations become more stringent
10 over time? And I am not just speaking of health
11 regulations, for this political climate is already
12 getting progressively greener as it stresses
13 diminishment of our dependence on non-renewable
14 resources.

15 And to that end more and more
16 homeowners, businesses and public campuses are
17 putting PV arrays on their roofs. They're even
18 talking about it at Chabot and not just because of
19 me. When combined, these factors suggest a future
20 of diminished demand for peak energy from
21 polluting sources. So even if such a plant gets
22 certified I don't believe the Eastshore Energy
23 Center will be shown in the final analysis to be a
24 sound investment.

25 Another thing that just popped into my

1 head is that it was very windy a couple of weeks
2 ago. And a thought, you know, that I just have,
3 is, you know, maybe you guys should put up some
4 wind turbines instead. I understand that's your
5 bailiwick. But anyway, that's what I wanted to
6 say. Thank you.

7 PRESIDING COMMISSIONER BYRON: Professor
8 Fouquet, thank you very much for your comments,
9 excellent. I hesitate to correct a math
10 professor.

11 MR. FOUQUET: Oh? Well, go for it.

12 PRESIDING COMMISSIONER BYRON: But
13 wasn't it 3.7 times 7 is going to be about 27, not
14 2.7? So you're saying the --

15 MR. FOUQUET: No, it's .37.

16 PRESIDING COMMISSIONER BYRON: Point-
17 three-seven.

18 MR. FOUQUET: The original was .37.

19 PRESIDING COMMISSIONER BYRON: Okay.

20 MR. FOUQUET: And because that number
21 was less than one it was deemed acceptable.

22 PRESIDING COMMISSIONER BYRON: I see.

23 MR. FOUQUET: And so what I'm saying is,
24 when you multiply that number by seven it is no
25 longer in the acceptable range.

1 PRESIDING COMMISSIONER BYRON: And I am
2 not sure that we have someone here this evening
3 that could help answer that question. Because we
4 have been doing hearings on the different aspects
5 of the evidence that we're collecting and I am not
6 sure that we have someone here on air quality
7 tonight that can answer your question. But I
8 think you've raised some very good points.
9 Particularly that you're walking the walk,
10 installing your 2.3 KW solar, very impressive.

11 MR. FOUQUET: Thank you.

12 PRESIDING COMMISSIONER BYRON: Thank you
13 for coming.

14 HEARING OFFICER GEFTER: And Martha
15 Perez. And when I asked people to line up, you
16 can sit down, you don't need to keep standing. I
17 just want you to know that you're next.

18 We also did have the timer on for five
19 minutes and if you can see when it turns yellow
20 that means you have one minute left.

21 MS. PEREZ: I don't think I'll take that
22 long.

23 HEARING OFFICER GEFTER: Thank you.

24 MS. PEREZ: My name is Martha Perez,
25 I've lived in Hayward all my life. I teach at

1 Mount Eden High School, I've been there ten years.
2 Mostly I'm not here to give any new information or
3 evidence, just voice my concern because this is my
4 first meeting.

5 Just mostly my family and I, my husband,
6 have been talking about the quality, the
7 pollution. The Russell City plant was a concern
8 when we heard that was passed. But when we heard
9 about the second one being considered that's when
10 I decided, you know, I need to come to do
11 something instead of just talking and reading
12 about it in the paper. So mostly I am just
13 concerned about my kids growing up here, quality
14 of air. About my students at Mount Eden because
15 they are pretty close to where these plants are
16 going to be.

17 I live right across the street from the
18 Hayward Airport so I am concerned about that and
19 what kind of issues with airport safety are going
20 to be coming up. If this is going to create a
21 dangerous situation.

22 So pretty much that's just it, just kind
23 of voicing my concern about these two plants. I
24 don't think it's fair that we're getting two. I
25 didn't like the one but, you know, to have two I

1 don't think that's right. And a lot of our family
2 and friends feel that we're going to bear a big
3 burden with these two. Thank you.

4 HEARING OFFICER GEFTER: Thank you for
5 coming out tonight, appreciate that.

6 Connie Jordan. And then after Connie,
7 Karen Kramer, and then after Karen, Michael Toth.
8 Thank you. Go ahead, Connie.

9 MS. JORDAN: Thank you. My name is
10 Connie Jordan. My family owns 2661 Depot Road.
11 We're about 1200 feet from the proposed plant.
12 Since January of last year I have attended all but
13 one of your local meetings and sat with patience
14 and disgust at this process. I know more about
15 power plants than I ever wanted to know.

16 I encourage you to think again. We are
17 still battling Russell City and we will not give
18 up. I don't think Hayward is behind it, even
19 though the City officials opened the door.
20 Tierra, you caught them by surprise. The
21 community does not deserve a second power plant.
22 It's simply not fair.

23 You know all about the tonnage going
24 into the air, I don't have to go over that. I
25 don't think environmental justice is being served

1 at all. We have walked around the communities
2 leaving flyers on the door for the last year.
3 Thousands of dollars have been spent, hours upon
4 hours, to fight this.

5 And when we walk around these
6 communities I see pride, I see diverse populations
7 going door to door. Everybody I spoke to is not
8 in favor of this. Some are still surprised even a
9 year later that this is even going on. So that
10 speaks to me that this still not a public issue
11 that is being brought out to the attention of the
12 people of Hayward.

13 So to dump on this community as I think
14 you are planning on doing is just simply unfair
15 and I want you to give it a lot of consideration.
16 We are concerned about the airport safety as well
17 as the land use, we think it is an inappropriate
18 use. So I thank you for your time.

19 HEARING OFFICER GEFTER: Thank you for
20 coming out tonight.

21 PRESIDING COMMISSIONER BYRON:
22 Ms. Jordan, something you said I would like to ask
23 if you wouldn't mind elaborating. You said you're
24 disgusted with the process and I just wonder --

25 MS. JORDAN: I am. I'm disgusted

1 because it seems that every time I turn around --

2 PRESIDING COMMISSIONER BYRON: I'm
3 wondering if there was something in particular
4 that bothered you.

5 MS. JORDAN: The air credits is
6 bothering me. The Air Quality Management District
7 gave it a pass, even with the tonnage. Both power
8 plants with air pollution received a pass. I
9 think that's disturbing. To me it flies in the
10 face of logic. I think it's a step backwards. A
11 year ago we weren't where we were today as far as
12 the green movement. I think this is not -- The
13 time is wrong. I think it's a different day.
14 It's different, certainly. Thank you.

15 PRESIDING COMMISSIONER BYRON: Thank you
16 for coming again.

17 HEARING OFFICER GEFTER: Karen Kramer.
18 Hi, come on up.

19 MS. KRAMER: I spoke before and I'll try
20 to be brief tonight. Because I don't really
21 have --

22 HEARING OFFICER GEFTER: You have two
23 Ks, Karen and Kramer both start with a K, correct?

24 MS. KRAMER: Yes.

25 HEARING OFFICER GEFTER: Great, okay.

1 MS. KRAMER: I used to have a dog named
2 K-K. My brother's name is Kevin.

3 HEARING OFFICER GEFTER: And you have
4 been here many times so if you have something in
5 addition to tell us.

6 MS. KRAMER: I'll keep it brief.

7 HEARING OFFICER GEFTER: Thank you.

8 MS. KRAMER: It's not any new
9 information other than I heard that Dr. Witt speak
10 the last time you were here and of course I was
11 very upset because I live in the 94545 area code
12 across from Chabot College. Which she spoke to as
13 being over-polluted and more people going to the
14 hospital in that area.

15 So I kind of mimic Connie's statement
16 that I really feel that this Board is just a sham.
17 Because, you know, since deregulation and you're
18 only beholdng, the Commissioners are only
19 beholdng to the Governor and nobody else, that
20 does not seem democratic to me at all.

21 Because all the people, the City,
22 everybody else can speak and say no, we don't want
23 this, but these four people hold all the power.
24 Even their own staff assessment which is hundreds
25 of pages long, I'm sure it took a lot of time and

1 effort and money, says no. But they still can say
2 yes. Four voices say yes and that's it.

3 So with the over-pollution in our area
4 and the staff assessment saying no I just feel
5 like you're placating us by letting us talk here.
6 I really do. But I can't resist getting up here
7 and telling you that because it just disgusts me
8 so much.

9 Oh, this is my next point, last point.
10 A realtor who walks our neighborhood who I've
11 talked to said she is having to disclose that PG&E
12 is building, you know, a plant or they're building
13 a plant nearby. And she says, what are they
14 trying to do? This was a nice neighborhood. Are
15 they trying to turn it into a ghetto? That's what
16 she said. In Hayward this was one of the nicer
17 neighborhoods.

18 I'm on disability, a single mom on
19 disability. My house is my only asset. Which the
20 value has gone down with the market but it's going
21 to go down even more with the power plants. So if
22 any of you have a conscience, because I don't
23 really feel you do, to put one in where it's
24 already over-polluted. You'd put it somewhere
25 else if you had a conscience where it's not over-

1 polluted. Then here is the deed to my house and
2 I'd like one of you to buy my house from me
3 please. Okay? So you can see me after, thank
4 you.

5 HEARING OFFICER GEFTER: Okay. And then
6 Michael Toth, please. And after Michael, Diane
7 Zuliani. Diane, I know you're out there. There
8 you are. Okay, Michael.

9 MR. TOTH: Thanks for the opportunity to
10 address the Commission.

11 HEARING OFFICER GEFTER: Spell your last
12 name for the reporter.

13 MR. TOTH: My name is Toth, T-O-T-H,
14 Michael Toth. I am a resident of a neighborhood,
15 the Eden Gardens neighborhood, about 3,000 feet
16 due east of the Eastshore plant.

17 There is a specific public health impact
18 issue that I would like to address that hasn't
19 been brought up in the evidentiary hearing so I
20 would like to bring this issue out if you would
21 hear me out.

22 I have been involved in the process
23 since March and I have reviewed extensively the
24 Air District and the CEC and the applicant's data
25 regarding the toxic air contaminants that will be

1 emitted by the plant.

2 Just for some background, for some
3 context so that you can understand where my
4 comments are coming from. I have a degree in
5 computer science. I studied numerical computation
6 in college. I went to Rutgers University. Before
7 computer science I studied engineering and so I
8 have completed engineering physics, engineering
9 calculus, engineering chemistry.

10 In addition to these studies I have
11 studied, I have a secondary in psychology and
12 communication. I have studied the use of
13 statistics in science and engineering and their
14 importance in determining the use of these results
15 in the end results of the engineering process.

16 In that respect I would like to
17 recommend further study of the health risks of
18 these plants before construction is started. I
19 know that staff has recommended that testing be
20 performed after this \$300 million plant is already
21 in existence based on criteria that will be
22 evaluated at the time.

23 There is an abundance of contradictory
24 information out there regarding a particular toxic
25 air contaminant called acrolein. According to the

1 Bay Area Air Quality District, Air Quality
2 Management District, they consider, and the CEC
3 staff as well as the applicant, consider the one
4 hour exposure hazard to this chemical to be
5 insignificant.

6 They based this on information taken
7 from a database called the California Air Toxic
8 Emission Factors Database. Essentially because
9 the plant hasn't been built yet they need to
10 estimate what the emissions are by using a
11 database provided by the State which contains the
12 amount of acrolein that is predicted to be emitted
13 by the plant based on measurements from similar
14 engines. This database has some serious flaws as
15 well as the methods that were used, the use of
16 this data from the database.

17 The EPA has a similar database which has
18 in the same exact classification of engine has
19 numbers which appear to correct these flaws in
20 California's database. Unfortunately the numbers
21 in the EPA database list the acrolein emissions
22 from this plant as 88 times higher than the
23 emissions in the California database. There are
24 several reasons for this that I have uncovered.

25 In addition, when a statistical measure

1 of confidence is applied to this data, which is
2 also published in this database, the discrepancy
3 between the numbers that were used by the CEC and
4 the Air District increases to about 192. And so
5 we're potentially dealing with a problem that
6 acrolein emissions could be 192 times higher than
7 what the health impact currently states.

8 Now the current health impact states
9 that essentially a health risk of .66 out of one
10 for a worker, .2 out of one for a resident, when
11 you multiply that by 192 you're talking about
12 numbers that are well into the range of requiring
13 further study in order to determine the specific
14 effect.

15 The specific effects here and the
16 specific reasons for this, acrolein is regulated
17 by AB 2588, the Hot Spots program. CARB or Bay
18 Area Air District has a policy not requiring
19 testing for acrolein and not requiring a health
20 risk analysis be done for acrolein because they
21 are saying that the exposure levels which would
22 indicate a possible health risk are under
23 reevaluation and their test method has been
24 decertified. Well the EPA has a certified test
25 method.

1 So that said I am going to enumerate the
2 flaws in this database and together they add up to
3 this incredible discrepancy.

4 HEARING OFFICER GEFTER: Mr. Toth, the
5 red light is on but we're going to let you go for
6 a little bit more.

7 MR. TOTH: Thank you. I appreciate it
8 very much.

9 MS. ZULIANI: I'd like to donate my
10 minutes to Mr. Toth.

11 MR. TOTH: I very much appreciate that.

12 CARB's public policy states that the
13 measurements in the CATEF database should not be
14 used. On the database they actually state that
15 the acrolein factors in this database should not
16 be used. Yet the CEC, Bay Area Air Quality Air
17 Management District and the applicant used them
18 anyway.

19 The justification offered by
20 Dr. Greenberg, CEC staff member, for contradicting
21 this CARB policy and using the CATEF database
22 anyway was that an individual at CARB told him
23 that he could use it. I find this astonishing
24 given the rules of evidence of this proceeding
25 that this undocumented communication would be

1 given any weight as evidence against the clearly
2 stated public policy of CARB.

3 Number two: The emission factor for
4 acrolein in the CATEF database is based on a
5 decertified test method. CARB again says this is
6 their policy, that the CARB method for measuring
7 acrolein has been decertified. Because they found
8 -- It was decertified after it was found that it
9 significantly under-measured the acrolein
10 concentrations compared with the US EPA's FTIR
11 method. The FTIR method is a method that has been
12 in use by the EPA for several years that is used
13 -- it's commercialized and it's been used, it's
14 advertised as testing acrolein and the EPA
15 recommends that it be used over California's
16 method.

17 Number three: According to the EPA,
18 CARB's test method for acrolein is rendered even
19 less reliable when testing reciprocating internal
20 combustion engines due to the interference of NOx
21 in the measurement process. So they even further
22 recommend using the FTIR method, specifically with
23 respect to internal combustion engines, which is
24 the type of engine used in Eastshore.

25 Further the CATEF database, the emission

1 factor is based on only two measurements. A
2 sample size of two, in my opinion, is not a valid
3 basis for a scientific or engineering conclusion.
4 Particularly one designed to protect public
5 health. The EPA database, their measurement for
6 acrolein is based on 32 measurements, which is
7 much more substantial than the measurements in the
8 CARB database.

9 In addition the final flaw of this
10 contributing to this discrepancy is that there is
11 no statistical confidence interval or error
12 computation included in the health risk analysis,
13 yet the analysis was based on the use of
14 statistical averages.

15 The EPA themselves has a policy where
16 they recommend that the emission factors from
17 their database and others like it incorporate
18 statistical weights when used to measure emissions
19 from a single facility. That was not done in this
20 case. So based on a 95 percent confidence
21 interval, given the variance of the data that is
22 published in the EPA's database, we end up that
23 the emissions for acrolein can be 2.5 times higher
24 than the average that is published in that
25 database.

1 When statistical confidence intervals
2 are not included in engineering calculations the
3 validity of the result needs to be called into
4 question because we don't know whether the numbers
5 can differ by one percent or 1,000 percent.

6 And all the numbers I have mentioned
7 here do take into account the fact that they are
8 using emission controls. This was considered with
9 all the other assumptions that the Air District
10 made about emissions controls so the uncontrolled
11 emissions will be a lot higher than that.

12 I brought this up numerous times at the
13 workshops. This is an issue that just seemed very
14 elusive for staff to address. Dr. Greenberg
15 actually mentioned the AP 42 database but didn't
16 mention the acrolein number from the database,
17 even though he listed other compounds which would
18 tend to put the CATEF database in a much more
19 positive light.

20 And then, you know, when he indicated
21 that the -- even if the acrolein level exceeded
22 the health protective level that the health
23 protective level was based on subjective,
24 anecdotal evidence of eye irritation and that that
25 was not a significant health risk. And I would

1 say that if people experience eye irritation they
2 are going to contact a medical professional.

3 I think people are going to expend money
4 if there is an incidence of eye irritation that
5 spans a number, a population in a school or a
6 college. There's going to be some serious issues
7 brought up, why is everybody's eyes tearing, you
8 know, in peak times.

9 To compound the issue here, you know,
10 the Air District when mentioned that the FTIR
11 method should be used to test for acrolein, which
12 the applicant certainly objected to testing for
13 acrolein because the air district doesn't have a
14 certified test method, the Air District simply
15 said that FTIR has its own problems. They didn't
16 cite any evidence. They simply waved their hands
17 and said, oh FTIR has its own problems, and, you
18 know, didn't provide any kind of rebuttal to the
19 fact that the EPA has this method certified. It's
20 advertised by GE Power. They can drive a truck up
21 and test your emissions in stack.

22 ADVISOR TAYLOR: Mr. Toth.

23 MR. TOTH: Um-hmm.

24 ADVISOR TAYLOR: Sorry to interrupt but
25 I just wanted to clarify it for the record. FTIR

1 which you're referring to is --

2 MR. TOTH: Oh, I'm sorry.

3 ADVISOR TAYLOR: -- Fourier transform --

4 MR. TOTH: Infrared.

5 ADVISOR TAYLOR: -- infrared

6 spectroscopy, which is a method for testing for

7 inorganic and organic chemicals in air, right?

8 MR. TOTH: Yes. And it can be done in
9 situ. There are products that you can put in a
10 stack or you can test real time for it that are
11 advertised commercially.

12 ADVISOR TAYLOR: And you are not
13 advocating using an uncertified test method, are
14 you?

15 MR. TOTH: The FTIR is actually approved
16 by, is recommended by the US EPA as an alternative
17 to the decertified CARB 430 method, which has been
18 shown to underestimate acrolein concentrations
19 when compared to FTIR.

20 You know, in addition the big elephant
21 in the room here is that staff admitted to not
22 considering the start-up emissions of either plant
23 in their health risk analysis. Now start-up
24 emissions, given the Eastshore Energy Center will
25 start up quickly so it might not be a significant

1 issue, but the cumulative issue.

2 Russell City Energy Center takes three
3 hours to warm start and they have been permitted
4 to start twice per day as a load-following plant.
5 If Russell City Energy Center decides to be in the
6 process of starting up their emission control
7 systems are not going to be fully functional at
8 that point. We're going to be dealing with three
9 hours of release of a very inefficient start-up
10 process until that engine warms up. I don't
11 understand why this was not taken into account in
12 the cumulative process.

13 So, you know, in the end I would hope
14 that the Commission would understand that there is
15 a high level of uncertainty regarding the health
16 risk analysis process. That this is not, this
17 determination is by no means a guarantee that
18 there will be no health risk. That there are a
19 significant number of unaddressed issues that are
20 magnified by the fact that this plant is in the
21 proximity, it is virtually next door to a
22 residential area.

23 My house is 3,000 feet away, the nearest
24 residence is 1,000 feet away. And the local
25 weather conditions at that time in the summer when

1 this plant is most likely to be used in the
2 evening peak periods. There is a cool wind that
3 is blowing from the offshore that is bringing all
4 those emissions straight into the neighborhoods
5 near that plant.

6 Which is why the issue of the location
7 of the plant is so important. Russell City Energy
8 Center may be further away towards the Bay, the
9 plume has a little more chance to disperse. But
10 the Eastshore Energy Center is virtually on top of
11 the residential neighborhoods. And with the level
12 of uncertainty involved I would respectfully ask
13 the Commission to not weigh the dismissal of any
14 public health impact too heavily. Thank you very
15 much.

16 MS. HARGLEROAD: Excuse me.

17 HEARING OFFICER GEFTER: Okay.

18 MS. HARGLEROAD: I just want to --

19 HEARING OFFICER GEFTER: I know. We're
20 taking public comment right now.

21 MS. HARGLEROAD: I understand but I just
22 wanted to ask Mr. Toth if he is available just in
23 case because staff once said that they wanted to
24 cross examine him. I'm just making that point.
25 Mr. Toth, are you available?

1 MR. TOTH: I would be happy to make
2 myself available for any kind of question.

3 MS. HARGLEROAD: Okay, and any --

4 HEARING OFFICER GEFTER: Thank you,
5 Mr. Toth. Thank you very much for your time.

6 MS. HARGLEROAD: And that would be under
7 penalty of perjury.

8 HEARING OFFICER GEFTER: The next person
9 is Diane. Diane, would you like to come up, Diane
10 Zuliani. Do you have anything else to add?

11 MS. ZULIANI: I don't and I donated my
12 minutes to Mr. Toth.

13 HEARING OFFICER GEFTER: Okay.

14 MS. ZULIANI: When the light turned red
15 I donated my time.

16 HEARING OFFICER GEFTER: Thank you very
17 much. Okay, Charlie Cameron. Is Charlie here?
18 Thank you. And also Susan Silva can come on after
19 Charlie if you're still here.

20 MR. CAMERON: Yes. Charlie Cameron, I'm
21 a Hayward resident.

22 HEARING OFFICER GEFTER: Yes.

23 MR. CAMERON: First of all, for the
24 members of the public to include Supervisor Alice
25 Lai-Bitker, that has left the room, I really wish

1 Commissioner Byron would have made the mantra
2 information that he did put out for the ten
3 o'clock setting that Commissioner Geesman is not
4 here. Commissioner Geesman has retired as of --
5 his term has expired as of January the 6th or 9th.

6 I read in the paper, Saturday's paper,
7 the Daily Review, that Arnold Schwartzberger (sic)
8 has 30 days to appoint a new Commissioner. All
9 well and be. But to include also, I can only
10 gather from what I read in the newspaper, that
11 Commissioner Geesman can possibly stay on the
12 Commission. Do feel free, Commissioner Byron, to
13 correct me if I am wrong on that statement.

14 PRESIDING COMMISSIONER BYRON: Well I
15 don't know that --

16 MR. CAMERON: And true, why wasn't the
17 mantra that you made at ten o'clock not presented
18 for the six o'clock public audience?

19 PRESIDING COMMISSIONER BYRON: I'm
20 sorry, I don't know what my mantra was at ten
21 o'clock. But let me answer your question.

22 MR. CAMERON: Well the mantra was,
23 Commissioner, that you announced that Commissioner
24 Geesman isn't here and that Commissioner Geesman
25 this and this and this. And that's what you

1 didn't do for the six o'clock setting. And no one
2 at the six o'clock setting knows what you said at
3 the ten o'clock setting.

4 PRESIDING COMMISSIONER BYRON:
5 Mr. Cameron, let me try and answer your question.
6 At ten o'clock this morning I did not discuss
7 Commissioner Geesman. That was last month I did
8 explain why he was not there.

9 MR. CAMERON: I beg to differ with you.

10 PRESIDING COMMISSIONER BYRON: But with
11 regard to the appointment, we serve at the
12 pleasure of the Governor. He appoints us for five
13 year terms. Commissioner Geesman's term ended, as
14 you pointed out, January 6. The Governor has 30
15 days to appoint a new Commissioner. If he does
16 not do so then the Legislature will take that
17 opportunity to appoint a new Commissioner.

18 I can't speak for the Governor. I have
19 heard however Commissioner Geesman say that he is
20 not interested in reappointment. So --

21 MR. CAMERON: Oh, thank you for sharing
22 that in the audience. I didn't know that.

23 PRESIDING COMMISSIONER BYRON: Well a
24 lot of people don't know that. But be that as it
25 may it's up to --

1 MR. CAMERON: That does affect how the
2 outcome may come about.

3 PRESIDING COMMISSIONER BYRON:
4 Mr. Cameron, be that as it may it is up to the
5 Governor to appoint, not Commissioner Geesman.

6 MR. CAMERON: Thank you for sharing
7 that. And of course first of all I'd like to just
8 bring up the subject matter that former City
9 Manager Jesus Armas, when he as approached in
10 April or May of 2006. Surely an off the cuff
11 remark should have been told to or they should
12 have surmised, the Eastshore people or staff from
13 the City or I'm sure possibly also the City
14 Manager said the location, the location is wrong.
15 I don't know how the Eastshore people and the
16 Tierra Energy could keep battling and butting
17 heads against this.

18 True maybe after a major earthquake we
19 have new alignment of railroads and highways and
20 street alignments to include a new power plant
21 somewhere's in the greater industrial area. That
22 might be an alternative. But that is my only
23 constructive comment and criticism. You're
24 putting it in the wrong place at the wrong
25 location.

1 And just about the things that are
2 wrong. In your map on how to get to this location
3 here you do mention the Hayward Amtrak train
4 station. I wrote twice now to your project
5 manager, Mr. Bill Planner (sic), he has the wrong
6 AC Transit bus route there. You might think it's
7 a funny thing by not putting the correct thing
8 there and let it go at that. But it's not a funny
9 thing, it's a competence issue.

10 HEARING OFFICER GEFTER: Okay.

11 MR. CAMERON: And I really wish I
12 wouldn't have been treated so slightly.

13 HEARING OFFICER GEFTER: Mr. Cameron,
14 yes, and you have one minute left. But that map
15 actually comes from the City of Hayward. That's a
16 City of Hayward map they gave to us.

17 MR. CAMERON: Thank you for sharing
18 that. I didn't know that at the time.

19 HEARING OFFICER GEFTER: Okay. You have
20 one minute left.

21 MR. CAMERON: Thank you for your time.

22 HEARING OFFICER GEFTER: Thank you.

23 MR. CAMERON: I'll write in more
24 comments.

25 HEARING OFFICER GEFTER: Thank you.

1 Susan Silva. And after Susan, Rob Simpson. And
2 after Rob, Jesus would like to address us again.

3 PRESIDING COMMISSIONER BYRON:

4 Ms. Silva, before you begin. A number of the
5 public seem to be under the impression that a
6 decision has been made with regard to this
7 Commissioner and my fellow Commissioners. And I
8 just want to make sure everybody understands this
9 process. We will -- I will provide my fellow
10 Commissioners a Proposed Member's Decision for
11 their consideration and evaluation based upon all
12 the evidence that we have collected. No decision
13 has been made at this time.

14 So please. I am sorry to hold you up,
15 go right ahead.

16 MS. SILVA: My name is Susan Silva. I
17 am a resident of Castro Valley, very close to
18 Hayward. My home is the most valuable asset that
19 my mother and I own. And it is going to lose its
20 value if this, if this plant is built.

21 Not to mention the health of at least
22 14,000 students at Chabot College, students at
23 elementary and middle schools.

24 I learned from a fact sheet by
25 California's EPA office that particulate matter

1 and ozone that will be coming from the East Bay
2 Energy Tower would be specifically harmful to
3 infants and children because for one thing they
4 breathe more rapidly than adults, they sometimes
5 breathe through their mouths, they spend more time
6 outdoors than adults, especially in the summer
7 months when the smog levels are high.

8 And their immune systems and developing
9 organs are still immature. Exposure to toxic air
10 contaminants during infancy and childhood can
11 affect the developing respiratory, nervous,
12 endocrine and immune systems and it can increase
13 the risk of cancer later in life. Children that
14 have been, have grown up in smoggier areas have a
15 notable lag in lung function growth and repeated
16 ozone exposures may lead to chronically reduced
17 lung function.

18 I'm just, I'm worried about my home
19 because it's my one valuable asset. It's just --
20 Not only that, it will just make the city smoggy.
21 People will not want to stop in Hayward to do
22 business. It will run the city down. And it just
23 -- I think some other form of energy should be
24 used. So please reconsider putting it --
25 Especially near the shoreline. Don't build any

1 energy towers near our shoreline. Thank you.

2 HEARING OFFICER GEFTER: Thank you for
3 coming tonight. Rob Simpson. And then after Rob,
4 Jesus Armas.

5 MR. SIMPSON: I'm Rob Simpson. This is
6 a map from your staff assessment. It shows a 69
7 point --

8 HEARING OFFICER GEFTER: Could you tell
9 us where in the staff assessment you got that map.

10 MR. SIMPSON: Sure.

11 HEARING OFFICER GEFTER: What is the
12 name of the map?

13 MR. SIMPSON: Socioeconomics Figure 1.

14 HEARING OFFICER GEFTER: Okay, thank
15 you.

16 MR. SIMPSON: It shows a 69.97 minority
17 population. I haven't seen any outreach to the
18 primarily non-English, speaking contingency in
19 this neighborhood. The way you measure these
20 things from the center of a site, under that
21 rationale if you had a two mile wide site you
22 wouldn't need to notice anybody.

23 On the southern tip of this you see Eden
24 Landing Ecological Preserve. Page 4.2-8 of the
25 staff assessment shows Eden Landing Ecological

1 Preserve being three miles south of the project
2 but your map shows it within a mile. I don't
3 think that this project should be built without a
4 formal opinion from Fish and Wildlife. I think
5 consistency with the Coastal Zone Management Act
6 is required and that the project doesn't meet the
7 Clean Air Act.

8 This project represents an increase in
9 40 percent of the overall city's greenhouse gas
10 emissions. That's based on an ICLEI study that we
11 had done. The City of Hayward is now planning
12 their own climate protection plan, which this will
13 throw us out of whack by 40 percent. The
14 emissions from this plant compared to other
15 similar plants. I think I've got a focus here,
16 don't I? Maybe for eyes at least.

17 HEARING OFFICER GEFTER: And what are
18 you showing us now?

19 MR. SIMPSON: I'm showing from Bay Area
20 Air Quality Management District's emissions from
21 this 115 watt, megawatt facility.

22 HEARING OFFICER GEFTER: Is this the
23 Final Determination of Compliance from the Air
24 District? Is that what you're showing us?

25 MR. SIMPSON: This is their notice

1 inviting written public comment. With 115
2 megawatts they have 64 tons of particulate matter.
3 This is from Los Esteros Critical Energy Center,
4 who's upgrading to 320 megawatts.

5 The Los Esteros plant, particulate
6 matter for our's is 64.39 tons for 115 megawatts,
7 their's is 53.3 tons for 320 megawatts. We have
8 percussor organic compounds, 76.1 tons for our 115
9 megawatts. They have 28.3 tons for the 320
10 megawatts. This facility is way out of whack from
11 anything else at any of the existing facilities
12 and I can't see how it would be best available
13 control technology.

14 Carbon dioxide emissions haven't been
15 measured. From what I can figure this represents
16 the emissions from about 60,000 cars, which we
17 can't handle in Hayward. Thank you.

18 HEARING OFFICER GEFTER: Thank you.
19 Mr. Armas.

20 MR. ARMAS: Thank you for the
21 opportunity to address you and again, welcome to
22 Hayward. I appreciate you affording us an
23 opportunity to address you here in town. I want
24 to speak to an item that you will be dealing with
25 later but I think it's important and that concerns

1 the matter of override.

2 You have heard considerable testimony
3 from residents, from experts from a variety of
4 perspectives that you will have to weigh and
5 determine whether on balance the project should be
6 approved. But what we do know is that there are
7 some areas where there are inconsistencies with
8 the accepted and adopted local regulations to the
9 extent where you may need to entertain overriding
10 those. I believe that you cannot make the
11 findings to support that.

12 In reading the Public Resource Code it
13 says that the Commission may not certify a
14 facility that does not conform with applicable
15 state, local or regional standards, ordinances or
16 laws unless the Commission determines that the
17 facility is required for public convenience and
18 necessity and that there are not more prudent and
19 feasible means of achieving public convenience and
20 necessity. It goes on to say the Commission shall
21 consider the entire record, including but not
22 limited to the impacts of the facility on the
23 environment, consumer benefits and electric system
24 reliability.

25 In addition, of course, the public --

1 that's from the Public Resource Code. In addition
2 the Commission's own regulations ask that due
3 deference be given to local regulations where the
4 jurisdiction would otherwise be the deciding body
5 but for the State taking jurisdiction as it
6 relates to the plants.

7 And so in this case I believe it's
8 important to give consideration, careful
9 consideration to the fact that the City of Hayward
10 has determined that this application is not
11 consistent with the general plan nor the zoning.
12 That the city has determined it is not consistent
13 and supports CEC staff that it is not consistent
14 with the local regulations as it relates to
15 aviation matters.

16 And depending on whether or not the
17 applicant continues to seek modification on one of
18 your noise regulations, potentially may be
19 inconsistent on the City's noise standards as
20 well. And of course you heard earlier today that
21 there are also potentially some conflicts with
22 Airport Land Use Commission regulations.

23 So having a little bit of time on my
24 hands I had an opportunity over the last few weeks
25 to also take a look at the deliberations as it

1 relates to Metcalf and Los Esteros because I think
2 those are helpful to inform one about what might
3 be worth considering. And I think it can be
4 summarized that in both of those cases the CEC
5 effectively concluded that the benefits
6 significantly outweighed the impacts as it related
7 to environmental issues, consumer benefits and
8 system reliability.

9 Well, again, I believe that you cannot
10 make those findings on the environmental front.
11 You have heard considerable discussion on air
12 quality and aviation.

13 On the consumer benefits front, Metcalf
14 argued that there would be potential savings in
15 the order of \$1 billion a year. We're talking
16 about fractions of that here. It also argued that
17 with the high growth of technology in San Jose,
18 and the absence of San Jose in any way meeting
19 that need, that there was a compelling case to
20 override the City's objection. The same cannot be
21 determined here.

22 In looking at the total population the
23 system effects takes a look at a reason why that
24 should be considered here and it talks about 3600
25 units, 3600 homes receiving some kind of benefit

1 as a result of the reduction in the loss of power
2 through the transmission. Well when we look at
3 the communities referenced, Fremont, Hayward, San
4 Leandro, that's 147,000 units. So again
5 proportionality, it's a relatively insignificant
6 amount of benefit being derived.

7 I believe that on balance we cannot make
8 a determination that the impacts are superseded by
9 the benefits.

10 And then lastly let me quote from the
11 Executive Summary of the 2007 Integrated Energy
12 Policy Report at page eight. Which I think is
13 very persuasive. There is a paragraph here. Let
14 me read it and then that will conclude my remarks.

15 "Of the nearly 24,000
16 megawatts of new capacity licensed
17 since 1998, 36 plants, 12,910
18 megawatts have been built and are
19 in operation. An additional 2,278
20 megawatts are currently under
21 construction, and 18 additional
22 plants, totalling 8,361 megawatts
23 have been approved, but
24 construction has not moved
25 forward."

1 Of these megawatts, most again are fueled by
2 natural gas as is the case here. And so it seems
3 to me that until we have a better handle on
4 whether in fact those 8,400 megawatts are going to
5 be constructed and generated the case cannot be
6 made for override.

7 I should note from personal knowledge
8 that part of those 18 additional plants that have
9 not been constructed represent about 2,200
10 megawatts in the east end of Alameda County
11 involving the Tesla plant and the East Altamont
12 plant. Both of which, of course, would have, if
13 constructed, significant benefit to the Bay Area.
14 So until we see some activity there it seems to me
15 that the overriding findings cannot be made.

16 PRESIDING COMMISSIONER BYRON:

17 Mr. Armas, excellent comments. You are better
18 unrestrained as a public commentor, I can tell
19 you. The only other thing that I would -- And I
20 think you have done an excellent job of
21 summarizing what's involved with regard to this
22 Commission making an override determination. I
23 think your summaries are very good.

24 The only other thing that I would add is
25 that there's a great deal of burden on the

1 applicant's part to demonstrate the compelling
2 reasons for an override as well. And we'll be
3 getting into that after the public comment period
4 is over.

5 MR. ARMAS: Well you know, I left my
6 glasses at the desk so my note was too small here
7 for me to read on burden of proof. Because you're
8 absolutely right, the burden of proof rests with
9 the applicant. It doesn't rest with the City, it
10 doesn't rest with the community objecting. The
11 applicant needs to demonstrate that it should be
12 approved.

13 PRESIDING COMMISSIONER BYRON: Well
14 done, thank you, sir.

15 HEARING OFFICER GEFTER: Thank you for
16 staying with us all day too, appreciate that. We
17 have a couple more comments, Dave Head and also
18 Mr. McCarthy. So if Dave Head and Mr. McCarthy
19 would line up here, thank you.

20 MR. HEAD: I have an air conditioner on
21 my house. I can count the number of times I used
22 it last year on one hand.

23 My name is David Head, H-E-A-D.

24 That's going to change. At no time
25 during these hearings have I heard anybody address

1 the increase in the usage of electricity because
2 residents of Hayward like me will close their
3 windows and turn on their air conditioners that
4 otherwise would not have.

5 HEARING OFFICER GEFTER: Thank you.

6 Mr. McCarthy.

7 MR. McCARTHY: There were two points
8 that you covered in the second day of the last
9 hearing that I needed to address as well as two
10 for this. My name is John McCarthy, I live at 732
11 B Street. I have some professional background for
12 urban planning from the East Coast as well as
13 certification for emergency planning and hazardous
14 materials from the State of California.

15 Disturbing to me as well as other people
16 here is the, is the sidetracking of the burden of
17 proof issue on need and alternatives, alternatives
18 per location or form of power and the actual need
19 issue. Now it is my understanding that if the
20 applicant has declined to make the case where PG&E
21 declined to provide information that there would
22 be a burden of proof on the Commission if they
23 were to make an override to show what the need is
24 or what the alternatives are.

25 The other issue other than my original

1 concern, which was with hazardous materials, is
2 aviation and regarding traffic and transportation
3 and land use issues. I'll first cover traffic and
4 transportation. My aviation experience is mostly
5 military regarding four different locations.
6 Aviation of 2nd ACR in Germany, the 129th Group at
7 Moffett Field, 1st of the 140th Aviation at
8 Sacramento and Stockton, and most of this all
9 involves rotor craft.

10 Now the testimony that was provided
11 addressing rotor craft, as I understand it, was
12 from a pilot whose main experience was with fixed
13 wing, not rotor craft. Fixed wing aviation. That
14 was what the C-130 is all about. The C-130 is a
15 fixed wing transport. There is a difference.

16 I have a graphic to show what I think
17 are factual differences in the technology between
18 fixed wing and rotor craft which relates to how
19 there is an important difference in the way the
20 two things perform, between rotor craft aircraft
21 and fixed wing.

22 If you can make out this diagram you
23 will notice the center hub on the rotor plane --
24 the rotor plane is all four rotor blades which
25 form a plane. On that plane is included both the

1 source of lift and the direction of flight, all in
2 the same plane. So that if you have a source of
3 lift going vertically and you have a direction of
4 flight going vertically that's all in the same
5 direction.

6 That's not the way it works with fixed
7 wing. With fixed wing you have a forward thrust
8 which is -- that's a horizontal or 90 degrees
9 difference from the vertical. Combined with the
10 lift source, which is vertical, which gives you a
11 very different situation.

12 For example, if you want to change
13 direction, your direction of flight, you -- your
14 change with a fixed wing aircraft involves a
15 combination of the forward thrust and the lift
16 together so that your bank gets you into a curve
17 changing your direction of flight.

18 Well with a rotor craft since your lift
19 and your direction of flight are all on the same
20 direction, the same plane, you don't have that
21 curve. For example, if you're flying over a plume
22 and there's a gust on one side your response in a
23 rotor craft from that gust is basically all at
24 once. The rotor tilts up from one side so that
25 your lift and your direction of flight are all

1 simultaneously tilted to the other direction,
2 whichever way it is.

3 The other thing is that when you are
4 piloting the aircraft there is a delay with a
5 rotor craft. The cable controls go through to a
6 rotating hub. It takes a full cycle before that
7 rotor craft responds. That's not the way it is
8 with fixed wing aircraft.

9 HEARING OFFICER GEFTER: I think we
10 understand, yes, thank you very much.

11 MR. McCARTHY: Okay. This is all --
12 This is for the --

13 HEARING OFFICER GEFTER: Your five
14 minutes are up. We'll give you a couple of more
15 minutes so if you could summarize for us, please.

16 MR. McCARTHY: Okay. Well I will say
17 this. This explanation is for the edification of
18 Mr. Geesman and the applicants wherein Mr. Geesman
19 seemed only to be interested in a reply from the
20 applicants on that issue. So those are two
21 factual differences regarding rotor craft that
22 were overlooked the last time around.

23 On the final issue regarding aviation.
24 I just have a question. This is a recent plan
25 that's put out for the Hayward Air Terminal and it

1 shows the significant area of the southwest or
2 southern approach. It's southern and western.

3 Now when you combine what's going to
4 happen between Russell City and Eastshore per the
5 southern or southwest approach and the approach to
6 the main runway and consider the overall impact of
7 that on the future of the airport. I want, I want
8 a direct answer in print from staff and the
9 Commission. How soon do you expect the
10 termination of the Hayward Airport as a result of
11 that?

12 HEARING OFFICER GEFTER: Thank you.
13 That question has been raised by other people as
14 well. Thank you very much.

15 And then we have Mr. Edward Bogue and
16 Andrew Wilson, I believe. Could the two of you
17 line up. I think that would be it. If there are
18 any more public commentators besides Mr. Bogue and
19 Mr. Wilson if you could please give your blue
20 cards to Mr. Pfanner who is standing outside at
21 this point.

22 MR. BOGUE: Good evening, I am Edward
23 Bogue, a Hayward resident.

24 HEARING OFFICER GEFTER: Spell your name
25 for the reporter, please.

1 MR. BOGUE: B-O-G-U-E.

2 HEARING OFFICER GEFTER: Thank you.

3 MR. BOGUE: I was a member of the
4 Planning Commission when we had Russell City come
5 before us. And I could make findings that Russell
6 City was in an appropriate location and I could
7 not make those same findings on Eastshore. I
8 would not be able to do that today. The location,
9 of course, is different. It has a greater impact
10 to the airport, a greater impact on the residents
11 and other uses in the industrial district.

12 Our discussions on Russell City talked
13 about the precise location. It wasn't just the
14 entire district that something like that would be
15 appropriate it, the district is a large district.
16 It matters on what uses are adjacent to it and
17 nearby and how it inter-relates with the rest of
18 the city. Those are why I could never find that
19 Eastshore is an appropriate location and an
20 appropriate use.

21 Part of your charge is also to ensure
22 that we are not overburdened. No community should
23 be overburdened with the environmental impacts of
24 power plants like this. And when you have two or
25 more, who knows, and people around you like the

1 Chamber of Commerce in San Leandro thinks it's
2 appropriate to dump them here, that's what we are
3 looking at. That's the level we're at now. And I
4 believe it is the charge of the Commission to
5 ensure that this town is not dumped upon and we
6 don't take on all that burden.

7 And that's -- I'd like to just point
8 that out to you and make that very clear. I can't
9 make it any clearer than that. And I think that
10 is the entire issue before you on this plant.
11 Thank you.

12 HEARING OFFICER GEFTER: Thank you very
13 much. Many of your elected officials have
14 mentioned that same issue. Mr. Wilson. And after
15 Mr. Wilson, Trish Welsh Taylor and then next would
16 be Suzanne Barba. Mr. Wilson.

17 MR. WILSON: Thank you, Madame Hearing
18 Officer, Commissioner, staff. I assume that you
19 remember all the comments that I have made over
20 the previous year so I'll just keep it at a couple
21 of minutes.

22 I would like to talk about the NOTAMs or
23 NOTAMs. I was trying to keep up with the
24 conversations and how both power plants were
25 progressing and the NOTAMs. So what I did was I

1 put a drawing together. So if You notice there is
2 a 28-left with two NOTAMs. We know the height of
3 the NOTAM but we don't know the width of the
4 NOTAM. It's --

5 HEARING OFFICER GEFTER: Could you tell
6 people in the audience what NOTAM means, what the
7 acronym stands for.

8 MR. WILSON: Sure, it's N-O-T-A-M, it
9 stands for Notice to Airmen. I'm a pilot, I'm
10 instrument-rated and I'm a resident of Hayward.

11 HEARING OFFICER GEFTER: Thank you.

12 MR. WILSON: This is one of those funny
13 drawings. You know, there's two ways to take off
14 and land at an airport, there's 28-left and
15 there's 10-right. So if you turn it upside down
16 you more or less get the same picture. So
17 regardless if you're taking off from 10-right or
18 28-left we still have the problem of two NOTAMs.
19 Which we know by lighting where the Russell power
20 plant will be, there is no option for a NOTAM
21 because it is so close to the runway. That has
22 already been discussed.

23 But if there were two NOTAMs then what
24 the pilot has to do is be concerned he can't fly
25 1,000 feet lower or can't fly under 1,000 feet

1 over the power plants. But we don't know what the
2 definition is of the left and the right to the
3 power plant. So it's up to the power company --
4 excuse me, the pilot to determine on his own
5 unless the FAA determines that in some of the
6 charts.

7 So I just wanted to point out that the
8 Eastshore power plant, the NOTAM could actually
9 extend into the landing pattern of the runway. On
10 Russell if the landing pattern is extended due to
11 the amount of traffic then actually Russell, the
12 NOTAM for Russell extends into the landing
13 pattern.

14 So as this hearing progresses and the
15 discussion between Russell and Eastshore I was
16 trying to keep up with the dimensions to and from
17 the runway. And in addition to that there's been
18 a new posting on the Eastshore website for the CEC
19 that the Hearing Officer has now requested actual
20 dimensions from the airport to the power plants,
21 the power plants to Chabot, et cetera, et cetera.

22 So I am just pointing out it could be
23 very, very confusing in the future for pilots.
24 Thank you.

25 HEARING OFFICER GEFTER: Thank you. You

1 know, that diagram that you have just shown us.
2 Could you hand that to the reporter and she could
3 incorporate it into the transcript.

4 MR. WILSON: Sure.

5 HEARING OFFICER GEFTER: Thank you.
6 Okay, Trish. Trish Welch Taylor. And then after
7 Trish, Suzanne Barba. And I think you have
8 visited us before haven't you?

9 MS. TAYLOR: Yes, I have new things
10 today for you.

11 HEARING OFFICER GEFTER: So if you have
12 some new information you'd like to share --

13 MS. TAYLOR: I will, thank you.

14 HEARING OFFICER GEFTER: Thank you.

15 MS. TAYLOR: First I want to acknowledge
16 that the California Energy Commission has --
17 actually given their website, they have, you have
18 tremendously high goals and green intentions. And
19 I don't know that anybody in the audience knows
20 what the Energy Commission in California really
21 would like to be able to pull off.

22 I want to support all the comments of my
23 fellow compatriots but one of the things I want to
24 let them know about and acknowledge here in the
25 room is that there is the Western Climate

1 Initiative, which includes Arizona and Utah and
2 California, Oregon and Washington and then several
3 provinces in Canada to work together and then
4 there are all these observers.

5 Anyway, the California Energy Commission
6 is about the right thing. And I know that your
7 hands are held by utility companies who have to
8 satisfy the population who want flowing energy as
9 well as cheap energy and your hands are held by
10 the energy companies' stockholders. I mean,
11 there's a lot involved.

12 And so I would like to offer an
13 alternative plan to the peaker plant there. I
14 would like to propose that you put in instead --
15 and I know that you need an applicant to propose
16 this. However I nevertheless propose that
17 somebody apply for a solar, wind or even an
18 experimental algae or bio-bacteria production of
19 energy. I think that it's a perfectly fine site.
20 I'm not sure that the turbines would work with the
21 airport but that could be considered in another
22 location.

23 And I'm not really making a joke here
24 when I say I offer an alternative plan. My first
25 time speaking to you had to do with a moratorium

1 and so on. So I think that there are alternatives
2 and I think that you want to do them. I think
3 that actually the Commission would like to be able
4 to do them.

5 Along with that I'd like to suggest that
6 along with this newer form of production of energy
7 along with then conservation and working with
8 Hayward. And I know this is outside of your
9 prerogative but it's still -- If you worked with
10 the City and said, okay, let's work with
11 conservation, materials and, you know, smart
12 buildings. The new energy production that's
13 renewable.

14 When you combine that with incentives
15 for really local energy production in homes, solar
16 panels and all the different types, that you
17 actually could make a model of Hayward. Use
18 Hayward instead as a model city. Because I think
19 we're probably willing and if not Hayward
20 somewhere else. I use Hayward as an example.
21 There are other places and there are other energy
22 plants that need to not go up unless they're
23 renewable.

24 Now as far as all these wind turbines,
25 which is what Wall Street is looking at. Wall

1 Street is most interested in turbines. Can we do
2 that? Well in 1941 we had Pearl Harbor and two
3 months later or less we had a sudden shift by
4 presidential prerogative to shift into this
5 production of airplanes, ships, tanks and big
6 guns. I think 40,000 guns and -- I could give you
7 the statistics here. Just huge amounts in
8 production.

9 So what I'm saying is that we can
10 produce enough wind turbines in the next 12 or so
11 years, which is one man's recommendation. That in
12 12 years -- This is Lester Brown who I'm referring
13 to. He was on public radio just on Friday. Maybe
14 you heard. This is all information that's in the
15 public. We could, as California's economy is
16 almost as big as the US's was at that time, we
17 could do it. We could do it.

18 HEARING OFFICER GEFTER: One more
19 minute, please.

20 MS. TAYLOR: Now that we seem to be in a
21 period when the fed and the state legislatures are
22 slow it's really become apparent that things are
23 happening locally, as you have already shown with
24 the Western Climate Initiative. And it can happen
25 also as local US cities -- Hayward has decided to

1 be non-nuclear. There's lots of cities, to give
2 an example. The Kyoto Protocols as well. City by
3 city those protocols are being established. Local
4 is the way things have to happen.

5 My friend who just died, one thing she
6 admonished me and once said, a soul is developed
7 one moral decision at a time. I think that this
8 is a decision that will be made.

9 There are -- What's happening around the
10 states, Florida has halted, they've halted fossil
11 fuel plants being produced. Texas has put in so
12 many wind turbines, or maybe it's still in the
13 planning stage, but that will be the equivalent of
14 23 coal plants. Kansas has plans or is already
15 putting up solar, solar panels that are
16 extraordinary. I don't know if it's them or
17 Florida that the proposal is more than anywhere
18 else.

19 You have Algiers, another country, who
20 know that the oil is going to run out and so they
21 are already putting in their solar panels. This
22 is Algiers, another country, obviously. But they
23 are putting in huge solar panels and they are
24 going to cable it to Europe. People are doing
25 things and you can too.

1 I will finish. I just want to suggest
2 also that part of this plan would be the hybrid
3 plug-in cars. I am just repeating NPR from
4 Science Friday. The plug-in cars will be able to
5 be used as a place once the wind turbines are up.

6 The USA when the eastern states went
7 black a couple of years ago between '01 and now at
8 some point it was decided that the United States
9 needs a whole grid. It's already decided it's
10 just nobody is moving, like I said, in the
11 legislatures. So that's why you've got the
12 Western Climate Initiative, I understand that.
13 You're already doing it anyway.

14 Once you've got the turbines producing
15 then you can put that straight into plug-in cars.
16 They hold the energy. That energy can be even put
17 right back into the homes if you have a dark day.

18 HEARING OFFICER GEFTER: Ms. Taylor, you
19 have great enthusiasm and great energy and we --

20 MS. TAYLOR: And I want to offer hope.

21 HEARING OFFICER GEFTER: We appreciate
22 it.

23 MS. TAYLOR: Okay, all right.

24 HEARING OFFICER GEFTER: Because every
25 time you come you have great ideas. But let's

1 wind up because there are other people lined up
2 behind you.

3 MS. TAYLOR: I thought Suzanne was last
4 but I'm happy that she's not.

5 So in conclusion, oil is costly, so
6 costly now that essentially we're paying a tax on
7 it but not exactly. The money doesn't go to
8 California or the United States, it goes to Saudi
9 Arabia. You read that in the newspaper the other
10 day, this is public knowledge.

11 Fossil fuel burning acidifies the
12 oceans. This is something I haven't heard
13 anywhere. This is my idea. It's a commodity that
14 is precious, it's going to run out. We should be
15 banking what we have. Using the alternative
16 methods, holding on to the fossil fuels that we
17 have on our land and preserving it for the rainy
18 day. Thank you.

19 HEARING OFFICER GEFTER: Thank you very
20 much. Ms. Barba.

21 And you know, Ms. Taylor, thank you for
22 coming out. I know you've come to almost every
23 hearing and you always have new ideas for us,
24 thank you. Ms. Barba.

25 MS. BARBA: Hi. I've spoken before,

1 Suzanne Barba, B-A-R-B-A.

2 I wanted to talk just about two or three
3 little points. Number one, I was the one that
4 brought up the earthquake that nobody seems to
5 talk about. And we've had some articles in the
6 paper about it's not if it's when it's going to
7 happen.

8 And I did notice when I read the FSA
9 that Hayward had some kind of regulation that said
10 any kind of above-ground tank that holds hazardous
11 materials should be not more than 600 gallons.
12 Well then I read a little further and apparently
13 Eastshore is going to put in two 10,000 gallon
14 tanks, which will hold the ammonia which will be
15 above ground.

16 And I thought that doesn't seem right.
17 And so I asked the question and then I was told,
18 well, Russell City had been given a pass on that
19 particular thing so it was felt like they couldn't
20 deny them this thing. So it's like two wrongs
21 make a right? I don't think so. And if it's
22 above ground and it's hazardous materials and
23 we're in earthquake country it just seems kind of
24 foolish that that wouldn't be something that was
25 taken care of.

1 The other thing I wondered about was all
2 over California there are quite a few plants that
3 have already run their string out and they're
4 being decommissioned. And we all know that we
5 were manipulated back in 2001 and there really
6 wasn't an energy shortage.

7 And my point being that in the summer,
8 this past summer we had four or five spare the air
9 days, which means the air was polluted. They
10 didn't tell us not to plug in any electricity, it
11 was don't drive and don't cause any more
12 pollution. It wasn't that we were having a brown-
13 out or an energy shortage and that was during the
14 summer. And no wood stoves and no fireplaces were
15 going during the summer and yet we still had spare
16 the air days.

17 Which leads me to an article that was in
18 the paper today that talked about the Air
19 Resources Board going after the Oakland Port to
20 reduce their diesel fuel and other energy fuels to
21 reduce the pollution because it's so bad over
22 there. And we already heard from the health
23 people here about how Oakland is so impacted with
24 cases of asthma and upper respiratory and heart.

25 We don't want to replicate that in

1 Hayward. We already are not in compliance with
2 the air pollution kind of thing. So without the
3 mitigations and with this added thing from the
4 energy plant, we're just really going to be adding
5 to it.

6 But to get back to the plants that are
7 being decommissioned. So my question was, because
8 I'm a person who has a curious mind, well how come
9 they don't just take those away and put something
10 else that is more efficient and less polluting in
11 its place? Because it's already gone through all
12 the zoning, it's already gone -- everybody already
13 screamed about it but it's there.

14 And the answer to my question was, well
15 these cities, these areas that have them want to
16 get rid of them. So here we're going to put
17 something in that other people don't want in their
18 communities anymore and we're supposed to have
19 open arms and welcome two, not one but two in our
20 community. That doesn't seem logical either.

21 If the plant has already been running
22 and now it's run its 30 years. Apparently from
23 what I read in the FSA this thing is 30 years as
24 well and then at the end of that 30 year period
25 we'll be looking at it to see what we want to do

1 with it. And perhaps they want to give us back
2 the land that they have polluted so we could clean
3 it up to do something else with.

4 So anyway, those are the three points I
5 wanted to make. Thank you.

6 HEARING OFFICER GEFTER: One more blue
7 card, Fernando Hernandez. Then we're going to
8 wind down.

9 MR. HERNANDEZ: Hi, my name is Fernando
10 Hernandez. I live at 22723 Woodridge Drive in
11 Hayward. First of all I want to say that I am
12 opposed to this plant going in. I want to
13 congratulate all of my fellow citizens because
14 even though I am a new face to this debate today I
15 have been lurking electronically on the other end
16 of the camera and I have done the best to educate
17 myself. I have listened to countless hours of
18 broadcasts through Channel 15 and Channel 26.

19 Basically I could not understand how I
20 haven't seen any arguments presented why you would
21 go against your staff's recommendation, first of
22 all. That's hard to understand. We are paying
23 these people I imagine a living wage to be in the
24 Bay Area because of their expertise. And for you
25 to go against their recommendation -- I haven't

1 seen anything in all of the broadcasts presented
2 that would make me, dissuade me --

3 I should say when I first came to this,
4 became aware of this issue I was borderline. I
5 was one of those people that I didn't want to be,
6 not in my backyard. I was willing to listen. And
7 I have been listening and I haven't seen anything
8 that really dissuades me that we shouldn't oppose
9 this plant.

10 I have a house that has both a gas
11 furnace and a fireplace with an insert, an
12 efficient insert, and we run it judiciously. The
13 remediation that is being proposed for this
14 project doesn't seem to go far enough, you know.
15 I have spoken with my wife about it and I would be
16 willing to give up the fireplace if there was real
17 remediation that was green.

18 For me to allow PG&E to stick their
19 other hand into my pocket. For me to give up,
20 depreciate my home because now I do not have a
21 fireplace, a working fireplace, I have a five ton
22 decoration in the middle of my living room, that
23 is not going to go away with \$300 worth of
24 remediation. It makes no sense. I am not going
25 to give up my fireplace for somebody that runs

1 their fireplace even for decoration. You know, I
2 am not convinced.

3 I am opposed to this, this plant. If I
4 was offered -- and I believe there are three or
5 four cities in the Bay Area that are offering
6 solar installation. The city will actually pay
7 for it and the customer, the recipient of the
8 grant pays for the installation of the solar
9 panels over 20 years with their property taxes.
10 My wife might actually go along and say, hey,
11 let's get rid of the fireplace. We'll give up the
12 ambience for Christmas and take that step.

13 The way that things are now I just, you
14 know, I don't really see this as a step forward,
15 as much as I have tried to look at all points of
16 view coming through the media. So that's my two
17 cents, thank you.

18 And I can truly appreciate, you know. I
19 really appreciate your serving on this committee
20 because I cannot even try to understand how
21 difficult this must be for you to try to make this
22 kind of decision. So thank you.

23 HEARING OFFICER GEFTER: Thank you,
24 thank you very much.

25 PRESIDING COMMISSIONER BYRON: Yes,

1 thank you for coming and being part of the process
2 this evening.

3 HEARING OFFICER GEFTER: That was real
4 interesting to hear from somebody who has been
5 watching us on TV rather than coming to all the
6 meetings. Okay, I think we're going to wind down
7 now with public comment, I don't have any other
8 blue cards.

9 So we have to finish our evidentiary
10 hearing. Everyone is welcome to stay. We'll go
11 off the record.

12 (Whereupon a brief discussion
13 was held off the record.)

14 HEARING OFFICER GEFTER: Ms. Hargleroad
15 on behalf of group petitioners has offered
16 Mr. Toth's public comment as testimony under
17 penalty of perjury and has made him available for
18 cross examination if any party wishes to do that.

19 I indicated to Ms. Hargleroad that Mr.
20 Toth's comments are public comments and they were
21 very interesting and helpful to the record but he
22 did not present testimony during the public health
23 section of our hearing and his comments will
24 remain as public comment.

25 MS. HARGLEROAD: If I could just make it

1 clear for the record that even though you are
2 receiving them solely under public comment that we
3 again offer them under penalty of perjury. He is
4 available for cross examination if any party so
5 chooses or wishes to provide an interrogatory or
6 some limited questions.

7 HEARING OFFICER GEFTER: Thank you,
8 Ms. Hargleroad.

9 MS. HARGLEROAD: Should I also provide
10 Stephen Schneider's e-mail at this point in time?

11 HEARING OFFICER GEFTER: If you have
12 another public comment you can give it to the
13 reporter and we'll collect it later. It will be
14 docketed.

15 MS. HARGLEROAD: Well I just want to
16 make it clear. This is an e-mail from Stephen
17 Schneider whose biography I have also attached.
18 He is one of the recipients of the Nobel Prize.
19 He is a professor at Stanford on climatology. And
20 he has copied Dan Kammen who was recently
21 interviewed in the E-Squared PBS program and he
22 was unavailable. I had asked Professor Schneider
23 to appear here to testify as a substitute
24 potentially for Professor Lewis. And his comments
25 I think are pretty important in the sense of he

1 clearly says that:

2 "-- gas-fired power plants do
3 generate the greenhouse gas CO2
4 (though only half that of banned-
5 in-California coal-fired power) a
6 greenhouse gas that the State of
7 California is legally committed to
8 reduce by 80 percent relative to
9 1990 levels by 2050, and
10 construction of any more CO2-
11 emitting ventures is a step in the
12 wrong direction, given that not
13 nearly all efficiency and
14 conservation measures that are cost
15 effective have yet been
16 implemented, nor has the Pavley
17 bill gotten is court victory over
18 the EPA--soon I believe--nor has
19 the state committed enough
20 resources for renewable energy like
21 wind and solar thermal power,
22 rapidly becoming competitors to
23 fossil fueled plants."

24 HEARING OFFICER GEFTER: Thank you, that
25 will be accepted as public comment and you can put

1 the document in. It will be in dockets and it
2 will be part of the record. Okay, let's move on,
3 thank you very much.

4 We are going to discuss the concern
5 around the override issue. The applicant has
6 requested that the Committee make a recommendation
7 to override the City's land use ordinances and
8 also the Airport Land Use Commission's
9 recommendations on this project. And I am going
10 to ask the applicant to begin and indicate to us
11 specifically which ordinances and other LORS that
12 you're asking the Committee to recommend be
13 overridden and on what basis. If you could
14 please.

15 MS. LUCKHARDT: I would like to start
16 our discussion with our position because I think
17 it needs to be clarified in this instance. It is
18 our position that the thermal plumes caused by
19 Eastshore will not create a risk or a hazard to
20 aircraft.

21 It is further our position that the
22 thermal plumes in the location of the Eastshore
23 facility will not create a conflict with the
24 operation of the airport nor will it create a
25 conflict with the local plans and policies enacted

1 to protect the operation of the airport.

2 Furthermore we also believe that based
3 upon the industrial zoning of the site that the
4 project is consistent with the Hayward zoning
5 ordinance.

6 And we believe that the advisory action
7 of the Alameda County Land Use Commission in their
8 current proposed and still-draft plans do not pose
9 a LORS violation that has to be overridden.

10 Nonetheless, we understand that the
11 Commission and the Committee may or may not agree
12 with our position. Therefore we have asked that
13 the Committee and the Commission, should they
14 decide that the project conflicts with any of the
15 LORS advocated by any of the other parties, that
16 they consider overriding that conflict.

17 As such we have presented evidence in
18 the proceeding to support an override finding.
19 And we do intend to use the entirety of the record
20 and we have evidence in a variety of places in the
21 record to support this finding. And we intend to
22 provide a summary of that in the briefing that we
23 will provide at the close of this proceeding on
24 the schedule on which you would like to see
25 override briefs provided.

1 HEARING OFFICER GEFTER: So in the event
2 that the Committee does not find the project is
3 consistent with the LORS that we have discussed
4 during this land use and traffic testimony you
5 would then argue that we should override certain
6 LORS.

7 MS. LUCKHARDT: Yes.

8 HEARING OFFICER GEFTER: And that is
9 based on all the evidence. Does that include the
10 local system effects?

11 MS. LUCKHARDT: Yes it does.

12 HEARING OFFICER GEFTER: And what I
13 would like to do right now is -- we're really
14 discussing this with the attorneys and not
15 necessarily asking for testimony. I see that
16 Mr. Galati who represents PG&E is actually here
17 this evening and he came specially to talk to us
18 if we have any questions for him. And so,
19 Mr. Galati, if you could come up. There are a
20 couple of things that I wanted to ask you for
21 clarification. And one is that, first of all,
22 introduce yourself to us and to the audience.

23 MR. GALATI: My name is Scott Galati,
24 representing PG&E.

25 HEARING OFFICER GEFTER: And Mr. Galati,

1 at the status conference that we had, the joint
2 status conference that we had with Russell City
3 and the applicant for the Eastshore Energy Center
4 back in June of '07 a letter was presented from
5 PG&E, it's dated May 9, and we talked about that
6 earlier today. And in that letter --

7 It wasn't really clear whether this is
8 an official position of PG&E. Could you represent
9 that to us, that the letter which says that during
10 the 2004 RFO process PG&E was looking for capacity
11 into the Bay Area but did not specify that it had
12 to come through the Eastshore substation.

13 MR. GALATI: Yes, that is our official
14 position. And as I clarified, that particular
15 letter was intended and was docketed in all of the
16 long-term RFO projects to make it clear since
17 there was confusion at that time which projects
18 PG&E was actually the applicant and which projects
19 PG&E was just the purchaser of the power.

20 HEARING OFFICER GEFTER: And at some
21 point while you were not here today some of the
22 intervenors raised the question about the RFO
23 process. What was it, how did PG&E end up picking
24 the seven projects that you chose, that PG&E
25 chose. So if you could tell us what that RFO

1 process was in a very quick way and then tell us
2 which seven projects were chosen and what the
3 status is of them, of those projects now.

4 MR. GALATI: I'll do my best.

5 HEARING OFFICER GEFTER: Okay.

6 MR. GALATI: The long-term RFO process
7 was called the 2004 Long-Term RFO Process. It was
8 a process whereby the PUC allowed us to purchase a
9 certain number of megawatts in accordance with, I
10 believe, our 2004 procurement plan. How it works
11 at the Public Utility Commission is you submit, as
12 a regulated entity you submit a procurement plan
13 and then you are allowed to procure in accordance
14 with that plan. So the plan was approved and then
15 we went out to the 2004 long-term RFO.

16 Two of the projects -- Well, one of the
17 projects was unique and it was the Humboldt Bay
18 repowering project. In that case the people that
19 bid in, it made more sense for PG&E to own that
20 particular facility since everyone who bid in to
21 supply power in Humboldt sought to repower the
22 existing PG&E plant. So in that case we were the
23 applicant.

24 In the Colusa project, in that case
25 there was a bid to either purchase the power or

1 purchase the plant, of which it made the best
2 sense to our customers to purchase the plant.

3 The rest of the projects were simple
4 power purchase agreements in which we would
5 purchase the electricity once the plants were up
6 and running.

7 It was very clear in accordance with all
8 of those projects that the developer was selecting
9 the site. The developer selected the site as they
10 bid it into the process. And what we did is we
11 did a less, a least-cost/best-fit analysis. We
12 are sort of trying to serve several masters and
13 one of them is trying to keep the rates low so
14 that our customers are not overpaying. And that
15 process is pretty lengthy through the Public
16 Utilities Commission.

17 That process has been refined over time
18 and in fact this most recent procurement plan
19 there were changes made to that process to make it
20 a little bit more transparent. But the time --

21 HEARING OFFICER GEFTER: That's the 2007
22 plan that is now in effect?

23 MR. GALATI: I think it's actually 2006.

24 HEARING OFFICER GEFTER: 2006.

25 MR. GALATI: Yes. There will be another

1 RFO that's coming out.

2 One of the things that PG&E I think
3 decided at the beginning of that process is the
4 Energy Commission had a long-standing process of
5 ensuring projects did not have significant impacts
6 on the environment. To my knowledge they had
7 never made an override for an impact. They may
8 have made an override when something conflicted
9 with the plan. So we placed the risk of
10 development of the projects on the applicants and
11 the applicants accepted that risk.

12 But it was a very, very long process and
13 I understand that there's been quite a bit of
14 confusion about that process. I don't think I can
15 go back and recreate it but the bottom line was,
16 is that Eastshore Energy submitted a power
17 proposal to us for electricity that made the most
18 sense compared with all the other projects that
19 were a bit in.

20 We did not conduct a detailed
21 environmental analysis that the Energy Commission
22 has. Ours was based on our own criteria and that
23 criteria was the least-cost/best-fit approach.

24 HEARING OFFICER GEFTER: Now could you
25 also tell us what's going on with the other

1 projects that were awarded bids in the 2004 RFO
2 process.

3 MR. GALATI: Yes. The Panoche project
4 in the Fresno area received its license from the
5 Energy Commission. The Starwood project, my
6 understanding is that it may on the 16th or
7 sometime in early February receive its license.

8 The Colusa project has recently had its
9 prehearing conference and will be going to
10 evidentiary hearings on the 23rd. There's been
11 some changes to that project. We will become the
12 owner of that project. Although I don't believe
13 we've closed, we may have closed today. But we
14 will become the owner of that project prior to
15 construction. We were actually going to become
16 the owner of that project after construction.

17 The Bullard project. That project filed
18 an application with the Energy Commission, had a
19 land use zoning issue and withdrew its
20 application, or at least suspended its
21 application. And I think that that project is in
22 limbo at the time, I don't know what I can comment
23 on that one.

24 The Humboldt project is delayed,
25 although we recently had our Preliminary Staff

1 Assessment and we have a workshop on the 16th to
2 discuss further issues on that project. We're
3 pushing very hard to get that project licensed as
4 soon as possible so we can start construction.

5 I think -- And then we have the
6 Eastshore project, which you're well aware of what
7 the status is, and Russell City received its
8 license as well.

9 HEARING OFFICER GEFTER: So right now we
10 have Panoche and Russell City that have licenses
11 and Starwood that may move into that very soon.
12 So you have three out of seven that have received
13 their certification licenses.

14 Now did all of these seven projects have
15 a similar on-line date?

16 MR. GALATI: No, and that's what I am
17 asking for here to be able to augment the record.
18 I don't remember them off -- And I apologize, I
19 brought the wrong paper. But I will submit that
20 into the record if you need that. That is public
21 record on what each one of the on-line dates are.
22 I think Mr. Trewitt can make sure that you
23 understand what Eastshore's contract says.

24 MS. HOLMES: Mr. Galati -- I don't
25 believe he's identified seven projects, I believe

1 he's identified six. You mentioned Colusa,
2 Starwood, Panoche, Humboldt, Eastshore, Bullard.
3 And is Community Power the seventh?

4 MR. GALATI: No, Russell City.

5 MS. HOLMES: Russell City, thank you.

6 HEARING OFFICER GEFTER: Russell City.

7 MR. GALATI: Russell City was the
8 seventh and they received their license.

9 HEARING OFFICER GEFTER: Of the projects
10 that have received licenses it's Russell City and
11 Panoche and Starwood coming up. So three out of
12 seven. And during the 2004 RFO process did PG&E
13 accept those bids at the same time from all seven?
14 Was the announcement at one time?

15 MR. GALATI: Yes, I believe so.

16 HEARING OFFICER GEFTER: Okay. So all
17 of them then won their bids at the same time but
18 at this point only maybe two and three-quarters
19 have been licensed at this point in time. So it's
20 taking, it seems to be taking longer than PG&E had
21 anticipated. Would you agree with that?

22 MR. GALATI: It certainly has.

23 HEARING OFFICER GEFTER: And what is
24 going to happen to Bullard at this point since
25 they're in suspension?

1 MR. GALATI: That I do not know.

2 HEARING OFFICER GEFTER: And is there --
3 And we've discussed this. Is there a force
4 majeure clause in the RFO contracts with all of
5 these power developers?

6 MR. GALATI: Yes there is.

7 HEARING OFFICER GEFTER: There is.
8 Okay. I don't know if any of the other parties
9 might want to ask Mr. Galati for further
10 clarifications but I just wanted to ask you to
11 come up and give us some background on this. Does
12 anyone else have any, any of the attorneys have
13 any questions for clarification?

14 PRESIDING COMMISSIONER BYRON: Just a
15 couple of questions, Mr. Galati. You're
16 representing PG&E here but you were not personally
17 involved in these procurement review groups that
18 determined the selection process in the '06
19 procurement, were you?

20 MR. GALATI: No I was not.

21 PRESIDING COMMISSIONER BYRON: The '04
22 procurement.

23 MR. GALATI: That's not, I was not in
24 the '04 procurement.

25 PRESIDING COMMISSIONER BYRON: Okay, so

1 you're really just relaying them as you understand
2 they took place.

3 MR. GALATI: That's correct.

4 PRESIDING COMMISSIONER BYRON: Right,
5 okay. One other correction just for everyone
6 present. Russell City was not a license, we did
7 not -- the Commission did not grant a license or a
8 permit for that plant recently, we did that in
9 2002 I believe. What we granted was a major
10 amendment when they lost site control and
11 relocated to an alternative, preferred location.

12 MR. GALATI: That's correct. And their
13 contract with us was to deliver power pursuant to
14 the amended location.

15 PRESIDING COMMISSIONER BYRON: I don't
16 really have any more questions for you. I thank
17 you for being here tonight. But this would be a
18 good opportunity if anyone else has any other
19 questions they'd like to ask of PG&E.

20 HEARING OFFICER GEFTER: Do you remember
21 whether Russell City, the original certification
22 interconnected at Eastshore substation as well?

23 MR. GALATI: I'm sorry, I don't
24 remember.

25 HEARING OFFICER GEFTER: Mr. Armas is

1 waving, saying yes.

2 MR. GALATI: I think the interconnection
3 was the same.

4 HEARING OFFICER GEFTER: Okay, thank
5 you.

6 MS. HARGLEROAD: I object.

7 HEARING OFFICER GEFTER: You have a
8 question for Mr. Galati?

9 MS. HARGLEROAD: Well I really object
10 because we have not had this contract provided to
11 us. We've asked for this contract. These
12 questions are being asked concerning this contract
13 and where is it? I move to strike.

14 HEARING OFFICER GEFTER: Mr. Galati is
15 not testifying, he's giving us --

16 MS. HARGLEROAD: That's right, he is not
17 testifying yet you are relying on his statements
18 and representations. And so I would move that it
19 be stricken, it should not be relied upon because
20 the contract has not been provided. And this is a
21 very important point. And the applicant simply
22 states they are not going to rely on it. And if
23 they are not going to rely on it we should not be
24 talking about whether there are force majeure
25 clauses in the contract.

1 HEARING OFFICER GEFTER: Thank you.

2 MS. LUCKHARDT: I guess I have one
3 question.

4 HEARING OFFICER GEFTER: You have a
5 question.

6 MS. LUCKHARDT: Mr. Galati, are you
7 aware of the requirements on the people who are on
8 a procurement review group?

9 MS. HARGLEROAD: Can you repeat that.

10 MS. LUCKHARDT: I asked him whether he
11 was aware of the requirements placed on the
12 individuals that are part of the procurement
13 review group.

14 MR. GALATI: Yes, there is a
15 confidentiality provision. And the purpose of the
16 procurement review groups, and seeing that
17 Commissioner Geesman is not present I can describe
18 it with maybe less retribution. The purpose of it
19 was, and whether it has been effective or not I
20 think is a subject of debate.

21 But I think the purpose of it was to
22 allow parties that were interested -- Because
23 remember what happens at the PUC. The primary
24 arguments are about cost and about should the
25 customer pay for decisions made by the utility.

1 And so there, as you can imagine, are many
2 ratepayer advocates, consumer advocates and there
3 are other interested and professional parties.

4 The purpose of the procurement review
5 group, including the Energy Commission staff, part
6 of the procurement review group at that time, were
7 to get into a room and be able to have frank
8 discussions about what things cost, how they were
9 to be passed on. And the reason it was
10 confidential such that information like that could
11 not be used like at least was alleged to be used
12 during the energy crisis to game the system.

13 So people got into a room and tried to
14 get on the same page as to what the customer
15 should pay. And there was not, to my knowledge,
16 great environmental vetting in that venue. I
17 don't think that venue was meant to do that and I
18 don't think it was equipped to do that. But the
19 purpose of that was to have a frank discussion to
20 stop disputes and fighting over costs at the PUC.

21 MS. LUCKHARDT: I guess I'd just like to
22 refer you to the RFO documents where they talk
23 about the environmental characteristics that was
24 one of the items that was to be considered within
25 the procurement review group. So I'm wondering

1 if, you know, how accurate that statement may be
2 if they're saying that here on the RFO
3 requirements that one of the evaluating criteria
4 will be the environmental characteristics.

5 MR. GALATI: It clearly was any show-
6 stoppers that as those people determined that to
7 be. But I think my point here is it wasn't the
8 year-and-a-half to two year process that took
9 place since the application was filed. It
10 certainly wasn't even the depth of review that is
11 placed in the application. So I think that that's
12 where we were. Some of the items that were looked
13 at was a greenhouse gas adder. To some extent
14 environmental justice was looked at.

15 MS. HARGLEROAD: Are you talking about
16 the specific seven contracts or what are we
17 talking -- or just in general?

18 HEARING OFFICER GEFTER: We're talking
19 about the 2004 RFO process which is, we take
20 administrative notice it was a process that the
21 PUC vetted and they were the ones who approved
22 these contracts.

23 MS. HARGLEROAD: I just want to make
24 clear I'd like some references to the greenhouse
25 gas and the environmental justice, where those

1 references are.

2 MR. GALATI: I can certainly provide
3 those to you. I have provided them to the
4 Committee before. I provided very specific
5 references before. They are in the status
6 conference, I believe. I believe there's a very
7 specific reference that the applicant has made to
8 the public record and the transcript, including
9 the expert reports and opinions. I don't have
10 those for you at this moment.

11 MS. HARGLEROAD: Well it's somewhat --

12 MS. LUCKHARDT: I think what I was
13 referring to was Applicant's Exhibit 12, which is
14 a supplemental data response. And as a part of
15 that are attached the RFO long-term request for
16 offers for power purchase and that's where I got
17 my information from.

18 HEARING OFFICER GEFTER: Okay, then
19 Ms. Hargleroad can take a look at your Exhibit 12
20 for reference.

21 Okay. The other thing that we -- And I
22 don't -- What I was going to ask Mr. Galati then
23 is to, if you could, provide the on-line dates
24 that were originally approved in that RFO process.
25 Because at this point none of those projects are

1 on-line, right?

2 MR. GALATI: That's correct, none of
3 those projects are on-line. Although none of
4 their, I don't believe any of their on-line dates
5 have --

6 HEARING OFFICER GEFTER: They haven't
7 gotten to their deadlines. Someone is perhaps
8 going to give you that information here, one of
9 your colleagues.

10 MR. GALATI: The commercial on-line date
11 required for Bullard is 9/1/09, for Colusa it's
12 5/1/10, Eastshore is 5/1/09, Panoche is 8/1/09,
13 Russell City is 6/1/2010, Starwood is 5/1/09 and
14 the Humboldt Bay repowering project is 9/1/2010.

15 HEARING OFFICER GEFTER: Thank you very
16 much, that's very handy.

17 PRESIDING COMMISSIONER BYRON:
18 Mr. Galati, although the ghost of Commissioner
19 Geesman has been referred to more than once today,
20 and I'm sure he would have been glad to be here to
21 discuss the procurement process, I can tell you
22 that this Commissioner prior to being appointed to
23 the Commission was not happy with the way the
24 procurement process was proceeding in these
25 confidential PRGs. And I became even less

1 enamored with the process once I came to the
2 Commission and understood them better.

3 And in fact I also am the Commissioner
4 that directed the staff to no longer participate
5 in the confidential project review groups, much to
6 their dissatisfaction as well as others.

7 It is a process that definitely is not
8 yet open and transparent. I won't pick on you
9 personally but we're not pleased with the way the
10 investor-owned utilities are proceeding with their
11 procurement. I think it's improving and we'll
12 continue to work with the PUC. We have made
13 recommendations to improve this process but we're
14 not quite there yet.

15 MR. GALATI: Yes. And I would point out
16 that I think that some of the Energy Commission's
17 recommendations were helpful in the last, in the
18 administrative law judge's most recent proposed
19 decision.

20 PRESIDING COMMISSIONER BYRON: The long-
21 term procurement decision.

22 MR. GALATI: For the 2006 procurement
23 plan.

24 PRESIDING COMMISSIONER BYRON: I agree.

25 MR. GALATI: It may not have gone far

1 enough but I can tell you that they have attempted
2 to put some more transparency into that particular
3 piece of the process with the independent auditor
4 and others. But I am not sure that it -- it
5 certainly did not adopt all the Energy
6 Commission's recommendations yet.

7 PRESIDING COMMISSIONER BYRON: What
8 options does PG&E have with the contract, the
9 power purchase agreement they have with Eastshore,
10 or Tierra I should say, if their commercial on-
11 line date is not met?

12 MR. GALATI: Well there's always, there
13 are contractual remedies for a breach. I'm sure
14 there would be a long discussion whether or not
15 that occurred, whether there was a breach in the
16 contract. If the on-line date were the only issue
17 then we'd have to do an analysis to determine
18 whether an amendment to the PUC would be a major
19 amendment or a minor amendment. And that would
20 largely have to do with costs.

21 And one of the things that we would have
22 to take into account is if the queue changed or if
23 there was some change in that that affected PG&E's
24 costs. Then that would be a major amendment.

25 But quite frankly, we're hoping that

1 they make their on-line date.

2 PRESIDING COMMISSIONER BYRON: Thank
3 you.

4 MR. MASSEY: Mr. Galati, my name is
5 Andrew Massey, I'm with Alameda County. The
6 interconnection between the Energy Commission
7 process and the PUC process is complicated and
8 something we are still trying to grapple with.

9 One question I had was, you talked about
10 as a result of the 2004 RFO you ended with these
11 seven different projects or winning bidders. When
12 PG&E is doing, going through the procurement
13 process, is the risk that the Energy Commission
14 might not approve one of these plants, is that a
15 factor that you take into account when you're
16 coming to decisions and proposals to the PUC on
17 the procurement process?

18 MR. GALATI: Well first I can tell you
19 that the 2004 long-term RFO was the first RFO that
20 ever worked that way. I can tell you it clearly
21 is a factor now. I can also tell you that it was
22 projects in which we owned. We were taking the
23 development and permitting risk. We looked at
24 them differently. In the past it was not uncommon
25 for us to enter into a long-term contract and then

1 just be satisfied with the contractual remedy.

2 I think that one of the things PG&E
3 learned from this process is we're going to get
4 involved earlier on and hopefully that process is
5 one that we don't have projects that are, that are
6 sitting here waiting for their permits and having
7 the kinds of public opposition that this project
8 or other projects have had. We certainly can't
9 control that because for one thing we are not
10 developing the project. In that case we're
11 contractually bound, I think, to rely on the
12 developer.

13 But I can tell you that in no way, shape
14 or form are we commenting on whether the Eastshore
15 project has environmental impacts. We have
16 always, and we stated this from day one, is we
17 don't think a project comes out of the Energy
18 Commission unless it has all of its impacts
19 mitigated. And I think that the Commission since
20 1975, to my knowledge, has never made an override
21 for purposes of an impact. So we felt comfortable
22 with that and we still do.

23 MR. MASSEY: One of the issues obviously
24 on the LORS override is going to be energy need as
25 a component of whether the project is required for

1 public convenience and necessity. And I am just
2 trying to flesh out when you ended up with a
3 procurement process that had seven winning
4 bidders, is there a certain amount of -- do you
5 end up with seven because you might only get six
6 through the Energy Commission? Or somebody may,
7 their financing may fall apart between the date of
8 the procurement process and when it comes times to
9 construct?

10 MR. GALATI: That I can answer pretty
11 straightforward. No, we are not allowed to over-
12 procure. And in fact one of the decisions from
13 the PUC this time is any project that did not make
14 it through is automatically allowed for us to
15 purchase those megawatts. Those megawatts are
16 needed. There is no question that they are
17 needed. The PUC determined that the megawatts
18 were needed prior and the PUC has reaffirmed that
19 the megawatts are needed for our system.

20 So we will purchase those megawatts. We
21 hope to purchase them from the Eastshore Energy
22 Center because we have a contract with them and we
23 want them to make their on-line date. But there
24 was no specific CPCN for PPA, for the power
25 purchase agreements. There were specific CPCNs

1 for each of the --

2 MR. MASSEY: CPCN is?

3 MR. GALATI: Sorry, Certificate of
4 Public Convenience and Necessity for the projects
5 which we'll own. So Colusa had a CPCN and so did
6 the Humboldt Bay repowering project.

7 MS. HARGLEROAD: And this did not;
8 that's correct?

9 MR. GALATI: What's that?

10 MS. HOLMES: Perhaps, Mr. Galati, you
11 could explain why utility-owned projects need a
12 CPCN and third --

13 MS. HARGLEROAD: Can I get an answer?

14 MR. GALATI: You know what, I need a
15 more specific question. When you said, this did
16 not, did you mean Eastshore did not need a CPCN?
17 That was your question?

18 MS. HARGLEROAD: You just said that
19 Humboldt and a second one, what was the second one
20 you mentioned?

21 MR. GALATI: Colusa.

22 MS. HARGLEROAD: Colusa, right, had a
23 CPCN. There was a determination of need.

24 MR. GALATI: Because there were --

25 MS. HARGLEROAD: Is that correct?

1 MR. GALATI: That is correct.

2 Because --

3 MS. HARGLEROAD: But this did not.

4 MR. GALATI: Could I explain, please.

5 MS. HARGLEROAD: I just, I just want a
6 yes or no.

7 MR. GALATI: Okay, wait. Do you want to
8 cross examine me? Because I can play that game
9 with you if you'd like.

10 MS. HARGLEROAD: No, I'm just asking
11 you.

12 MR. GALATI: There is reason.

13 HEARING OFFICER GEFTER: He'll answer
14 your question, Ms. Hargleroad.

15 MR. GALATI: Utility-owned generation
16 requires a CPCN. To purchase electricity when the
17 utility does not own that generation does not
18 require a CPCN. So no project that is going to
19 deliver power under a power purchase agreement got
20 a CPCN. So none of the other five did.

21 MS. HARGLEROAD: By definition they
22 would not.

23 MR. GALATI: That's correct. So this
24 one, when you said, this Eastshore. Correct, they
25 did not get a CPCN for all the other reasons the

1 other four projects did not.

2 HEARING OFFICER GEFTER: Thank you,
3 Mr. Galati, I really appreciate your coming up and
4 explaining this. I think it's a little bit
5 unusual to do this in the middle of an evidentiary
6 hearing but I think we are at a point now where we
7 are just discussing among the attorneys what the
8 issues are. And I also want to educate the
9 members of the public as to the role of PG&E in
10 this process.

11 We don't have any other questions right
12 now but I know you want to stay around and maybe
13 answer some questions for the public if they want
14 to speak to you outside.

15 MR. GALATI: We certainly will be
16 outside for as long as someone wants to talk to
17 me.

18 HEARING OFFICER GEFTER: Okay.

19 MR. GALATI: Thank you.

20 HEARING OFFICER GEFTER: I want to get
21 back to the applicant on the override issue. As
22 we've discussed earlier it is the applicant's
23 burden since you have requested override to
24 actually prove it. That in fact if we find that
25 there are specific LORS that need to be overridden

1 that the project is inconsistent with and that
2 you're requesting us to override those, that it is
3 the burden of the applicant to prove that we need
4 to do that.

5 So that means you have to prove on
6 public's convenience and necessity. What sort of
7 facts do you believe that we need to see? What
8 have you provided to us to establish that?

9 MS. LUCKHARDT: Actually it's not just
10 here. It starts back with the PUC decisions
11 determining how much need PG&E had for its
12 facility. It goes into the local system effects.
13 It has to do with the air quality benefits or
14 impacts. It has to do with the impacts in every
15 subject area and every environmental area that we
16 have discussed in this proceeding.

17 You know, there are so many pieces of
18 evidence in the record that I can't off the top of
19 my head go through each one. That's why I said
20 that that's something that we would be providing
21 in a brief because it is throughout the record as
22 well as in documents that are specifically either
23 adopted by the Energy Commission, the Public
24 Utilities Commission or other entities.

25 Lots of folks have referenced the IEPR.

1 There's information in there as far as -- There is
2 information coming out in the greenhouse gas
3 proceedings regarding how intermittent resources
4 are needed. How peaking resources are needed to
5 support the addition and expansion of intermittent
6 renewables that are being pushed to come into the
7 system in response to AB 32 requirements.

8 And in addition there will be additional
9 gas-fired generation that will have to be
10 developed to support the changeover of coal
11 contracts and coal ownership as that shifts in
12 response to SB 1368. There are many, many pieces
13 of information that we will be providing and
14 relying on to support our request for an override
15 in this case.

16 PRESIDING COMMISSIONER BYRON:

17 Ms. Luckhardt, maybe I'll say it a little bit
18 differently. The December 7 brief that you
19 provided I thought was substantially lacking in
20 substance. But now I understand, based upon your
21 earlier comments, that you're basically taking the
22 approach that there is no LORS violation here and
23 that the Commission could find we could agree with
24 you, if I understood your earlier comments.

25 I guess what I would like you to assume

1 is that conservatively you should assume that
2 there is or there are LORS violations here and
3 that we will need, the Committee will need your
4 full and complete arguments in order to make an
5 override decision.

6 So I realize that that's inconsistent
7 with your earlier strategy. But I hope I'm saying
8 this properly not being an attorney, that we will
9 need substantial arguments put forward here on the
10 part of the applicant to make a determination.
11 Thus far we do not have those.

12 MS. LUCKHARDT: Yes. Until we have the
13 facts upon which to base the analysis for the
14 override it is difficult to draft it. Writing a
15 legal opinion based on simply a standard, a legal
16 standard, is a very difficult thing to do. When
17 you write legal analysis you set out the standard
18 and then apply it to the specific facts. We
19 needed the specific facts in order to make the
20 arguments that we need to make to support the
21 override. And until we have all the facts in the
22 record it is difficult to create the kind of
23 supportive document that you're looking for.

24 We understand that and intend to do that
25 in the following briefs but we need the facts to

1 use to make the, to support the arguments that
2 we're making.

3 PRESIDING COMMISSIONER BYRON: So am I
4 to understand that you now have all those facts?

5 MS. LUCKHARDT: We believe that we do.

6 PRESIDING COMMISSIONER BYRON: We are
7 going to close the evidentiary hearing here.

8 MS. LUCKHARDT: Yes, we believe that we
9 do.

10 PRESIDING COMMISSIONER BYRON: Okay,
11 thank you.

12 HEARING OFFICER GEFTER: I also want to
13 bring up another issue that the parties need to
14 consider when you do file your briefs in this
15 case. One of the difficult considerations that we
16 have is the need issue. Because after 1996 when
17 the Legislature enacted deregulation they also
18 abolished the Commission's need analysis.
19 However, they still left the section in the
20 statute having to do with public convenience and
21 necessity and part of that analysis goes to the
22 need for the project. But we don't, at this
23 point, have the authority to look at need.

24 However, when we were discussing the RFO
25 process and how the PUC looked at the megawatts

1 that the utility needs the PUC figures out the
2 utility needs X amount of megawatts and therefore
3 can review the RFO process based on that
4 determination. So where would you argue? And I
5 want the other parties to hear this because they
6 are not familiar with our process and I know we
7 have been educating people over the last several
8 hearings. What would you argue with respect to
9 need conformance since we don't do that anymore?

10 MS. LUCKHARDT: Well I know that it is
11 your effort to educate the other parties although
12 that has not, obviously, been mine.

13 (Laughter)

14 HEARING OFFICER GEFTER: But I'm asking
15 you to help, thank you.

16 MS. LUCKHARDT: Which may go more to
17 Mr. Byron's point than I always like to admit.
18 But nonetheless, as far as need goes, we
19 understand that the Energy Commission is no longer
20 making the formal need analysis.

21 As a result we are relying upon and will
22 be looking at the decisions made by the California
23 Public Utilities Commission in approving the
24 resource plans of PG&E leading up to the 2004 RFO.
25 We will be looking at the, for lack of a better

1 term, we'll be looking at the local system effects
2 study because we no longer do a formal need
3 analysis.

4 But there are determinations and
5 findings within Energy Commission decisions and
6 adopted documents that look at growth of demand
7 going forward, that look at the different needs
8 for different types of generation going forward
9 based upon the changes like I was referring to
10 before. The adoption of AB 32, the adoption of SB
11 1368.

12 All of those different actions are
13 generating numerous reports and analyses of the
14 electric system and all of them provide different
15 levels of insight into what is needed going
16 forward for California. And I think that that's
17 really all we have at this point to base it on.
18 But it's a lot, it's not a little.

19 There's been a huge amount of analysis
20 that's been done by both this Commission and the
21 California Public Utilities Commission as well as
22 looking at the interconnection study which shows
23 that there are no system upgrades at this
24 location, which shows that this location can
25 receive and use the power that we are providing

1 here. So there are lots of different things that
2 we will be relying on. We do not have the formal
3 need analysis to use so we will be using the other
4 documents.

5 HEARING OFFICER GEFTER: Thank you.

6 Mr. Massey.

7 MR. MASSEY: As one of those intervenors
8 who is supposed to be educated by this process I
9 want to make sure I understand Ms. Luckhardt's
10 comment. Does Eastshore intend to rely on
11 documents outside of this evidentiary record? For
12 instance, within the PUC's evidentiary record?

13 HEARING OFFICER GEFTER: There are quite
14 a number of public documents that we can take
15 administrative notice of. It's a policy document
16 and policy determinations adopted by governmental
17 agencies and so those are official positions,
18 official policies. Those would be acceptable the
19 same as if you were going to do research for me
20 and file a brief and cite a bunch of cases. You
21 know, you don't have to give me the case.

22 MR. MASSEY: Sure.

23 HEARING OFFICER GEFTER: You don't have
24 to Xerox the case and submit it as an exhibit.
25 Well the same would be the case for, you know,

1 public documents that administrative agencies have
2 adopted like our Integrated Energy Resource Report
3 (sic), which is, we call it the IEPR. It's a
4 document -- we don't need to have a copy of it
5 because we can take administrative notice of that.
6 The same would be the case with PUC documents.

7 MR. MASSEY: I guess going to
8 Commissioner Byron's comment earlier about the
9 lack of substance in the brief. And I think that
10 was, in my mind, a process of the way you went
11 about the briefing of having everyone file their
12 briefs at the same time. Which necessarily means
13 we're all sort of talking past each other. We
14 don't know what the other side is saying.

15 Typically when there's a burden of proof
16 the party that has the burden of proof files a
17 brief and other parties respond. I would propose
18 that on the override issue that that's the
19 approach we take. That would allow us to see what
20 the applicant, how they plan on meeting the burden
21 of proof. We can respond to that. The applicant
22 can reply, if you think that's appropriate.

23 I think that will really develop these
24 arguments much better. Otherwise you're going to
25 end up with seven briefs that are going to be

1 arguing potentially different policy arguments,
2 citing different documents. You want us to be
3 talking to each other and responding to each
4 other's arguments.

5 I think you're going to get a much more
6 robust argument out of that and you're really
7 going to be able to focus and hone in on the real
8 override issues. Otherwise you're going to get
9 seven briefs, everyone is going to be talking
10 about different things. And then we're going to
11 file replies and it's going to be kind of a mess.
12 You're going to end up with what you ended up with
13 the first time around with the opening briefs.

14 HEARING OFFICER GEFTER: And I think
15 that your suggestion has a lot of validity. We're
16 looking at that, in fact, even as you speak, what
17 our schedule would be. We're kind of moving into
18 the next section.

19 MS. HARGLEROAD: Can I supplement that?

20 HEARING OFFICER GEFTER: I see you,
21 Ms. Hargleroad, just wait a minute.

22 We're going to wind up our discussion on
23 override and actually move into the next topic,
24 which would be the briefing schedule. And perhaps
25 your idea might be very helpful, to divide the way

1 we do the briefing in this case. Ms. Hargleroad.

2 MS. HARGLEROAD: As far as the reliance
3 on the PUC decisions. I certainly appreciate the
4 judicial and administrative notice process.
5 However, under the rules of evidence and/or the
6 rules of court and the Evidentiary Code, when one
7 takes judicial notice of a document you have an
8 obligation to provide notice to the other side and
9 provide a copy of the document.

10 And so I would request that we follow
11 those very common procedures whereby if the
12 applicant wishes to take judicial or
13 administrative notice of a PUC document, although
14 it's a state document it's not a CEC per se
15 document, it's another agency's document and
16 that's fine, we get copies of those decisions so
17 we know what we're looking at and we can respond
18 to whether or not we think those decisions are
19 relevant. And we can also provide potential
20 decisions which we may think harmonize or respond
21 to certain issues that are being raised in those
22 decisions.

23 HEARING OFFICER GEFTER: I think that if
24 the party cites to it that everyone can find them
25 if you give a good citation. It's the same as if

1 you have a case and you're citing a case. You
2 don't have to give a copy of the case to somebody
3 else.

4 MS. HARGLEROAD: Well that is not
5 correct because in federal court, if you're in
6 federal court you need to provide copies of the
7 state law and if you're in state court you need to
8 provide copies of that federal case.

9 MS. HOLMES: Ms. Gefter.

10 HEARING OFFICER GEFTER: We're not
11 talking federal and state, we're in the state of
12 California. Thank you.

13 MS. HOLMES: The Energy Commission does
14 have a regulation on official notice that you and
15 I are probably familiar with but perhaps the other
16 parties aren't and I would refer to it. It is
17 consistent with what Ms. Gefter is suggesting, it's
18 Section 1213 of our regulations.

19 MS. HARGLEROAD: That's right. And I
20 am referring to 1213, which adopts the Evidence
21 Code. And that's 452 for judicial notice.

22 HEARING OFFICER GEFTER: Well, it gives
23 you the option. It's Section 1213 of our
24 regulations.

25 MS. HARGLEROAD: Correct.

1 HEARING OFFICER GEFTER: You have the
2 option of either noticing the other parties. It
3 says, those matters shall be noted in the record
4 or attached thereto. So we have the option.

5 MS. HARGLEROAD: I'm just making that
6 suggestion. I think that that would be helpful
7 for everybody and maybe expedite matters.

8 HEARING OFFICER GEFTER: I'll take that
9 suggestion again as we discuss the briefing
10 schedule. Let's close our discussion at override
11 at this point and actually go into the discussion
12 on briefing and the schedule. I also have several
13 other issues that we need to talk about but let's
14 try to plan our briefing schedule here.

15 MS. HARGLEROAD: I just want to take
16 note concerning on the override issues because I'd
17 like to make it clear that with respect to the
18 staff's report on the land use section, which does
19 lay out a very good chart there, that we do
20 disagree that federal law, there is no conflict
21 with federal law. We do have that point. We also
22 disagree that there is a consistency with state
23 law and -- Just so that that's clear for the
24 record. Everybody knows that that's our position.

25 HEARING OFFICER GEFTER: You can argue

1 that in your brief. You can tell us where the
2 facts are.

3 MS. HARGLEROAD: And that's fine. I'd
4 be happy to. I just want to make -- We did not
5 have an opportunity to provide an override brief
6 and we also relied upon the record.

7 HEARING OFFICER GEFTER: You're going to
8 have that opportunity now in post-hearing briefs.

9 MS. HARGLEROAD: That's fine. Just so
10 the applicant is aware that's our position.

11 HEARING OFFICER GEFTER: Fine, and you
12 can argue that and give us the facts to support
13 your position.

14 I think Mr. Massey had a good point in
15 terms of, you know, briefing. Because if the
16 other parties don't know what the applicant is
17 arguing and the applicant has the burden of proof
18 it makes sense to have the applicant file a brief
19 on override and then have the parties reply.

20 So what I think we would do, and then
21 you can comment. The briefing schedule. The
22 first brief that I calculated would be due on
23 Friday, February 1. And the reason I'm picking
24 that date is because our reporter has seven days
25 to get the transcript turned around and submitted.

1 It's ten days? Okay. It was seven but now I
2 think it's ten because of staffing concerns. So
3 now it's going to be a little bit after February 1
4 because my calculations were based on the seven
5 days.

6 So if you have ten days before the
7 transcript is actually up on our web page.
8 Because we put it up right when we receive it,
9 that same day. So say we get it January 30. I
10 had told everyone it would be, the next brief, the
11 brief will be due ten days after that. So we're
12 actually looking at February 11 because Monday
13 February 11 is ten days and you don't want to do
14 it on a Sunday. You could try filing it but
15 dockets is not open that day.

16 So the first brief would be due Monday,
17 February 11. And then ten days after that would
18 be February 21 and I'm not sure if that falls on a
19 -- It's a Thursday, okay, so we could do Thursday,
20 February 21. And we can talk about those dates.

21 The first brief would be the parties'
22 briefs on, they will be your post-hearing briefs
23 actually summarizing the facts for us and arguing
24 which LORS are violated or not violated, okay.
25 Because everybody has their own position on that

1 one and we have been over that many times.

2 We'll also hear your arguments on air
3 quality. You know, you can argue your positions
4 on air quality and the other environmental issues
5 that are contested. Let's do that in the first
6 brief.

7 I haven't seen anything on the various
8 conditions that the applicant was contesting, the
9 air quality, the public health, the noise. We
10 haven't seen anything where the applicant and
11 staff have come to some terms on that so if you
12 want to talk about that in the briefs that's your
13 place to do it.

14 MS. LUCKHARDT: I guess I would ask
15 Caryn to respond to that. We did contact staff to
16 see if we could have those discussions and staff
17 did not feel that it was appropriate to have so we
18 have agreed to present our position in the brief.

19 MS. HOLMES: That's correct. We were
20 very concerned given the number of parties and the
21 number of public, members of the public who have
22 come and expressed concern about this project. We
23 did not want to go behind closed doors and have
24 unnoticed meetings and try to resolve issues with
25 the applicant and so we declined to do that.

1 We did work to a certain extent with the
2 Air District and we were able to bring Public
3 Health-1 a little closer to what the Air District
4 has but it's not consistent with, it's not word
5 for word consistent with what the Air District has
6 required. So we are happy to present that. We
7 have some copies tonight or we can just present it
8 in our brief as an alternative to Public Health-1
9 that was sponsored in the FSA.

10 But in terms of reaching agreements on
11 the other issues. We just, as I said, didn't feel
12 it was appropriate to do that off the record.

13 MR. MASSEY: Will we be addressing
14 during this process or later on this evening my
15 letter concerning the fireplace mitigation?

16 HEARING OFFICER GEFTER: Yes, I wanted
17 to talk about that too.

18 MR. MASSEY: Okay, thank you.

19 HEARING OFFICER GEFTER: Right, that's
20 Exhibit 55. And in fact this is probably a good
21 time to bring it up because it does have to do
22 with -- We're going to ask you to brief your
23 positions on all of the contested issues in this
24 first brief. And that's all the environmental
25 issues and which land use LORS that you believe

1 are inconsistent -- that the project is
2 inconsistent with those particular LORS.

3 So I also -- Exhibit 55 was submitted by
4 the applicant in response to our request during
5 the air quality testimony regarding the fireplace
6 insert program in Santa Clara. Mr. Massey had
7 some concerns about that and so this would give --
8 Why don't you bring that up right now because that
9 could be also briefed in the parties' briefs.

10 MR. MASSEY: Sure. And I didn't want to
11 propose another round of cross examination and I
12 indicated that in my letter. I guess my concern
13 was that several of the parties had asked
14 questions about the fireplace mitigation and we
15 were told that staff and the applicant would try
16 to provide some additional information for us and
17 there would be an update.

18 At the end of the Tuesday the 18th
19 proceeding we were given the packet and I wasn't
20 sure where that left us procedurally. Whether
21 staff intended to provide us an update on whether
22 they made some changes or whether there was a new
23 proposal on the fireplace mitigation. Whether
24 they felt that Exhibit 55 constituted their
25 response to the line of questioning that they were

1 receiving.

2 I thought this was helpful both to us in
3 terms of our briefing but also to the public
4 because we have received a number of questions to
5 the County about the fireplace mitigation program
6 and we sort of didn't know where that stood.

7 HEARING OFFICER GEFTER: Actually I know
8 that the applicant provided that exhibit to us at
9 our request. I don't know whether -- we're not
10 going to take more testimony.

11 MR. MASSEY: Sure.

12 HEARING OFFICER GEFTER: So it sort of
13 speaks for itself. And if you feel it's
14 inadequate then you need to tell us that based on
15 the record. If you feel that what they have --
16 You know, it was a study. It was based on the
17 program and they provided a study down in Santa
18 Clara. If you feel that what their results show
19 are not sufficient and you're concerned that this
20 program won't work here in the Hayward area you
21 could argue that. You could talk about what the
22 record shows.

23 You can also talk about the Russell City
24 condition, which also includes a fireplace insert
25 program and whether the two conditions, whether

1 they overlap, they intersect, it doesn't seem
2 they're going to work. I mean, that's all up to
3 you to argue that based on the record that we
4 have.

5 MR. MASSEY: And that's fine, that's
6 what I wanted to hear. And I wanted that for the
7 public as well because we'd sort of left that as
8 somewhat of a loose end.

9 HEARING OFFICER GEFTER: That's right
10 and I know it's an issue.

11 MR. MASSEY: I appreciate that.

12 HEARING OFFICER GEFTER: Everyone has
13 brought it up.

14 PRESIDING COMMISSIONER BYRON:
15 Mr. Massey, forgive me. Does this have anything
16 to do with the override discussion?

17 MR. MASSEY: It was just a lingering
18 issue.

19 PRESIDING COMMISSIONER BYRON: Okay,
20 that's what I understood it to be.

21 MR. MASSEY: We were discussing some of
22 the --

23 PRESIDING COMMISSIONER BYRON: There's
24 no real connection then --

25 MR. MASSEY: Whether staff and the

1 applicant had come to agreements.

2 PRESIDING COMMISSIONER BYRON: There's
3 no real connection then to this issue and the
4 discussion of override.

5 HEARING OFFICER GEFTER: Well we've
6 moved on from override but, you know --

7 MR. MASSEY: Yes.

8 PRESIDING COMMISSIONER BYRON: Forgive
9 me, I missed that.

10 (Laughter)

11 HEARING OFFICER GEFTER: However, there
12 could be, actually not only on LORS but we have a
13 regulation where the Commission actually has
14 authority to override on air quality as well.
15 Let's see, it is -- And so, you know, you may want
16 to talk about air quality as well. Because if you
17 are arguing that the air quality mitigation is not
18 sufficient and everyone is saying yes it is, the
19 applicant is saying yes it is, and you're saying,
20 no it isn't, then it could be construed as a
21 request to override. So you might want to talk
22 about that, actually.

23 MR. MASSEY: Yes, and I'd indicated that
24 in my opening brief.

25 HEARING OFFICER GEFTER: And that's an

1 environmental issue and not a LORS issue.

2 MR. MASSEY: A different override
3 standard, yes.

4 ADVISOR TAYLOR: I did want to comment.
5 The Committees and the Commission has at times
6 refined or modified the staff's proposed
7 conditions, environmental conditions, in order to
8 respond to comments that are provided in briefs.
9 So if you feel you have a strong case for
10 refinement that needs to be made to that
11 condition, then if you present it and convince the
12 Committee then they do have the ability to
13 essentially modify that condition to improve upon
14 it.

15 MR. MASSEY: I appreciate that, thank
16 you.

17 MS. HARGLEROAD: Is there a reference --
18 Is there a reference on the ability of the
19 Commission to override air quality?

20 HEARING OFFICER GEFTER: Yes, there is.

21 MS. HARGLEROAD: Because I know that
22 Section 25525 is --

23 HEARING OFFICER GEFTER: Right, right,
24 no. In the regulations there are several sections
25 of the regulations which talk about override. In

1 the Presiding Member's Proposed Decision it lists
2 the contents and Section 1752. And 1752(k) talks
3 about the override where a PMPD can override LORS.
4 And then if you look at 1752.3, which is again
5 part of the Energy Commission regulations, it
6 talks about air quality. And if you look at
7 1752.3(c) it talks about the potential to override
8 air quality as well.

9 So those are the regulations. There are
10 a lot of places in the regs that talk about
11 override. Those are ones that you might want to
12 look at.

13 MS. HARGLEROAD: I only mention it in
14 respect to the last sentence of the statute that
15 simply says that the Commission doesn't have the
16 authority to override federal law so I think
17 that's an important distinguishing point,
18 particularly with air quality.

19 HEARING OFFICER GEFTER: You can
20 certainly argue that the project is inconsistent
21 with federal law, that is your opportunity to do
22 that.

23 Okay, now let's move on, it's getting
24 late. So what do we think about the February 11
25 date for filing your first set of briefs?

1 MS. HARGLEROAD: And what happened to
2 Mr. Massey's suggestion that perhaps we let the
3 applicant do it's --

4 HEARING OFFICER GEFTER: That is going
5 to be the next step.

6 MS. HARGLEROAD: -- opening brief?

7 HEARING OFFICER GEFTER: This is the
8 first step. The first step is to file your briefs
9 where you analyze the facts and you make your
10 arguments about whether or not the project is in
11 compliance with LORS and in compliance with the
12 environmental CEQA analysis. Whether you agree or
13 not.

14 As Mr. Taylor has indicated, you can
15 propose other language for the conditions. So if
16 you don't like condition AQ-SC8. which talks about
17 the fireplace insert program, you can propose
18 alternative language to us. And you could do that
19 with any condition that the staff has recommended
20 because staff's conditions are recommended
21 conditions.

22 The only conditions that may be
23 problematic that you might want to change are the
24 FDOC conditions which were incorporated into
25 staff's air quality conditions. You know, you

1 could propose some language but those are more
2 difficult to change. Whereas you can certainly
3 suggest modifications to any of staff's
4 conditions.

5 Okay, so February 11 for the first set
6 of briefs. The second brief would be the
7 applicant's brief on the override justification.
8 Then we have the applicant making that argument.
9 And everyone will have a chance to read that and
10 then you can file your reply briefs on that one.

11 And so at this point the applicant could
12 file that brief on the 21st or you can file it
13 earlier. You pick when you'd like to file that
14 brief because you can have until the 21st or so to
15 do that after you read everyone else's brief. And
16 if you want to add anything that gives you a
17 chance.

18 MS. LUCKHARDT: Yes, I was trying to
19 adjust them so they would be different dates.

20 HEARING OFFICER GEFTER: It's up to you.

21 MS. LUCKHARDT: If we could get the -- I
22 need to go back and look at my own calendar as far
23 as the 21st. I would hope to be able to move that
24 up so that you're not then having briefs come in
25 after the 21st.

1 HEARING OFFICER GEFTER: Well it's up to
2 you because in this case the applicant has the
3 burden and the applicant is the one more concerned
4 about the time line. So it's up to you.

5 MS. LUCKHARDT: We also would like an
6 opportunity to reply to the --

7 HEARING OFFICER GEFTER: To the other
8 briefs.

9 MS. LUCKHARDT: -- the other briefs.

10 HEARING OFFICER GEFTER: Yes, right,
11 right. Since we're going to have another, we're
12 going to have a reply brief.

13 MS. LUCKHARDT: Since we're not all
14 filing at the same time. So I'm going to look at,
15 look at a calendar and see how far up I can push
16 it. Depending on when the transcript will come
17 out because I'll need the transcript.

18 HEARING OFFICER GEFTER: Well at this
19 time let's -- you take a tentative date of
20 February 21 to file your brief on override. And
21 then we'll give everyone an opportunity to file
22 reply briefs to each other briefs and also to your
23 override brief. And we'll take another ten days
24 for that so then we're at the end of February, the
25 beginning of March. And that would be the 21st so

1 it would be March 2nd or something like that.

2 MS. HOLMES: March 3. The 3rd is what I
3 have. March 1st is a Saturday.

4 HEARING OFFICER GEFTER: March 3 would
5 be the reply briefs.

6 MS. GRAVES: Those would be the parties'
7 reply briefs on applicant's brief?

8 HEARING OFFICER GEFTER: On applicant's
9 brief on the override as well as reply briefs to
10 anybody else's briefs. You might as well just do
11 it in one brief instead of several. And then, you
12 know, these are the dates that we're going to go
13 with right now and if there is any discussion you
14 can discuss it by e-mail among the parties.

15 Okay, the parties' briefs will be due,
16 opening briefs are due February 11. The
17 applicant's brief on override justification would
18 be due February 21. The parties' reply briefs on
19 the override and all other reply briefs regarding
20 any other issue will be due on March 3. Okay?

21 PRESIDING COMMISSIONER BYRON: That's
22 the end?

23 HEARING OFFICER GEFTER: And that would
24 be the conclusion of briefing.

25 PRESIDING COMMISSIONER BYRON:

1 Ms. Hargleroad, that will be the conclusion of
2 briefing.

3 (Laughter)

4 MS. HARGLEROAD: Excuse me, I can only
5 take so many conversations at the same time.

6 MS. LUCKHARDT: I'm sorry, Ms. Gefter,
7 but I believe we should have an opportunity to
8 reply to the other parties' briefs on the
9 override.

10 HEARING OFFICER GEFTER: That is fine if
11 you want to reply. How much time will you need
12 after March 3?

13 MS. LUCKHARDT: Okay, fair enough.
14 We'll try and move up the 21st date.

15 HEARING OFFICER GEFTER: It doesn't
16 matter, it's still March 3 and you'll still have
17 to respond to the March 3 briefs.

18 MS. LUCKHARDT: Right. If we move up
19 the February 21 date I assume we could move up the
20 March 3 date.

21 ADVISOR TAYLOR: She's saying reply
22 briefs ten days after the applicant submits.

23 PRESIDING COMMISSIONER BYRON: So that's
24 how you could specify it.

25 HEARING OFFICER GEFTER: Yes, I can

1 specify ten days after your reply brief on the
2 override.

3 MS. LUCKHARDT: Yes, yes. And I'll look
4 at my calendar tomorrow.

5 HEARING OFFICER GEFTER: Then you'll
6 want ten days to file replies to the March 3
7 briefs or the whatever they are.

8 MS. HARGLEROAD: So February 11?

9 HEARING OFFICER GEFTER: So that would
10 be March 13 at this point, Ms. Luckhardt, and then
11 you know you can modify it if you want to. So the
12 applicant's reply, or as we used to call them, the
13 sub-reply or whatever it's called.

14 Then I also had a couple of other
15 housekeeping issues.

16 MS. LUCKHARDT: We noticed a couple of
17 housekeeping issues while you're looking at it
18 regarding the exhibits. One of the things that we
19 discovered was that all of our witness
20 qualifications, meaning all the r,sum,s, are in
21 our prehearing conference statement. And we have
22 not moved the prehearing conference statement in.
23 There's other stuff in there that doesn't need to
24 be in the evidentiary record but we do need to
25 move in Attachment 1 to our prehearing conference

1 statement and that would be a new exhibit. We
2 filed it on, I believe, November 20. I don't know
3 if any parties have any objections. I'm talking
4 simply about the r, sum, s.

5 HEARING OFFICER GEFTER: Those are the
6 qualifications for your witnesses.

7 MS. LUCKHARDT: The qualifications for
8 the witnesses.

9 HEARING OFFICER GEFTER: What they have
10 already testified to except for the declarations
11 under penalty of perjury.

12 MS. LUCKHARDT: Right, right. So we
13 would like to move those. We've also --

14 HEARING OFFICER GEFTER: What exhibit
15 would that be?

16 MS. LUCKHARDT: That would be 57, I
17 believe. Yes, that would be 57.

18 Also based upon our records, we don't
19 have the benefit of the transcript here today but
20 I am not sure that we moved in Exhibits 53 and 54
21 from previous, previous actions.

22 HEARING OFFICER GEFTER: That's true, I
23 don't have that.

24 MS. LUCKHARDT: So we would like to move
25 those in at this time.

1 HEARING OFFICER GEFTER: And that one is
2 your revisions to the recommended conditions of
3 certification and 54 is the errata to your
4 prehearing conference statement. And everyone has
5 seen those.

6 MS. LUCKHARDT: And that contained a
7 revision to the conditions that we proposed in 53.

8 HEARING OFFICER GEFTER: Since everyone
9 has seen those documents --

10 MS. LUCKHARDT: We also found some other
11 errors in the document. There was some mis-
12 communication between us and we will be providing
13 an updated comment on the exhibit list later this
14 week.

15 HEARING OFFICER GEFTER: Since everyone
16 has seen those documents I'm assuming there are no
17 objections to 53 and 54 being received into the
18 record. Okay. And hearing no objection those
19 documents are received into the record.

20 MS. LUCKHARDT: And I guess in response
21 to your comment to us about distances and wanting
22 to clarify distances.

23 HEARING OFFICER GEFTER: Right.

24 MS. LUCKHARDT: We would propose to
25 create a list of distances and how we measured

1 those distances and provide them to the other
2 parties that they can either respond to or, you
3 know, agree to or not agree to. But that would at
4 least give us a starting point.

5 HEARING OFFICER GEFTER: I appreciate
6 that, that would be very helpful if the applicant
7 will take the lead on that. And then serve it on
8 everyone and we'll get everyone's comments back.
9 Because this was the request that I put out to the
10 parties regarding the distances of the proposed
11 project site to all the other entities that we
12 have been discussing throughout these hearings,
13 including Chabot College. So that would be very
14 helpful. You can take the lead, send it out and
15 we'll get everyone's comments back and then you
16 can put something together. That would be very
17 handy.

18 MS. HARGLEROAD: So are we vacating the
19 January 22 date concerning a proposed stipulation
20 on distances and the applicant will provide their
21 position on the 21st in that regard?

22 HEARING OFFICER GEFTER: No, she's going
23 to, they're going to file it as soon as possible,
24 the distances.

25 MS. HARGLEROAD: So even prior to the

1 21st then?

2 MS. LUCKHARDT: Yes, so that you guys --

3 MS. HARGLEROAD: As a separate document?

4 MS. LUCKHARDT: As a separate document
5 so that everyone can take a look at it. And if
6 you have concerns about the distances or how
7 they're calculated you can respond to that. At
8 least we'll provide a starting point for our
9 calculation of the distances.

10 MS. HARGLEROAD: And your identification
11 of where your beginning point is located?

12 MS. LUCKHARDT: Right.

13 HEARING OFFICER GEFTER: And that will
14 all be included in their proposal on the
15 distances.

16 MS. HARGLEROAD: And I would just like
17 to also point out that with respect to the airport
18 boundaries there is a specific statute that
19 requires measurements to be begun at the boundary
20 line. And I'll be happy to provide that statute
21 to the applicant if, if you have a question.

22 HEARING OFFICER GEFTER: Right. And
23 then if you have any concerns about their
24 calculations you can let us know.

25 MS. HARGLEROAD: Well I'm just making

1 that point because there is a specific statute
2 that addresses that.

3 HEARING OFFICER GEFTER: Thank you.

4 Exhibit 57, witness qualifications that
5 the applicant has just proposed. I assume there
6 are no objections to that exhibit. And hearing
7 none Exhibit 57 will be received into evidence.

8 And then you're going to give me another
9 copy of that for the docket?

10 MS. LUCKHARDT: Sure.

11 HEARING OFFICER GEFTER: And also send
12 me a copy too for the exhibits.

13 MS. LUCKHARDT: Okay.

14 HEARING OFFICER GEFTER: Thank you.

15 All right. Well thank you for talking
16 about the distances because that was my next topic
17 so thank you very much for that.

18 I think we're almost done. There was
19 one more thing that I wanted to bring up.
20 Mr. Sarvey did not attend today's hearing,
21 although he filed a petition of some sort being
22 very concerned that he was not allowed to be
23 designated an expert witness in air quality and he
24 asked for an apology. And I certainly would like
25 to apologize to Mr. Sarvey. I am very sorry that

1 he is not here so he could hear it in person.

2 Mr. Sarvey's r, sum,, his qualifications,
3 were included with his testimony in Exhibit 800
4 and so we could have at that time, the parties
5 could have voir dired him on his r, sum,. Since he
6 is not here we can't do the voir dire but you do
7 see that he does have his qualifications attached
8 to his testimony. He did testify. So I am sorry,
9 again, and he will read this in the transcript
10 that I tried to accommodate his concerns.

11 Let's see if there is anything else
12 before we adjourn.

13 PRESIDING COMMISSIONER BYRON: I think
14 we're very close here. I would like to thank all
15 the parties and all the participants and the
16 public, particularly being here so late this
17 evening.

18 I don't share Mr. Massey's sense of
19 confusion around all these issues. I really think
20 that this process has helped us, de-mystified and
21 gotten to the core of what I think the key issues
22 are to be dealing with in this case.

23 I think we're going to pay very close
24 attention to what the City has to say with regard
25 to the LORS that we may be in violation of and

1 what we will need an override to consider. So we
2 will pay very close attention to that.

3 I guess I would like to also suggest
4 that I don't want to limit anybody's arguments or
5 briefs in any way but land use is clearly the key
6 issue here and I would like to ask you to please
7 make sure you focus on that particular issue.

8 My thanks to the City for having us,
9 hosting us here. We will be back. If I
10 understand our process, when this is all done and
11 all these briefings go on, there will be a draft
12 proposed -- a PMPD, Presiding Member's Proposed
13 Decision. And we will be back here and we will
14 give you all an opportunity to comment once again
15 on the proposed decision that will go to the full
16 Commission.

17 The process is highly contentious on
18 this particular -- I shouldn't say the process is
19 contentious. We have very many issues that are
20 contentious on this particular case and so we will
21 go through the full process of being back here and
22 giving you an opportunity once again to comment,
23 if necessary, on that proposed decision.

24 Anything else, Ms. Gefter?

25 HEARING OFFICER GEFTER: No.

1 PRESIDING COMMISSIONER BYRON: Again,
2 thank you to the City for hosting us here. It's a
3 wonderful venue. So I adjourn us?

4 HEARING OFFICER GEFTER: Let's adjourn.

5 PRESIDING COMMISSIONER BYRON: Thank you
6 all.

7 HEARING OFFICER GEFTER: Thank you all
8 for being here, the record is closed.

9 (Whereupon, at 8:50 p.m., the
10 Evidentiary Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; 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 conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2008.

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