

WORKSHOP AND PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification of the) Docket No. 00-AFC-14
El Segundo Modernization)
Project)
_____)

HACIENDA HOTEL
525 NORTH SEPULVEDA BOULEVARD
EL SEGUNDO, CALIFORNIA

THURSDAY, NOVEMBER 7, 2002
10:10 a.m.

Reported by:
James A. Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner and
Presiding Committee Member

HEARING OFFICER AND ADVISOR PRESENT

Garret Shean, Hearing Officer

Michael Smith, Advisor to Commissioner Keese

STAFF AND CONSULTANTS PRESENT

David F. Abelson, Senior Staff Counsel

James W. Reede, Jr., MPPA, Project Manager
Energy Facilities Siting and Environmental
Protection Division

Donna Stone, Compliance Project Manager
Energy Facilities Siting and Environmental
Protection Division

Mark R. Hamblin, MPA, Planner II
Systems Assessment and Facilities
Siting Division

Eric Knight, Environmental Planner
Systems Assessment and Facilities
Siting Division
Environmental Protection Office

Rick York, Staff Biologist/Botanist
Systems Assessment and Facilities
Siting Division

Roger E. Johnson, Siting Office Manager
Energy Facilities Siting and Environmental
Protection Division

Tony Rizk, PhD, PD
Associate Water Resources Control Engineer
California Regional Water Quality Control Board
California Environmental Protection Agency

APPLICANT AND CONSULTANTS PRESENT

John McKinsey, Esq.
Livingston and Mattesich

Kimberly J. Hellwig, Energy Regulatory Analyst
Livingston and Mattesich

Ron Cabe, Project Director
NRG, El Segundo Power II

David Lloyd, Esq., Secretary
NRG, El Segundo Power II LLC

Timothy J. Murphy, Sr. Environmental Planner
URS Corporation

Tim E. Hemig, Manager, Environmental Services--CA
NRG North America/NRG Energy, Inc.

Noel Davis, PhD, Vice President
Chambers Group
Environmental Services

INTERVENORS AND CONSULTANTS PRESENT

Richard G. "Nick" Nickelson, Chairman of the Board
The Kenny Nickelson Memorial Foundation for
Homeless Veterans, Inc.

Michelle Murphy

Bob Perkins

Karl H. Berger, Assistant City Attorney
Paul Garry, Senior Planner
City of El Segundo

Laurie Jester, Senior Planner
City of Manhattan Beach

Don Behrens
Behrens and Associates, Inc.
Acoustics, Noise and Vibration Control Specialists

Lyle Cripe

Elsie Cripe

TELEPHONIC APPEARANCES

Jim Bunton, Staff noise consultant

Brian Chesney, National Marine Fisheries Service

Kenneth L. Coats
Air Quality Engineer II
Refinery, Energy and RECLAIM
Engineering and Compliance
South Coast Air Quality Management District

Alvin Greenberg, PhD, REA, QEP, President
Risk Science Associates

Matt Layton, Air Quality

Joe Loyer, Air Quality engineer

Tom Luster, California Coastal Commission

Mike Ringer, California Energy Commission

John Theodore Yee, PE
Senior Air Quality Engineer
Refinery, Energy and RECLAIM
Engineering and Compliance
South Coast Air Quality Management District

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P R O C E E D I N G S

10:10 a.m.

PRESIDING COMMITTEE MEMBER PERNELL:

Good morning. My name is Commissioner Pernell. I am the presiding member of the Energy Commission Committee for El Segundo. To my left is Mr. Smith. He is the advisor to Commissioner Keese, who is the second member on the Committee. To my right is Mr. Shean. Mr. Shean is the hearing officer and will be conducting the hearings today.

This will be a workshop/prehearing conference to review an application for certification by the El Segundo Power II LLC to replace existing El Segundo generating stations units one and two in the City of El Segundo with a 630-megawatt natural-gas-fired combined-cycle electric generating facility.

At this time I would like to turn the hearing over to our hearing officer, Mr. Shean.

HEARING OFFICER SHEAN: Good morning. What we'll do first is have everyone at the table identify him or herself, and if there are members of the audience who anticipate speaking at any point in this morning's or this afternoon's

1 proceedings, please come to the microphone there
2 and identify yourself. Then we will get underway
3 after some brief introductory comments.

4 So why don't we go to the applicant
5 first.

6 NRG MANAGER HEMIG: My name is Tim Hemig
7 with NRG Energy.

8 MR. MCKINSEY: I'm John McKinsey from
9 Livingston and Mattesich on the Project Council
10 for El Segundo Power II LLC.

11 APPLICANT PROJECT DIRECTOR CABE: Rob
12 Cabe, project director for the applicant.

13 APPLICANT SECRETARY LLOYD: My name is
14 David Lloyd. I'm an officer with El Segundo Power
15 II LLC. I'm also a member of the bar.

16 SENIOR ENVIRONMENTAL PLANNER MURPHY:
17 Tim Murphy with URS Corporation, environmental
18 consultant to the applicant.

19 MR. BERGER: My name is Karl Berger.
20 I'm the assistant city attorney for the City of El
21 Segundo.

22 SENIOR PLANNER GARRY: My name is Paul
23 Garry, the senior planner for the City of El
24 Segundo.

25 MR. PERKINS: I'm Bob Perkins. I'm an

1 intervenor.

2 MR. MURPHY: Michelle Murphy,
3 intervenor.

4 MR. NICKELSON: I'm Nick Nickelson,
5 intervenor.

6 SENIOR PLANNER JESTER: Laurie Jester,
7 senior planner for the City of Manhattan Beach,
8 intervenor.

9 SENIOR STAFF COUNSEL ABELSON: David
10 Abelson, senior staff counsel.

11 PROJECT MANAGER REEDE: James Reede,
12 project manager.

13 HEARING OFFICER SHEAN: Is there anyone
14 back in that area who anticipates speaking that
15 would like to be identified at this point?

16 MR. BEHRENS: Don Behrens, Behrens and
17 Associates. I am the acoustical consultant for
18 the City of Manhattan Beach.

19 ASSOCIATE WATER RESOURCES CONTROL
20 ENGINEER RIZK: Dr. Tony Rizk with the Los Angeles
21 Regional Water Quality Control Board.

22 HEARING OFFICER SHEAN: Thank you.

23 PRESIDING COMMITTEE MEMBER PERNELL: Are
24 there any other public agencies here or anyone
25 representing organizations?

1 HEARING OFFICER SHEAN: Do you want to
2 identify yourself?

3 PROJECT MANAGER REEDE: Hi, this is
4 James Reede. Can you all hear?

5 All right. It's Kimberly Hellwig. She
6 is with the firm of Livingston and Mattesich.

7 HEARING OFFICER SHEAN: And on the
8 telephone we have, can you identify yourselves,
9 please.

10 MR. BUNTON [telephonically]: Jim
11 Bunton.

12 HEARING OFFICER SHEAN: Jim Bunton.

13 MR. LUSTER [telephonically]: Tom Luster
14 with the Coastal Commission.

15 HEARING OFFICER SHEAN: And Tom Luster.

16 PRESIDING COMMITTEE MEMBER PERNELL: And
17 who are they with?

18 PROJECT MANAGER REEDE: Identify your
19 organizations, please.

20 MR. BUNTON: Yes, Jim Bunton, consultant
21 to the Energy Commission on noise.

22 MR. LUSTER: And Tom Luster with the
23 Coastal Commission.

24 PROJECT MANAGER REEDE: Tom Luster with
25 the Coastal Commission.

1 MR. LUSTER: We're not able to hear much
2 at all. It's pretty faint.

3 HEARING OFFICER SHEAN: All right. Let
4 me just go ahead here, because I don't know if
5 we're going to get this working in an optimal
6 manner.

7 I think it's important for everyone to
8 understand that we've gotten to this point because
9 the applicant has submitted its application for
10 certification, the staff has done an independent
11 review of that, using the technical experts on the
12 staff. And the intervenors, whether you're a
13 city, citizens, or agencies, basically have had
14 your input into that process, attempting to either
15 bring information to the attention of the
16 applicant or the staff to have it considered as
17 part of their independent analysis.

18 The staff has produced essentially two
19 documents, the most recent being the final staff
20 assessment which gives the staff's view of the
21 world as far as this proceeding is concerned. The
22 role of the Committee, and ultimately the five-
23 member Commission, is to take information from the
24 applicant, the staff, interested local
25 jurisdictions such as the cities, other agencies,

1 including in particular a report from the
2 California Coastal Commission, and take all of
3 that information and ultimately decide the
4 disposition of the application for a license by
5 the people at El Segundo.

6 So you need to understand, if you didn't
7 already, that the staff's determinations in their
8 final staff assessment plus the errata do not
9 represent necessarily the position of the
10 Committee and ultimately the Commission.

11 And the reason for this workshop and the
12 evidentiary hearings that will be coming are the
13 opportunity for you, if you do not agree with the
14 applicant or you do not agree with the staff
15 analysis, is the opportunity for you to
16 independently come to the Committee and offer
17 either evidence of a factual nature that says we
18 believe that the facts that the applicant or the
19 staff have relied on are incorrect and the true
20 facts are X, Y, and Z.

21 Or if you do agree with the factual
22 presentation of the staff or the applicant that
23 you come to a different conclusion, such as a
24 condition with respect to noise or to lighting or
25 to aesthetics should be different from what has

1 been discussed and offered by the staff.

2 So I'll need you to understand that
3 that's where we are today. We are in the
4 beginning phases of the Committee involvement in
5 the proceeding. The purpose of the workshop
6 aspect today is to see if, on areas where the
7 staff, the applicant and you intervenors have made
8 significant headway in terms of trying to agree
9 upon language that would be conditions in the
10 decision maybe needs to be fine tuned, or you can
11 at least tell us why you disagree with a condition
12 and what added language you would like to see or
13 what your concerns or interests are.

14 We will ultimately then get to the
15 prehearing conference aspect of this set of public
16 meetings that we're holding here today, today and
17 possibly tomorrow. And that would be if we cannot
18 come to consensus on these things, that you want
19 to have an opportunity to present a witness at
20 future evidentiary hearings.

21 We will go basically marching through
22 the list of topics in appendix A that was attached
23 to the notice of the meeting today, and find out
24 who wants to present what after we've concluded
25 the attempt to reach some consensus on the issues

1 before us.

2 So, with that, I guess what I'll ask is
3 if there are any comments or new information that
4 we should be working from. I am basically working
5 from not only our notice but the staff's FSA, the
6 staff's errata, and then submissions by the, for
7 the prehearing conference by the following
8 parties. That would be the applicant, the staff,
9 the City of El Segundo, Murphy Perkins, and also
10 the City of Manhattan Beach. That's what I have.

11 Has there been any other that has been
12 submitted in writing?

13 MR. NICKELSON: Nickelson.

14 HEARING OFFICER SHEAN: Nickelson?

15 MR. NICKELSON: In Air Quality. It's in
16 the errata.

17 HEARING OFFICER SHEAN: All right. I do
18 have comments on the errata from you.

19 MR. NICKELSON: Yes.

20 HEARING OFFICER SHEAN: Okay. Now, are
21 there any other submissions that would need to
22 be --

23 PROJECT MANAGER REEDE: Excuse me,
24 Hearing Officer Shean, when was that filed?

25 MR. NICKELSON: It was filed back in

1 September.

2 APPLICANT ATTORNEY MCKINSEY: He's
3 referring to his comments on Air Quality that he
4 made here.

5 PROJECT MANAGER REEDE: Okay. I just
6 thought he had filed something within the past
7 couple of days.

8 MR. NICKELSON: It was on 10/13.

9 PROJECT MANAGER REEDE: Yes, we did
10 receive that.

11 HEARING OFFICER SHEAN: All right. So
12 are there any other documents that we have
13 received that are germane to what we're doing here
14 today?

15 APPLICANT ATTORNEY MCKINSEY: Hearing
16 Officer Shean, we've this week, following our
17 docketing on the 4th of the prehearing conference
18 statement, docketed several other documents. And
19 then today we've introduced one more.

20 We understand that the late nature of
21 especially what we're introducing today will make
22 it difficult for the parties to completely
23 understand what's involved in them, and our main
24 goal in getting this information out before we
25 started our prehearing conference and for today's

1 workshop was to ensure that anything, are there
2 any other ideas that we had and any other
3 information that we had that could help bring
4 about a resolution to the remaining issues got out
5 there before we reached a point where we were
6 really entrenching in terms of our positions for
7 purposes of the hearing.

8 We've docketed information in the Visual
9 Resources area Tuesday that proposes to plant 36,
10 we're going to plant and maintain 36 box trees on
11 a tank farm at all times. And the reason why they
12 would be boxes, they would be mobile, and that was
13 a change to Visual 2.

14 And yesterday we docketed changes to
15 Visual 4 that we had previously proposed but just
16 at the staff workshop, along with some supporting
17 documentation for Architectural Treatment on units
18 three and four. And some better explanation of
19 our concerns over architectural treatment on the
20 new units.

21 And then finally this morning -- It
22 hasn't been docketed. We've provided to all
23 people that attended here and it will be docketed
24 either today or tomorrow and served is proposed
25 Biology conditions. There are four conditions.

1 One of them is a modification of the original
2 condition we proposed in our comments to the staff
3 assessment. The other three are all new Biology
4 conditions, and they're fairly comprehensive and
5 new in scope.

6 And so our main goal once again was just
7 to try to get it out today when we knew we'd have
8 all the parties here so they would understand that
9 we're trying to get something else on the table to
10 try to bring resolution to those issues.

11 HEARING OFFICER SHEAN: Okay. And did
12 you have something from the Coastal Commission?

13 PROJECT MANAGER REEDE: Yes. On
14 November the 6th the California Coastal Commission
15 issued a consistency finding related to the
16 application for certification for the ESP II
17 projects related to its consistency with the
18 Coastal Act, and with your indulgence I may read
19 their conclusions, or how do you want to handle
20 it?

21 HEARING OFFICER SHEAN: Why don't you
22 just summarize it, or I can, I've read it.

23 PROJECT MANAGER REEDE: Basically
24 they've found that the plant as proposed is
25 inconsistent with the Coastal Act for Biology.

1 PRESIDING COMMITTEE MEMBER PERNELL: Do
2 all the parties have a copy of that?

3 PROJECT MANAGER REEDE: No, it was just
4 given to me yesterday afternoon.

5 HEARING OFFICER SHEAN: I think what
6 we'll do is at the luncheon break see if there is
7 a Kinko's or copy shop not too far away, and we'll
8 try to make sure there are copies for everyone.
9 But fundamentally, the letter reiterates most of
10 what is in the staff position in the FSA
11 concerning the Aquatic Biology issue and I guess
12 they essentially restate their position that based
13 upon as proposed, the Coastal Commission finds it
14 to be inconsistent with the Coastal Plan, or
15 Coastal Act.

16 Okay. Any other new material that we
17 need to know about?

18 MS. JESTER: I don't have any new
19 written material, but there are some items that
20 were brought up in July that I did not put in
21 the -- that I brought up in July in writing that
22 were not in this latest letter that I just wanted
23 to verbally bring up again.

24 HEARING OFFICER SHEAN: Okay. Shall we
25 do that as we go through subject matters?

1 MS. JESTER: Yes, that would be fine.

2 HEARING OFFICER SHEAN: All right.

3 MS. JESTER: That's fine with me.

4 HEARING OFFICER SHEAN: So I think what
5 we're prepared to do is sort of launch through
6 these topics in the order that they appear on
7 appendix A to see where we are. I guess what I
8 should say is I understand that fundamentally the
9 areas that are not agreed to or significantly not
10 agreed to are Aquatic Biology, Visual, and Noise.
11 And then there are some minor areas in other
12 topics, and what we propose to do is sort of just
13 run through that and see what we can do in terms
14 of finding out what people's --

15 Let me just say this. I think it's of
16 more concern to the Committee instead of finding
17 out what your position is, is to find out what
18 your interest is or what your goal is, in terms of
19 what you're trying to achieve, either for matters
20 related to Noise, matters related to the Visual
21 Impact, or Aquatic Biology, such that we're not
22 attempting to restate our positions here as part
23 of a settlement workshop but to find out what your
24 fundamental concerns are and if there are
25 alternate routes to solving what is your

1 fundamental interest.

2 So why don't we sort of keep that in
3 mind. In the latter part of the proceeding if we
4 are unable to resolve some of these differences,
5 why, we'll hear what your position is. I think we
6 already know what your position is, having read
7 the prehearing conference statement. So it
8 doesn't inform us any better to have you reiterate
9 it, but that's I think how we'd like to work this
10 so that the reason we're doing this.

11 It fundamentally amounts to a round
12 table or at least a square table, as opposed to
13 right in everyone else's face. We're trying to
14 work together to solve some of these issues, once
15 we determine what people's fundamental concerns
16 and goals are.

17 So why don't we do this, marching off
18 with Noise, and I guess most of the issues arising
19 here come from the neighborhood in Manhattan Beach
20 that is concerned with respect to how the before
21 and after noise monitoring are going to work and
22 how they're going to be in compliance with the
23 essential goal of no perceptible increase in noise
24 level.

25 And, to some degree, the applicant has

1 provided -- This may be of some assistance -- a
2 list of conditions and where things are, in
3 relationship to the errata, so --

4 APPLICANT ATTORNEY MCKINSEY: Hearing
5 Officer Shean, if I could be heard?

6 HEARING OFFICER SHEAN: Sure.

7 APPLICANT ATTORNEY MCKINSEY: When we
8 had drafted this, this wasn't done in reflection
9 of the prehearing conference statements of the
10 parties. And what you're referring to as the
11 attachment to our prehearing conference statement
12 is an Excel spreadsheet. It's a table of the
13 conditions.

14 It was based on what we read from
15 looking at the final staff assessment, the
16 comments that were received at the workshop, and
17 then what the errata dealt with. And I noted that
18 the -- And I'm only mentioning this because the
19 column where we indicate the status under our
20 notes, like resolved in errata or no objections
21 raised. I know several of the parties in the
22 prehearing conference statement have different
23 positions than that, and I just don't want anybody
24 to feel that we were making that in reflection of
25 those comments.

1 So that column doesn't really reflect
2 our perception of the status of the parties on
3 those conditions. It definitely reflects ours and
4 what we thought would be the outcome based on the
5 final staff assessment and errata, but obviously
6 we were mistaken in quite a few places.

7 HEARING OFFICER SHEAN: Okay. Well, and
8 if I understand correctly, a lot of this revolves
9 around the fact that the final staff assessment as
10 it was published did not include a version of
11 condition Noise 6 that most of the parties at
12 least appeared to suggest that they had agreed
13 upon in the prior summer, and that the restoration
14 of the Noise 6 condition was essentially what
15 everyone wanted to see because it had, at the
16 point that it had been agreed to, fundamentally
17 satisfied most people's concerns about how noise
18 was going to be dealt with.

19 Is that fundamentally correct?

20 MR. PERKINS: That's close. The July
21 publication actually has a Noise 6 and 7, and I
22 don't want to water over the positions instead of
23 concerns. I heard you when you said you wanted to
24 hear the concerns.

25 HEARING OFFICER SHEAN: Well, I guess

1 what I'm --

2 MR. PERKINS: It did have --

3 HEARING OFFICER SHEAN: -- trying to
4 find out is whether or not in the staff errata
5 they have gone back to or attempted to go back to
6 the Noise 6 language.

7 MR. PERKINS: Right. It --

8 PROJECT MANAGER REEDE: Hearing Officer
9 Shean?

10 HEARING OFFICER SHEAN: Go ahead.

11 PROJECT MANAGER REEDE: As noted in the
12 staff response, because 6 and 7 were so closely
13 related they were blended. And so the Noise 7
14 that was proposed in July when the final staff
15 assessment came out, the main parts of that had
16 been blended into 6. And we recognized that we
17 had failed to change seven-day testing to the 30-
18 day testing.

19 And, consequently, in the staff errata
20 on page, beginning on the bottom of page 23 and
21 going into page 24, we acknowledged that we had
22 not included it; we explained that conditions 6
23 and 7 that were proposed in July were combined due
24 to their interrelatedness, and we then replaced
25 bullets 1 and 5 in the FSA to reincorporate the

1 30-day continuous community noise surveys at
2 various residential receptors.

3 HEARING OFFICER SHEAN: Okay, and these
4 are all on 45th Street as it faces the south side
5 of the project.

6 PROJECT MANAGER REEDE: Some of those
7 receptors, yes, are on 45th Street. Some are
8 above.

9 HEARING OFFICER SHEAN: Above meaning
10 east of --

11 PROJECT MANAGER REEDE: Above Highland.

12 HEARING OFFICER SHEAN: East of
13 Highland.

14 PROJECT MANAGER REEDE: Right.

15 HEARING OFFICER SHEAN: Okay.

16 Does that seem to satisfy your interest
17 here, and if not, why not?

18 PRESIDING COMMITTEE MEMBER PERNELL: And
19 could I get you to state your name for the record.
20 What we're trying to do is develop a record, and
21 so if you would, when you're responding, and that
22 goes for everyone, just state your name for the
23 record, please, and then respond.

24 MR. PERKINS: Yes, Commissioner Pernell
25 and Hearing Officer Shean. The staff has

1 clearly --

2 HEARING OFFICER SHEAN: This is
3 intervenor --

4 MR. PERKINS: Oh, I'm sorry, I still
5 messed up. I'm Bob Perkins, I'm one of the
6 intervenors.

7 PRESIDING COMMITTEE MEMBER PERNELL:
8 That's all right. We'll get through this.

9 MR. PERKINS: And yes, the staff has I
10 think made a diligent effort to bring us back to
11 what we had in July, which I think the parties
12 would have compromised -- nobody is totally happy
13 with it, but I think the parties would have
14 compromised on that language.

15 There are still a couple of minor
16 glitches which I think are fixable with language,
17 and I might defer to Laurie Jester from the City
18 of Manhattan Beach who perhaps can articulate for
19 the community better than I can my own personal
20 position, and then I'll fill in if I have some
21 special stuff.

22 HEARING OFFICER SHEAN: All right.

23 Ms. Jester?

24 MS. JESTER: Okay. So on Noise 6,
25 starting at the beginning --

1 PROJECT MANAGER REEDE: We do have Jim
2 Bunton on the line, who is my acoustic expert.

3 MR. BUNTON: [telephonically] Yes, I'm on
4 the line but I can only hear Mr. Shean.

5 PROJECT MANAGER REEDE: Okay.

6 MR. BUNTON: And a little bit of James.

7 MS. JESTER: He can't hear or he can?

8 HEARING OFFICER SHEAN: He cannot hear
9 you. Apparently, I'm both closer to the box and
10 I'm using my parade deck voice.

11 MS. JESTER: Okay.

12 HEARING OFFICER SHEAN: Go ahead.

13 MS. JESTER: Do we want to do something
14 so he can hear, or that's not going to happen?

15 HEARING OFFICER SHEAN: No, no, you just
16 proceed.

17 MS. JESTER: Okay. In the first
18 paragraph on Noise 6, the word "median" was
19 inserted, and where it says "ambient median noise
20 level," that was also inserted on A, bullet four.
21 And I don't know if that has any impact or change
22 in the meaning. It was actually not included on
23 the next page on item C, Implementation of Tank
24 Removal Noise Mitigation. We have the same
25 language, "ambient noise level," but "median" is

1 not included.

2 So I'm wondering why that language was
3 inserted and does it change the meaning or the way
4 the measurements are taken?

5 HEARING OFFICER SHEAN: Okay. Do you
6 know that?

7 PROJECT MANAGER REEDE: Yes. Laurie,
8 would you please come down here?

9 HEARING OFFICER SHEAN: Well, I'll just
10 restate it.

11 Mr. Bunton?

12 MR. BUNTON: Yes?

13 HEARING OFFICER SHEAN: The City of
14 Manhattan Beach is inquiring why the use of the
15 word "median" in terms of "ambient median" in some
16 places and not in others, and what is the effect
17 of that?

18 MR. BUNTON: Well, the median is the
19 same as the L50 value that the City uses in the
20 noise ordinance and they're interchangeable.

21 HEARING OFFICER SHEAN: Okay. Median
22 and L50 are interchangeable.

23 MS. JESTER: Okay. So it doesn't change
24 the meaning of that.

25 HEARING OFFICER SHEAN: Correct.

1 MS. JESTER: Okay. Then that's fine.
2 For consistency, then, it should be inserted into
3 C, Ambient Median Noise Level, so we have the same
4 consistent language is what I would suggest.

5 On paragraph two, where it refers to
6 pure tones, it talks about no single piece of
7 equipment standing out as a source of noise that
8 draws legitimate complaints, and then steam relief
9 valves being muffled to preclude legitimate
10 complaints. And there is no definition of
11 "legitimate complaints," and we're just wondering
12 what does that mean. That is kind of subjective.
13 Maybe we can come up with some better language.

14 HEARING OFFICER SHEAN: My recollection,
15 having seen that in prior cases, is it's too vague
16 to be meaningful, and, therefore, needs to be
17 replaced with something that is meaningful.

18 I guess we could either look back to
19 some of our prior decisions as precedent or try to
20 suggest something under these circumstances.
21 Because what is legitimate to one person, you
22 know, the guy who drives around with a boombox in
23 his car, his idea of legitimate noise is entirely
24 different from somebody -- anybody else.

25 (Laughter.)

1 PROJECT MANAGER REEDE: So what I'm
2 understanding you are looking at is that steam
3 relief valves shall be adequately muffled to
4 maintain noise levels below X, rather than -- You
5 want it quantified; is that what I'm hearing?

6 HEARING OFFICER SHEAN: Well, we should
7 have some standard.

8 MR. BUNTON: Are we discussing the
9 construction noise under Noise 8?

10 HEARING OFFICER SHEAN: We are at Noise
11 6.

12 PROJECT MANAGER REEDE: Pure tone
13 components.

14 HEARING OFFICER SHEAN: Second
15 paragraph.

16 MR. BUNTON: Okay.

17 PROJECT MANAGER REEDE: No new pure tone
18 components may be introduced. The very last
19 sentence, "Steam relief valves shall be adequately
20 muffled to preclude noise that draws legitimate
21 complaints."

22 MR. BUNTON: Right. There has been some
23 standard language in the conditions of
24 certification, and my understanding is that the
25 burden of determining what is legitimate falls

1 upon the CPM. I'm open to suggestions, certainly,
2 but that was the idea, was the CPM would be
3 determining whether it was a noise complaint
4 related to the power plant or perhaps to something
5 else.

6 SENIOR STAFF COUNSEL ABELSON:

7 Mr. Shean, if we could hold just one second, I
8 would like to ask our Compliance Section which is
9 here if they -- I want to understand if they have
10 a view on this issue, just because of it being a
11 traditional --

12 HEARING OFFICER SHEAN: All right. You
13 need to --

14 PROJECT MANAGER REEDE: State your name.

15 HEARING OFFICER SHEAN: If Kay is going
16 to be speaking, she needs to state her name for
17 the record.

18 SENIOR STAFF COUNSEL ABELSON: Donna.

19 COMPLIANCE MANAGER STONE: Donna Stone.

20 PROJECT MANAGER REEDE: Donna Stone.

21 HEARING OFFICER SHEAN: Donna, I'm
22 sorry, Donna.

23 COMPLIANCE MANAGER STONE: Compliance
24 project manager on the El Segundo project.

25 I would like to see this quantified.

1 It's hard for me to enforce something like this.
2 It's too loose.

3 HEARING OFFICER SHEAN: Okay. I think
4 we've got our arms around the fact that there is
5 an issue with the use of the word "legitimate,"
6 and we'll try to work on that. And if you have
7 suggestions in that --

8 COMPLIANCE MANAGER STONE: I don't -- Do
9 you have any suggestions?

10 HEARING OFFICER SHEAN: Yeah, we can't
11 have a standardless standard.

12 COMPLIANCE MANAGER STONE: Did you want
13 to make comments -- Do you want comments now?

14 HEARING OFFICER SHEAN: Sure, if you
15 have anything on that particular issue.

16 COMPLIANCE MANAGER STONE: Or
17 suggestions? Don, do you have any suggestions?

18 MR. BEHRENS: Don Behrens, City of
19 Manhattan Beach consultant. We have clearly
20 defined noise levels for construction, for
21 property line noise levels for construction and
22 for operation. And so I don't believe putting
23 steam relief valves in a separate category for a
24 separate qualification would be required. We have
25 determined levels accepted for sound.

1 HEARING OFFICER SHEAN: So what you're
2 saying, essentially, this is fundamentally
3 redundant in that it states a goal, but the
4 standards for achieving the goal are stated
5 elsewhere in the condition.

6 MR. BEHRENS: That's correct.

7 PROJECT MANAGER REEDE: In the previous
8 paragraph, at the bottom of the previous
9 paragraph.

10 HEARING OFFICER SHEAN: Okay.

11 PROJECT MANAGER REEDE: Basically, I'd
12 make the suggestion, "Steam relief valves shall be
13 adequately muffled to otherwise comply with the
14 noise standards of the Cities of El Segundo and
15 Manhattan Beach municipal codes."

16 You have a standard, you tie it to a
17 standard, and you go from there.

18 HEARING OFFICER SHEAN: Okay. We'll
19 work with this.

20 MR. PERKINS: May I point out that that
21 word "legitimate" appears twice in that paragraph.

22 HEARING OFFICER SHEAN: It does.

23 MR. PERKINS: And so one of them deals
24 with steam relief valves and the other with
25 everything else.

1 HEARING OFFICER SHEAN: Sure. Well,
2 we'll run a global search for "legitimate," and if
3 we find it --

4 (Laughter.)

5 MR. PERKINS: No legitimacy allowed.

6 HEARING OFFICER SHEAN: Yeah, right.

7 PRESIDING COMMITTEE MEMBER PERNELL: Let
8 me just ask, is everybody comfortable with
9 Mr. Reede's suggestion, which is tying it back to
10 the noise codes of the City of El Segundo?

11 MS. JESTER: It seems to me that it
12 should be tied to the requirements in the
13 conditions of certification.

14 HEARING OFFICER SHEAN: Right. I think
15 we'll refer back within the conditions.

16 MS. JESTER: Right, within the
17 conditions. Right.

18 The next area was under verification,
19 under 1A. This is the preconstruction survey and
20 determination of the ambient noise level. And we
21 have that preconstruction noise monitoring plan,
22 so this is not the survey itself, this is just the
23 plan being submitted 60 days prior to
24 construction.

25 And our concern is that since the survey

1 itself needs to be conducted during the summer
2 months and, let's say, that the plan is submitted
3 in December and that's 60 days prior to
4 construction starting in February, that doesn't
5 allow time for the survey to happen during the
6 summer months prior to construction starting,
7 which is the whole point of the survey.

8 So that survey, it needs to be completed
9 prior to site mobilization. It ties in with A and
10 B.

11 PRESIDING COMMITTEE MEMBER PERNELL:

12 Where are you? What's the page number?

13 MS. JESTER: Verification.

14 PROJECT MANAGER REEDE: FSA page number
15 is 4.6-25.

16 MS. JESTER: At the top, verification 1A
17 and B.

18 PROJECT MANAGER REEDE: And this is all
19 part of Noise 6.

20 HEARING OFFICER SHEAN: And is
21 subparagraph A intended to be the preconstruction
22 survey?

23 PROJECT MANAGER REEDE: Correct. And
24 earlier in the condition we require that the
25 preconstruction noise survey be conducted between

1 the months of June and September. So they would
2 have to perform a noise survey next summer, and
3 then it has to be prior to construction.

4 HEARING OFFICER SHEAN: Okay. I'm
5 scanning that. Where do June and September
6 appear?

7 PROJECT MANAGER REEDE: Okay. It
8 appears on 4.6-24, paragraph B, about halfway
9 through that paragraph. It says --

10 HEARING OFFICER SHEAN: Well, I see
11 that, but that is your postconstruction survey,
12 right?

13 PROJECT MANAGER REEDE: That would be on
14 the other page.

15 MR. PERKINS: If I can interrupt, it's
16 actually not in the FSA, but it is in the errata.
17 It's on page 24 of the errata, the first bullet,
18 30 days, conducted during the period June 1st
19 through September 30th.

20 HEARING OFFICER SHEAN: All right.
21 Well, so then if the submittal under the
22 verification 1A has to otherwise comply with the
23 condition that the survey take place in a period
24 that's given, doesn't that solve the problem?

25 MS. JESTER: I hope we just don't get

1 into this Catch-22 is what I'm concerned about.

2 APPLICANT ATTORNEY MCKINSEY: I think I
3 understand what she's saying. The condition, as
4 it's drafted now, does not specify that the survey
5 has to be conducted prior to starting
6 construction. It's called a preconstruction
7 survey, but all it really says is that it has to
8 be conducted during these months, and then the
9 only other information in there is when it says
10 that the plan has to be submitted 60 days prior to
11 construction.

12 And her concern is that we would be in
13 the middle of construction when we conduct the
14 preconstruction survey because it's not -- it
15 doesn't expressly state that.

16 MS. JESTER: Right, so you could add
17 language to B right after "within 30 days of
18 completion of the survey and prior to site
19 mobilization, demolition and construction, the
20 project owner shall provide CMP for review and
21 approval," and we would also like the City of
22 Manhattan Beach and the City of El Segundo for
23 review and comment the results of the
24 preconstruction noise survey.

25 We had language before that would allow

1 both cities to review and comment, and we had
2 discussed that it would not add any time to the
3 review period because the applicant was concerned
4 with that, so --

5 HEARING OFFICER SHEAN: And that
6 concept, that's okay with the applicant?

7 APPLICANT ATTORNEY MCKINSEY: Actually,
8 I've got a couple of comments there.

9 First, I think the appropriate place to
10 specify when the survey has to be conducted should
11 be in the actual condition language, in A under
12 Noise 6, where it says, "Determine the ambient
13 noise level of residential receivers." That should
14 probably say "prior to the start of construction."
15 That would be the right place, where it's mandated
16 that that is the condition.

17 The comment she made about review, if
18 you look at the end of A on page 4.26-24 at the
19 top, it says, "We have to implement the survey and
20 present the results in a preconstruction noise
21 survey report to the Cities of El Segundo and
22 Manhattan Beach and to the CPM." So it may not be
23 in the verification, maybe that's the problem, it
24 just needs to be in the verification. It's
25 already in the condition that we have to submit it

1 to both the cities.

2 HEARING OFFICER SHEAN: Okay.

3 APPLICANT ATTORNEY MCKINSEY: So we
4 obviously don't have a problem changing the
5 verification, but it is there.

6 PROJECT MANAGER REEDE: All right. But
7 I need to bring in the compliance project manager
8 when we start talking about verifications, because
9 they are responsible for the verifications.

10 Now, we notice for review and comment
11 it's in the body of the condition. It does not
12 need to be in the verification; is that correct,
13 Ms. Stone?

14 COMPLIANCE MANAGER STONE: Yes.

15 HEARING OFFICER SHEAN: Well, except for
16 the fact that state government seems to have an
17 interest in using as much paper as possible and
18 therefore repeating everything two or three
19 times --

20 PROJECT MANAGER REEDE: Well, if it's in
21 the condition and they're told to supply it to
22 them, we'll verify it then.

23 APPLICANT ATTORNEY MCKINSEY: Yeah, he
24 was tweaking you there.

25 PROJECT MANAGER REEDE: I know, but I've

1 got to keep him on his toes.

2 COMPLIANCE MANAGER STONE: Excuse me, if
3 it's in the condition, that's fine. And the way I
4 would verify that is when they send me the noise
5 survey, they send me also a copy of the
6 transmittal letters to the two cities. And then I
7 know that it went to the two cities, and the two
8 cities, whether they want to comment. There may
9 not be anything in there that they take exception
10 with.

11 But then I know the applicant has done
12 what the condition requires that --

13 HEARING OFFICER SHEAN: Okay.

14 PRESIDING COMMITTEE MEMBER PERNELL: All
15 right.

16 HEARING OFFICER SHEAN: We pretty much
17 have our --

18 Mr. Perkins?

19 MR. PERKINS: If I may, I may be missing
20 something, but I think the thing Mr. McKinsey
21 pointed out is that the preconstruction noise
22 survey plan is expressly required to be sent to
23 the two cities, but not, as it stands now, the
24 results of the survey. And I think that's what
25 needs clarifying is that the results will also go

1 to the cities for their review and comment and the
2 CPM makes their decision.

3 APPLICANT ATTORNEY MCKINSEY: The
4 sentence I'm reading, it says, "The project owner
5 shall implement the survey and present the results
6 in a preconstruction noise survey report to the
7 Cities of El Segundo and Manhattan Beach."

8 MR. PERKINS: No doubt I'm missing
9 something.

10 HEARING OFFICER SHEAN: Yeah, at the top
11 of page 4.6-24.

12 MR. PERKINS: I see. Thank you very
13 much.

14 HEARING OFFICER SHEAN: I think we've
15 got this one.

16 SENIOR STAFF COUNSEL ABELSON:
17 Mr. Shean, I have a process question I want to ask
18 you. On any of these issues where we discuss
19 them, there appears to be consensus but the
20 precise language is not literally written today,
21 it's not written in the document, do you have a
22 suggested manner in which your arms are going to
23 appear to show us that you did get your arms
24 around it?

25 HEARING OFFICER SHEAN: I think we're

1 going to answer that question when we draw to the
2 end of the meeting to essentially do that, because
3 we're going to need to consolidate the list. I
4 mean, we're literally flipping between, let's say,
5 the FSA, the errata, and now notes with respect to
6 what we think we were doing.

7 We don't intend that this be a
8 wordsmithing workshop. Our intention is let's
9 get, on the concept level, do we agree, do we
10 reach consensus, and then we'll let the wordsmiths
11 go to it. Otherwise, we're going to spend a lot
12 of time figuring out conjunctions and comments and
13 stuff like that, and that's not a good use of our
14 time here today.

15 Yes, sir?

16 MR. PERKINS: Sorry to interrupt you one
17 more time about this --

18 HEARING OFFICER SHEAN: No problem.

19 MR. PERKINS: -- and that sounds like
20 the kind of approach that I endorse
21 wholeheartedly. My only question is if the
22 prehearing conference is immediately after this,
23 until we see the wordsmithing, how are we going to
24 know whether we have agreement or not?

25 HEARING OFFICER SHEAN: Let's just let

1 the process work.

2 MR. PERKINS: Okay.

3 HEARING OFFICER SHEAN: I mean, it's
4 dynamic, I think we know what our objectives are,
5 and there are other circumstances we may not know
6 here at, you know, like 10:30, but may become
7 clear at 2:30 or 4:30 that tell us what we should
8 be doing.

9 Okay.

10 APPLICANT ATTORNEY MCKINSEY: I would
11 like to say that we as the applicant have no
12 problem with changing the language that makes it
13 very clear that the preconstruction noise survey
14 has to be done prior to construction.

15 HEARING OFFICER SHEAN: Well, yes, if
16 it's the preconstruction, then doing it before
17 construction makes sense to me.

18 (Laughter.)

19 HEARING OFFICER SHEAN: Okay.

20 Ms. Jester, anything?

21 MS. JESTER: Okay. This may be
22 redundant too, then, in two and three, we would
23 suggest that review and comment by both cities be
24 included, but if it's covered, if somebody can
25 find it covered somewhere else, it's the

1 postconstruction survey and mitigation
2 implementation.

3 PROJECT MANAGER REEDE: Yes, it's page
4 4.6-24 of the FSA, the same paragraph that starts
5 with "Following the postconstruction survey, the
6 project owner shall present the results in a
7 postconstruction noise survey report to the Cities
8 of El Segundo and Manhattan Beach and to the CPM.
9 The report will include," and on and on.

10 MS. JESTER: Okay. That would cover
11 two, postconstruction. What about mitigation
12 implementation?

13 APPLICANT ATTORNEY MCKINSEY: It's in
14 paragraph D at the bottom of that page, the very
15 last sentence, the very last two lines of the
16 page.

17 MS. JESTER: And does that -- I don't
18 see the language that says that that would be
19 submitted for review and comment to the cities.

20 PROJECT MANAGER REEDE: Well, the
21 previous paragraph that says "Following," it says,
22 "the report will include a discussion of the
23 relationships between surf and ambient noise," and
24 then it goes on to say what mitigation is
25 required.

1 MS. JESTER: Maybe I'm just seeing it,
2 but I'm just not seeing language that says if
3 there is mitigation proposed, that that will be
4 submitted for review and comment to Manhattan
5 Beach and El Segundo.

6 HEARING OFFICER SHEAN: All right. So
7 what you're looking for is that C, D and E be part
8 of the submittal and comment by both cities; is
9 that the idea?

10 MS. JESTER: Right, exactly.

11 MR. LUSTER: [telephonically] Hello?

12 HEARING OFFICER SHEAN: Hello?

13 MR. LUSTER: Hi, this is Tom Luster on
14 the phone. We're not able to hear much at all.
15 We hear an occasional full sentence, but other
16 than that, just snippets of words here and there.
17 Is there anything that can be done with the
18 speaker placement?

19 PROJECT MANAGER REEDE: We intend to get
20 in a different type of speakerphone by the
21 afternoon hearing. During the break I'll go to
22 Radio Shack or somewhere, but this is all the
23 hotel had for equipment.

24 MR. LUSTER: Okay.

25 PROJECT MANAGER REEDE: Can you hear me

1 clearly, Tom?

2 MR. LUSTER: I can hear you now, yes,
3 but other than that, occasionally I'll hear
4 Mr. Shean and I'll hear what I think are some of
5 the intervenors or the applicant --

6 PRESIDING COMMITTEE MEMBER PERNELL:
7 He's going to have to speak up.

8 PROJECT MANAGER REEDE: Are you speaking
9 directly into the telephone?

10 MR. LUSTER: Pardon?

11 HEARING OFFICER SHEAN: Are you speaking
12 as loudly as you think you can, both your voice
13 and into the phone? Because you're barely audible
14 to other than those of us who are right up here by
15 the conferencing.

16 MR. LUSTER: Yeah.

17 HEARING OFFICER SHEAN: For the moment
18 and for the morning, what I'll do is try to
19 indicate to you what it is we're talking about,
20 and without --

21 PROJECT MANAGER REEDE: Excuse me,
22 Mr. McKinsey, could we send somebody to the plant
23 to pick up one of your speaker -- Oh, they're
24 doing it right now.

25 HEARING OFFICER SHEAN: Okay. We're

1 apparently going to replace the speakerphone with
2 one from the plant. Anyway, we've been working on
3 Noise 6 and talking about the submittal of plans
4 and survey results to the Cities of Manhattan
5 Beach and to the City of El Segundo.

6 MR. LUSTER: Okay. Could I possibly
7 perhaps when the topic switches to Visual and
8 Marine Biology, could you give me a call back
9 then?

10 PROJECT MANAGER REEDE: Yes, that would
11 be okay, I'll call you back.

12 MR. LUSTER: Okay, thanks a lot.

13 HEARING OFFICER SHEAN: All right, thank
14 you.

15 MR. LUSTER: Uh-huh, bye-bye.

16 HEARING OFFICER SHEAN: Okay. Anything
17 more on Noise?

18 MS. JESTER: Not on Noise 6, but on some
19 other noise issues.

20 HEARING OFFICER SHEAN: Yeah, we're
21 doing those.

22 MS. JESTER: Okay. Do you want to start
23 with my letter or --

24 HEARING OFFICER SHEAN: You go in the
25 manner --

1 MS. JESTER: Okay.

2 SENIOR STAFF COUNSEL ABELSON:

3 Ms. Jester, before you start, let me ask Hearing
4 Officer Shean, we have our noise consultant on
5 this phone line, which is defective, and I have no
6 idea the full depth of Ms. Jester's concerns. I
7 don't know whether they're really very, very minor
8 stuff that he needn't really hear or participate
9 in or not.

10 But on the expectation that there may be
11 issues that it would be helpful to have his input
12 on as well, would it be possible to table Noise
13 just in sequence until we get this new
14 speakerphone, move on to some other issues, and
15 just pick up where we're at right now as soon as
16 we have a more effective line?

17 HEARING OFFICER SHEAN: I don't have any
18 problem with that.

19 PRESIDING COMMITTEE MEMBER PERNELL: How
20 much more do you have on Noise? We've done a lot
21 on Noise already. How much more do you have?

22 MS. JESTER: We have quite a bit more.

23 PROJECT MANAGER REEDE: They're
24 proposing three additional Noise conditions.

25 HEARING OFFICER SHEAN: All right. We

1 can go to something else.

2 PROJECT MANAGER REEDE: I believe
3 they're proposing conditions Noise 11, 12, and 13,
4 which staff has not had the opportunity to review.
5 It was only recently e-mailed, yesterday. Staff
6 has not reviewed it, so we're not prepared to
7 discuss it nor do we have copies of it.

8 MS. JESTER: Can I clarify something for
9 the record?

10 HEARING OFFICER SHEAN: Sure.

11 MS. JESTER: Eleven through 14 is
12 exactly the same language that was docketed in
13 July 2001. So it's not new, it's something that
14 staff has seen before, but you objected to it
15 before, you didn't feel it was necessary.

16 HEARING OFFICER SHEAN: Okay.

17 MS. JESTER: So it is repetitive. And
18 this was docketed on Monday. We received a
19 verification back from docket. I called a number
20 of people that received it, but apparently
21 Mr. Reede and Mr. Abelson did not receive it until
22 I e-mailed it separately to them.

23 SENIOR STAFF COUNSEL ABELSON: Yeah.

24 PROJECT MANAGER REEDE: It was forwarded
25 to me yesterday.

1 HEARING OFFICER SHEAN: All right.
2 Well, let's do what we were talking about, which
3 is we'll table this for now and we'll come back to
4 it.

5 MS. JESTER: That's fine.

6 HEARING OFFICER SHEAN: Okay. And since
7 the Coastal Commission wants us to hold Visual and
8 Aquatic Biology, and, let's see, are there Air
9 District people here?

10 PROJECT MANAGER REEDE: They just
11 arrived, but our Air Quality engineer is going to
12 be calling in, which is why, might I suggest we
13 could dispense with a couple of areas that are
14 uncontentious.

15 HEARING OFFICER SHEAN: Okay.

16 PROJECT MANAGER REEDE: We can knock
17 those out very quickly.

18 HEARING OFFICER SHEAN: Why don't we
19 sort of go through those.

20 PROJECT MANAGER REEDE: Okay. Might I
21 suggest which ones we do first while we're waiting
22 on a speakerphone?

23 HEARING OFFICER SHEAN: Sure.

24 SENIOR STAFF COUNSEL ABELSON: I believe
25 someone is trying to --

1 HEARING OFFICER SHEAN: Is somebody
2 trying to say something?

3 MR. BUNTON: Yes. This is Jim Bunton.
4 Shall I sign off?

5 HEARING OFFICER SHEAN: Yes, we'll get
6 back to you.

7 PROJECT MANAGER REEDE: Yes, please give
8 me your phone number.

9 HEARING OFFICER SHEAN: Give us your
10 telephone number, please.

11 MR. BUNTON: Yes. 916-765-6205.

12 HEARING OFFICER SHEAN: All right. When
13 we get another speakerphone, we'll get back to
14 you.

15 MR. BUNTON: Okay. This is on Noise
16 only, right?

17 HEARING OFFICER SHEAN: That's
18 affirmative.

19 Okay.

20 PROJECT MANAGER REEDE: Might I suggest,
21 Hearing Officer Shean, that we address Efficiency,
22 Geology, Facility Design, Reliability, and
23 Cultural Resources.

24 APPLICANT ATTORNEY MCKINSEY: Hearing
25 Officer Shean, I would suggest, only because I'm

1 aware of the time constraint that Tony Rizk has
2 from the LA Regional Water Quality Control Board,
3 that we actually tackle Biology next. It was
4 actually in order, and that's why I hadn't said
5 anything before. And I don't think we may really
6 have to spend very much time on Biology, and
7 actually, because of his schedule I'm glad that we
8 have him here and I'd like to have him actually
9 understand where we're at.

10 SENIOR STAFF COUNSEL ABELSON: We just
11 lost the Coastal Commission.

12 PROJECT MANAGER REEDE: Right, the
13 Coastal Commission isn't there. National Marine
14 Fisheries haven't called in, Department of --

15 HEARING OFFICER SHEAN: Let's just take
16 a little bit of time, because maybe your guy will
17 get back with this in 20 minutes to a half-hour,
18 and we can still salvage Biology in the morning
19 setting.

20 Do you have the morning until lunch?

21 ASSOCIATE WATER SOURCES CONTROL ENGINEER
22 RIZK: Not that I want to dictate any schedule,
23 but I could come back in the afternoon if it would
24 be better, or if we could do it right now.

25 Given the constraints you have,

1 logistical constraints about a speakerphone and
2 getting people on the line --

3 HEARING OFFICER SHEAN: If you were to
4 come back in the afternoon, when would that be?

5 ASSOCIATE WATER SOURCES CONTROL ENGINEER
6 RIZK: At your convenience.

7 SENIOR STAFF COUNSEL ABELSON: 2:00
8 o'clock?

9 PRESIDING COMMITTEE MEMBER PERNELL: No,
10 no, no, 1:00 o'clock.

11 HEARING OFFICER SHEAN: Does 1:00
12 o'clock work for you? Because now we're at
13 about --

14 PROJECT MANAGER REEDE: 11:00 o'clock.

15 HEARING OFFICER SHEAN: -- 11:00
16 o'clock. All right, 1:00 o'clock, is that
17 satisfactory to you?

18 ASSOCIATE WATER SOURCES CONTROL ENGINEER
19 RIZK: Then I'll just stay put.

20 HEARING OFFICER SHEAN: Pardon me?

21 ASSOCIATE WATER SOURCES CONTROL ENGINEER
22 RIZK: Then I'll just stay. The two hours won't
23 buy me anything.

24 HEARING OFFICER SHEAN: Oh, all right.
25 It would need to be much later than that?

1 ASSOCIATE WATER SOURCES CONTROL ENGINEER

2 RIZK: That's okay. I'll make a few phone calls
3 and I'll stay.

4 HEARING OFFICER SHEAN: Okay. Let's try
5 to do what we were doing, see if we can get this
6 speakerphone here in the next 20 minutes or so,
7 and --

8 PRESIDING COMMITTEE MEMBER PERNELL: All
9 right. Mr. Shean, before we do that, can we go
10 off the record a minute.

11 (Brief recess.)

12 PRESIDING COMMITTEE MEMBER PERNELL:
13 We're back on the record.

14 Mr. Shean?

15 HEARING OFFICER SHEAN: All right. Why
16 don't we pick up what we think are some of these
17 easier topics, referring to our appendix A that
18 was appended to the notice, and go to -- because,
19 as far as I know, if we start with Efficiency
20 there are no issues with respect to that; is that
21 correct?

22 And so can we take, when we do have our
23 evidentiary hearings, take that by declaration
24 rather than a live witness? Does anybody want a
25 live witness on Efficiency?

1 Okay. Hearing none, how about Geology?

2 PROJECT MANAGER REEDE: By declaration.

3 HEARING OFFICER SHEAN: Same question.

4 Any opposition to taking it by declaration?

5 All right. Hearing none, that's how
6 we'll do that.

7 PROJECT MANAGER REEDE: Facility Design,
8 sir.

9 HEARING OFFICER SHEAN: Same question.
10 Anybody want a witness for that?

11 With no objection, we'll take that by
12 declaration. We'll go to Reliability.

13 Yes?

14 MR. GARRY: This is Paul Garry from the
15 City of El Segundo. In our letter that we
16 submitted, we had a couple of comments on I think
17 Gen 6 or Gen 8, which I believe are in the
18 Facility Design chapter.

19 HEARING OFFICER SHEAN: Okay. We're
20 showing on page ten of your comments on Gen 8, and
21 I guess we go back to page nine on Gen 6, the
22 requirement that the CBO or if we have a contract
23 CBO has an El Segundo business license; is that
24 correct?

25 MR. GARRY: Well, it's for any special

1 inspectors that may work on the job that come from
2 the outside that they have an El Segundo business
3 license, not the CBO itself.

4 HEARING OFFICER SHEAN: Okay.

5 SENIOR STAFF COUNSEL ABELSON:

6 Mr. Shean, the compliance officer has made me
7 aware that she definitely has some concerns about
8 that and I think it would be useful in the context
9 of what you're trying to accomplish today to hear
10 what that's about. And I don't know whether we
11 need closure on that issue.

12 HEARING OFFICER SHEAN: All right. Why
13 don't we hear what those concerns are.

14 COMPLIANCE MANAGER STONE: Now?

15 HEARING OFFICER SHEAN: Yes. Well,
16 actually, why don't you tell us what your
17 objective is to having the condition added.

18 MR. GARRY: Our objective is that all
19 people who operate a business or do business in
20 the City of El Segundo are required to have a
21 business license to operate the business and
22 special inspectors who come and work on
23 construction jobs are included in that. And so we
24 want to make sure that as inspectors work on this
25 job that they are notified that they need to get a

1 business license.

2 PRESIDING COMMITTEE MEMBER PERNELL:

3 Well, is that --

4 HEARING OFFICER SHEAN: Just a revenue
5 deal? Do you review them for qualifications or
6 anything else like that?

7 MR. GARRY: They have to show that they
8 are a registered inspector in that particular
9 trade when they come to register on the job
10 normally, when it's a job in the city, and then we
11 would make sure they have a business license as
12 well.

13 HEARING OFFICER SHEAN: All right. Why
14 don't we have --

15 SENIOR STAFF COUNSEL ABELSON: Donna,
16 come on up, I want to bring you because I know
17 you're going to be involved in a number of these
18 decisions. Bring a chair up.

19 This is Donna Stone from our Compliance
20 Office and on many issues related to verification
21 and compliance her office and she personally will
22 have a lot of responsibilities.

23 COMPLIANCE MANAGER STONE: Well, my
24 basic objection to -- First of all, the Energy
25 Commission is basically the CBO on all of our

1 siting projects. And we do hire a delegate.

2 All of our inspectors are reviewed for
3 their qualifications. The CBO has to approve that
4 and the Energy Commission also looks that over for
5 qualifications. We are more interested in getting
6 good competent inspectors, and we don't want to be
7 restricted to somebody that has a City of El
8 Segundo business license. That certainly narrows
9 the pool.

10 Frankly, it also takes away some of our
11 authority and we don't want to do that.

12 SENIOR STAFF COUNSEL ABELSON:
13 Mr. Shean, if I could just add in closing on the
14 issue, it's my understanding that the condition
15 that Mr. Garry and the City has proposed would be
16 unprecedented for us. It is staff's position that
17 that is not an acceptable position, so if it's
18 something the City insists on, that will be an
19 issue that will have to be litigated.

20 MR. GARRY: I would just clarify that
21 our intent is not to say that only inspectors that
22 currently have a business license in the City
23 could work on the job, we're not trying to limit
24 the pool. Any inspector that is chosen by the
25 CBO, whoever that may be in this case, can have

1 who they want, they just need to get the business
2 license to do business in the City. That's all
3 this is saying.

4 It's not limiting who can be a special
5 inspector, they just have to pay the fee, just
6 like anyone else doing business in the City.

7 MR. BERGER: Mr. Chairman, this is Karl
8 Berger. I'm the assistant city attorney for El
9 Segundo. If I may ask a couple of questions,
10 perhaps we can get by this.

11 It's my understanding that you would be
12 contracting with these particular inspectors and
13 they would be under contract with the state; is
14 that right? Or are they independent contractors
15 and need to be issued a PO or something like that?

16 COMPLIANCE MANAGER STONE: They will be,
17 they're in --

18 (Inaudible conversation between Stone
19 and Abelson.)

20 HEARING OFFICER SHEAN: I guess what I'm
21 getting at is who are they under contract with?
22 Presumably they're paid for their services, so I
23 just want to see what --

24 COMPLIANCE MANAGER STONE: They're not
25 paid by the state of California, they're paid by

1 the power developer.

2 MR. BERGER: They're paid by the
3 applicant.

4 SENIOR STAFF COUNSEL ABELSON: So there
5 is a contract with the power developer, not with
6 the state.

7 COMPLIANCE MANAGER STONE: For payment.
8 Well, you know, it depends who the delegated CBO
9 is.

10 SENIOR STAFF COUNSEL ABELSON: Well, the
11 reason I ask is because our business license
12 regulations would in inapplicable to a state
13 employee or to a state agency, and so if they're
14 under contract with the state, our regulations
15 wouldn't apply; however, if they're private
16 contractors contracting with the utility company,
17 they would be applicable.

18 COMPLIANCE MANAGER STONE: The CBO has
19 an MOU with the California Energy Commission;
20 however, we do not fund them.

21 HEARING OFFICER SHEAN: Okay. We've
22 probably taken this about as far as we can, unless
23 you guys are in further contact to figure out some
24 of this --

25 SENIOR STAFF COUNSEL ABELSON: That's up

1 to you. I was hoping to get this off the table,
2 but there is still some --

3 HEARING OFFICER SHEAN: Yeah, it doesn't
4 appear --

5 PRESIDING COMMITTEE MEMBER PERNELL:
6 Well, let me ask a question. We would know or you
7 would know the name of the contractor, correct?

8 MR. BERGER: Not necessarily. I mean,
9 that's one of our enforcement techniques is going
10 after people that don't have business licenses who
11 are operating within the City of El Segundo, and
12 one of the ways we do that is through the
13 Franchise Tax Board to make a determination of who
14 files taxes, indicating their place of business
15 within El Segundo.

16 COMPLIANCE MANAGER STONE: But those
17 people have a state business license. Why do they
18 need another license. There are none of the other
19 projects that we have that have to do this.

20 MR. BERGER: Well, perhaps the
21 chairperson is right. We should table this and go
22 on to something else.

23 HEARING OFFICER SHEAN: Okay. Well,
24 we'll just add it to our list of something that if
25 you choose to at the evidentiary hearings, you can

1 do.

2 Why don't we go on to --

3 PRESIDING COMMITTEE MEMBER PERNELL:

4 Well, I think that's an easy one that fits. I
5 mean, if the City requires them to have a license,
6 you know they're on the project, go out and see
7 whether they've got a license or not.

8 MR. BERGER: Well, and that's what we'll
9 be doing. But I had hoped to not -- try to get
10 by --

11 PRESIDING COMMITTEE MEMBER PERNELL: I
12 think that's a little bit out of our realm.

13 MR. BERGER: This essentially is a
14 noticing requirement that the CBO would tell them
15 that they need to get a license. That's one of
16 the things the special inspector would have to do
17 as part of their job.

18 HEARING OFFICER SHEAN: And is that
19 fundamentally a ministerial task or is it a
20 prescriptionary task?

21 MR. BERGER: No, it's a ministerial
22 task.

23 HEARING OFFICER SHEAN: Okay. All
24 right. I think we have it in mind.

25 PRESIDING COMMITTEE MEMBER PERNELL: All

1 right, but we're not signing off on that one.

2 HEARING OFFICER SHEAN: Right.

3 PRESIDING COMMITTEE MEMBER PERNELL:

4 Okay.

5 HEARING OFFICER SHEAN: And the next one
6 you have on Gen 8.

7 MR. GARRY: Gen 8 refers to, since I
8 don't think it's been determined who will be the
9 CBO and it didn't seem to be clear that the City
10 would receive as billed drawings of the plant when
11 it's completed, if the City is not ultimately
12 selected as the CBO. I've added language to try
13 to ensure that the City does receive copies of the
14 final plans for our records, because that will
15 help down the road as modifications get done and
16 people want to research the plans to have a local
17 place to do that. And we microfilm plans at the
18 end of projects, normally.

19 COMPLIANCE MANAGER STONE: My only
20 concern is you keep them confidential. We have
21 security issues. We don't -- So I don't know who
22 it is you plan to share them with. You know, I
23 would hope you don't have students coming in and
24 just offering them up the plans to the power
25 plant. It's just from a security point of view.

1 MR. BERGER: Our provisions in -- This
2 is Karl Berger again, the assistant city attorney
3 for El Segundo. There are provisions, and the
4 state could with regard to whom we may disclose
5 building plans to, it's either in response to a
6 subpoena or with the permission of the property
7 owner.

8 PRESIDING COMMITTEE MEMBER PERNELL:
9 Well, there is -- Since 9/11 there has been some
10 heightened interest in security with all of these
11 power facilities. So perhaps that's one that
12 we're going to have to make a note on. You know,
13 we're very conscious of the vulnerability of some
14 of these plants, and we don't want all of the
15 plans just laying out there that someone can
16 download or go sit in a room on a microfiche and
17 get to.

18 And that's part of the additional
19 security that the governor is putting in place.

20 MR. BERGER: Well, the state is subject
21 to the same Public Records Act as we are, so
22 you're subject to the same rules as we are.

23 PRESIDING COMMITTEE MEMBER PERNELL:
24 Well, not when there is state security involved.

25 MR. BERGER: Well, I'm not going to get

1 into an argument about that right now.

2 PRESIDING COMMITTEE MEMBER PERNELL:

3 Okay.

4 MR. BERGER: So I guess we'll have to
5 have that as an unresolved issue.

6 PRESIDING COMMITTEE MEMBER PERNELL:

7 Well, we'll have some legal counsel look at that,
8 but I'm not prepared to sign off on that at this
9 time.

10 PROJECT MANAGER REEDE: Might I add, in
11 our general conditions there have been -- In our
12 errata there are additional security points that
13 have been added. On the last couple of pages of
14 our errata you will notice there are a number of
15 additional plant security issues that are now
16 included.

17 HEARING OFFICER SHEAN: Okay. Let's go
18 on to your Gen 10, and this should wrap up the
19 topic.

20 MR. GARRY: Yes. Finally, Gen 10 was a
21 request that assumes that the City may end up
22 being the CBO that an on-site construction trailer
23 be provided for the use of the CBO and inspection
24 personnel that might be under them.

25 SENIOR STAFF COUNSEL ABELSON: Again, I

1 think staff has a view on that. I would let
2 Ms. Stone state what that is.

3 COMPLIANCE MANAGER STONE: This is not
4 something that we generally do. Normally folks
5 are responsible for their own office space. At
6 most, and this is not on all projects, some
7 projects will allow some office space but not
8 normally a construction trailer.

9 So I would not be inclined to put this
10 in. I don't see it as any kind of mitigation for
11 the project, but it's --

12 HEARING OFFICER SHEAN: Is this
13 something that typically would be worked out
14 between the City and the project developer, in
15 terms of the convenience of the CBO and then
16 basically an agreement with the developer, we need
17 space to do something?

18 COMPLIANCE MANAGER STONE: You're so
19 close there, I would think that you would need
20 this less than a third party.

21 MR. BERGER: I think Mr. Garry would be
22 better able to tell you about past practice.

23 HEARING OFFICER SHEAN: Okay.

24 MR. GARRY: Well, I mean, we haven't had
25 too many jobs of this size, and because I assume

1 that these will be where the on-site plans would
2 be maintained for the inspectors to use during the
3 inspections and for the CBO that it would be --
4 and normally on a job site there is some
5 construction office where all these are taking
6 place, but it's less convenient when it's someone
7 else's office than our own personnel's for their
8 own use.

9 And given the size of it and the number
10 of inspections and people that might be involved,
11 that would be useful.

12 HEARING OFFICER SHEAN: I guess the
13 thing here is whether we've gone from the concept
14 of sort of a prescriptive thing of, well, your CBO
15 is going to need a work area where he can
16 effectively maintain his documents and go to and
17 this, that, and the other versus a sort of
18 proscriptive thing that, well, and you've got to
19 have a trailer site.

20 Isn't it just something that can be
21 worked out between the applicant and the CBO, if
22 that's the way --

23 MR. GARRY: Well, part of it was so that
24 we could try to work it out so that we didn't have
25 to argue about it later as a condition.

1 APPLICANT ATTORNEY MCKINSEY: Our
2 position would be that regardless of who the CBO
3 is, we're going to have to have a contract with
4 the CBO providing those services. And the CBO may
5 want a trailer on site, may insist on a trailer on
6 site in those negotiations.

7 We might be tying our hands a little bit
8 if it turns out to be a lot of site constraint
9 issues, and there may be that we don't want a
10 particular trailer designated just for the CBO
11 because of that. And so we would, I think we
12 would kind of prefer that we didn't have this type
13 of detail as a condition specifying a particular
14 term we would have to have in that contract with
15 the CBO, especially because the way the City is
16 proposing it actually says "if requested," which
17 would mean, I guess if the CBO requests it in our
18 negotiations, that would be an automatic, we would
19 have to give it to them.

20 And I don't know that we would need that
21 level of detail in the decision to decide that.

22 SENIOR STAFF COUNSEL ABELSON:
23 Mr. Shean, I think I can short-circuit this by
24 saying that staff is simply not prepared to
25 stipulate to this today.

1 HEARING OFFICER SHEAN: All right.
2 Well, we now know on the Facility Design issues,
3 if you choose to do so, you can bring forward at
4 the hearing.

5 Okay. So that is not by -- Well, the
6 other parties may submit it by declaration, but
7 we're going to reserve time for you to do whatever
8 you want on the topic.

9 MR. BERGER: Thank you.

10 HEARING OFFICER SHEAN: All right. How
11 about Reliability? Is there objection to taking
12 that by declaration?

13 All right. Hearing none, that's what
14 that will be.

15 Cultural Resources?

16 PROJECT MANAGER REEDE: Declaration.

17 HEARING OFFICER SHEAN: Any objection to
18 taking that on declaration?

19 Hearing none, that's the way we'll do
20 that. Let's go look at some of these other
21 topics.

22 I think there were some comments on
23 Worker Safety; is that correct?

24 PROJECT MANAGER REEDE: Yes. Hearing
25 Officer Shean, there were comments raised by the

1 City of El Segundo on Worker Safety, and we've
2 attempted to address all of the issues, or address
3 all of their concerns. In our errata, page 47,
4 we've -- This is James Reede speaking with the
5 CEC -- we have revised our conditions of
6 certification, Worker Safety 1 and Worker Safety
7 2, to the way it was asked to be brought up to by
8 the City of El Segundo.

9 There are other issues by the City of El
10 Segundo that are either contained in Hazardous
11 Material Management, Air Quality, or have to wait
12 for Final Design.

13 HEARING OFFICER SHEAN: Why don't we
14 hear from the City.

15 MR. GARRY: This is Paul Garry again.
16 In our recent submittal, the only comment, we had
17 accepted all of the changes in the errata
18 regarding the actual components of those various
19 plans. The only thing we were wanting to make
20 sure of is in the verification, that the City
21 of -- the Fire Department receive a copy of those,
22 which I believe were not -- that portion did not
23 get into the verification in Worker Safety 2 in
24 the end.

25 SENIOR STAFF COUNSEL ABELSON: And I

1 think conceptually we agree with that and perhaps
2 we don't need to wordsmith it right now. We don't
3 have a problem with that.

4 HEARING OFFICER SHEAN: Okay. Makes
5 sense to me.

6 SENIOR STAFF COUNSEL ABELSON:
7 Mr. Hearing Officer, which condition was that,
8 again, by number?

9 MR. GARRY: This is Worker Safety 2.

10 SENIOR STAFF COUNSEL ABELSON: Adding a
11 copy to the Fire Department, all right, in
12 verification?

13 MR. GARRY: Yes.

14 PROJECT MANAGER REEDE: Okay, because
15 originally, the City of El Segundo's comment was
16 that the Fire Department should have a review and
17 acceptance function. That's why it doesn't show
18 up exactly as they had asked.

19 COMPLIANCE MANAGER STONE: Right, per --

20 PROJECT MANAGER REEDE: We'll give them
21 a copy.

22 COMPLIANCE MANAGER STONE: Yeah.

23 MR. GARRY: Right.

24 PROJECT MANAGER REEDE: So we're
25 resolved on Worker Safety 1 and Worker Safety 2.

1 HEARING OFFICER SHEAN: Okay.

2 PROJECT MANAGER REEDE: Okay, and that
3 would be all of the conditions of certification.

4 Worker Safety 3, the City had raised a
5 concern that it didn't contain the agreed-upon
6 text regarding asbestos. That particular concern
7 regarding the asbestos and the fuel oil storage
8 tank was more appropriate in the Waste Management
9 section, and we created a Waste, condition of
10 certification Waste 8 that addresses the concerns
11 regarding asbestos and the fuel oil storage tank
12 where it is more appropriate.

13 SENIOR STAFF COUNSEL ABELSON: Is that
14 in our errata?

15 PROJECT MANAGER REEDE: Yes.

16 SENIOR STAFF COUNSEL ABELSON: Can we
17 point Mr. Garry to it, because they're the ones
18 who are raising the issue so we want to make
19 sure --

20 MR. BERGER: Pardon me for interrupting,
21 Mr. Chairman --

22 HEARING OFFICER SHEAN: Sure.

23 SENIOR STAFF COUNSEL ABELSON: Sure.

24 MR. BERGER: -- Karl Berger again,
25 assistant city attorney. On page eight, the only

1 issue we had was what we just discussed, which was
2 in Worker Safety 2. We had accepted all other
3 errata numbers.

4 PRESIDING COMMITTEE MEMBER PERNELL:

5 Okay, thank you.

6 PROJECT MANAGER REEDE: Okay, thank you.

7 MR. GARRY: But I only responded in my
8 most recent letter to -- you know, I had reviewed
9 the errata and where the changes that we had
10 requested in a previous letter had been addressed.
11 I did not bring them up again, so --

12 HEARING OFFICER SHEAN: Okay. Where you
13 became happy and you stayed happy.

14 MR. GARRY: Right.

15 HEARING OFFICER SHEAN: All right.

16 Well, then let's go to Waste Management
17 as a topic. Is there anything still outstanding
18 in Waste Management? Any reason not to take that
19 by declaration? Any objection?

20 All right. Hearing no objection, that's
21 how we'll do that.

22 PROJECT MANAGER REEDE: Haz Mat we can
23 go to.

24 HEARING OFFICER SHEAN: Haz Mat, yes,
25 next on the list.

1 PROJECT MANAGER REEDE: There was an
2 agreed-to change during the workshop. It's
3 contained in the applicant's prehearing conference
4 statement. That agreed-to change did not make it
5 into the errata; however, staff agrees to -- had
6 previously agreed and still agrees to the change
7 to those two particular conditions, which are
8 shown in the applicant's prehearing conference
9 statement.

10 HEARING OFFICER SHEAN: Okay. Let's
11 just find that.

12 APPLICANT ATTORNEY MCKINSEY: I think in
13 the prehearing conference statements we
14 summarized. We didn't actually articulate it as
15 we articulated in our comments to the FSA.

16 HEARING OFFICER SHEAN: Right.

17 APPLICANT ATTORNEY MCKINSEY: So that's
18 where it's in detail. It's on page four of our
19 prehearing conference statement where we note that
20 Haz 1 and Haz 4 don't seem to have the changes.

21 HEARING OFFICER SHEAN: Okay. But
22 whatever those changes are, those are currently
23 acceptable to the staff?

24 PROJECT MANAGER REEDE: It was a total
25 of three words.

1 HEARING OFFICER SHEAN: Oh, all right.

2 Any reason not -- Is there objection to
3 taking Haz Mat by declaration?

4 MR. GARRY: Which conditions were those?

5 HEARING OFFICER SHEAN: Haz 1 and Haz 4.

6 Why don't you just describe what this is
7 for our public purposes.

8 APPLICANT ATTORNEY MCKINSEY: The change
9 on Haz 1 is on page three of our FSA comments
10 submitted on October 10th. It's our letter dated
11 October 2nd, I'm sorry, to Mr. Reede.

12 And in Haz 1, the original Haz 1 as
13 proposed in the FSA involved a reference to both
14 the CFR and to a table, and we've indicated that
15 the CFR was what was intended. And the staff
16 indicated they had no problem or they didn't think
17 they would have any problem with confirming that
18 they could delete the line that reads "or in
19 greater quantities than those identified by
20 chemical name in the revised table 5.15-2, revised
21 as of June 7th in the AFC."

22 So that's just a deletion of that
23 reference so that the CFR remains as the guideline
24 when we exceed a chemical maximum.

25 And then in Haz 4, involving Hydrosine,

1 we had originally agreed that the term "or" would
2 be fine, that we could either choose to use
3 Hydrosine or not, and if we did not, we had
4 different things. And the "or" had changed to an
5 "and" in about the third line of Haz 4. And we
6 had said it should be "or" and the staff has
7 indicated they don't have a problem with that,
8 saying we either choose to use it or we find it
9 infeasible.

10 And if we choose to use it, it sets out
11 things that we have to do.

12 HEARING OFFICER SHEAN: Okay. And for
13 those who are working off the FSA, that would have
14 been on page 4.4-7 and 8.

15 Okay. So absent objection, we will take
16 Haz Mat by declaration, with those revisions.

17 All right. How about let's just work up
18 the list here. On Transmission Line Safety and
19 Nuisance, I know there was one with regard to
20 notification and monitoring related to
21 electromagnetic fields. Is that the only one
22 that's currently outstanding? Was that the City?

23 PROJECT MANAGER REEDE: Yes. I believe
24 that was the City. We did add one particular
25 condition of certification of Transmission Line

1 and Safety Nuisance 3 based on a previous
2 agreement between the City of El Segundo and the
3 City of Manhattan Beach so they could report any
4 associated electromagnetic interference complaints
5 to the Commission.

6 HEARING OFFICER SHEAN: Okay. This
7 actually, instead of being EMF, this is radio and
8 TV trans, right?

9 PROJECT MANAGER REEDE: Right. Well,
10 that's what causes the interference, the
11 electromagnetic waves.

12 Okay, and the City of Manhattan Beach
13 also had a comment, and we responded to their
14 comment relating to Transmission Line Safety and
15 Nuisance number 2. They had asked that -- They're
16 basically saying this condition appears to just
17 require measurements but does not have any
18 standards that are required to be met.
19 Documentation that shows compliance with the
20 standards that are identified and TLSN 1 should be
21 required.

22 And our response was the compliance
23 project manager will determine if the
24 postmodification measurements deviate from the
25 standards in TLSN 1 when compared to the

1 premodification measurements that were made and,
2 if appropriate, will initiate corrective action.
3 And I'm on page 37 of our errata.

4 So if the cities are satisfied with the
5 incorporation of TLSN 3, which was the City of El
6 Segundo and our response to City of Manhattan
7 Beach, then we can go by declaration.

8 MR. GARRY: You know, the City of El
9 Segundo -- This is Paul Garry -- in our letter we
10 had again requested, and I thought that was part
11 of the agreed-upon language, a couple of sentences
12 that actually required notification of the
13 property owners in Manhattan Beach along the
14 transmission line.

15 The rest of the language was fine, and
16 that just said how complaints would be addressed,
17 but without the notification people aren't likely
18 to know what the potential source of the
19 interference is coming from. And that's why we
20 had, or are again requesting -- I thought all
21 parties had agreed upon previously to that
22 additional language.

23 HEARING OFFICER SHEAN: Okay. This is a
24 notification issue, right? As far as you're
25 concerned?

1 MR. GARRY: Yes.

2 MS. JESTER: And that was our
3 understanding too in our comment letter that
4 basically says the same thing, notification should
5 be required.

6 PRESIDING COMMITTEE MEMBER PERNELL: Is
7 there a radius of -- How long is the line? I
8 mean, what are we talking about with notification?

9 PROJECT MANAGER REEDE: Well, there are
10 no new off-site lines.

11 PRESIDING COMMITTEE MEMBER PERNELL: So
12 these are on-site lines.

13 PROJECT MANAGER REEDE: No. They're
14 referring to off-site existing transmission lines.

15 PRESIDING COMMITTEE MEMBER PERNELL:
16 Right, but the notification, I'm trying to get a
17 clear picture of who gets notified, everybody
18 within a half-mile radius of the line, or --

19 MR. GARRY: Within a thousand feet.

20 PRESIDING COMMITTEE MEMBER PERNELL: A
21 thousand feet.

22 MR. GARRY: I believe that was the --

23 HEARING OFFICER SHEAN: For how many --
24 For what linear distance?

25 MR. GARRY: Well, it would be the length

1 of the line as it passes -- It goes down Rosecranz
2 Avenue until you pass the residential portion of
3 Manhattan Beach, and then it's all commercial.
4 And so it's -- I don't know how long it is, a mile
5 and a half, couple miles?

6 PRESIDING COMMITTEE MEMBER PERNELL:

7 Does applicant have --

8 APPLICANT ATTORNEY MCKINSEY: Well, we
9 do and we don't. We agreed to this language a
10 year and a half ago. The concern we have, as
11 we're reading it now and this is why we're kind of
12 did we really agree to this, is that the reason
13 why this wasn't originally in the FSA is staff
14 really didn't feel that there was potential for
15 interference, that we did not -- because we're not
16 increasing the maximum flows that will flow
17 through that line.

18 Right now there are two lines that power
19 can leave the plant with, and right now, in any
20 case, one of those lines is lying closest to the
21 City of Manhattan Beach can be at its full
22 capacity. We're not increasing that capacity.

23 So the only thing that is possible is,
24 because there will be increased megawatt
25 production at the facility, there may be more

1 times when that line that's closer is at full
2 capacity. Nevertheless, because there is a line
3 immediately adjacent there and because generally
4 speaking we don't have a problem with receiving
5 complaints, when we read it this time in your
6 change we realized what we're worried about, and
7 this may do, is, one, we already don't think we
8 expect any interference, and we're sending out
9 notices to all these residents to say look for it,
10 we may pick up more complaints that are more
11 opportunistic rather than actually related to
12 changes, since we're not expecting changes.

13 But nevertheless, we agreed to this
14 language before. What I'm actually kind of asking
15 is whether the cities really feel that we ought to
16 send out notices to all these residences when
17 we -- nobody is actually thinking that there are
18 going to be interferences. We kind of did this I
19 think as an extra assurance that we had an
20 obligation if we receive complaints to do it, but
21 that we didn't actually expect it, that we may
22 actually end up in a deluge of complaints that
23 might create more of a problem.

24 Because ultimately the resolution of all
25 of these complaints may be it wasn't caused or

1 your current interference is not being caused by
2 that line. Because the outcome should logically
3 be there isn't any increase in capacity on that
4 line immediately adjacent to those homes, so the
5 interference you're complaining about wasn't
6 caused by the project.

7 And if it was one or two complaints, it
8 might be able to handle those really well, but if
9 we got deluged with 300 of them, it could really
10 turn into a frustrating experience for the people
11 making the complaints. Because we're creating a
12 process to make complaints where we don't expect a
13 problem.

14 So what I'm actually asking is if the
15 cities are comfortable without having that
16 inserted language, though we did agree to it the
17 first time. And should you really insist, I think
18 we'll honor that agreement, but in retrospect it
19 may not be the right way to go.

20 HEARING OFFICER SHEAN: Well, I guess
21 that was sort of the Committee's question is this
22 line has been in existence forever, and it's not
23 going to be powered up at any higher level than
24 its historic level. So how --

25 MR. GARRY: I don't think that's

1 necessarily the case.

2 HEARING OFFICER SHEAN: Well, I mean,
3 it's --

4 MS. MURPHY: Its allowed levels, but not
5 its historic --

6 HEARING OFFICER SHEAN: I'm sorry?

7 MS. MURPHY: Its allowed levels, but not
8 its historic --

9 HEARING OFFICER SHEAN: Its allowed
10 levels.

11 MS. MURPHY: -- not what actually has
12 been happening -- when it will be powered up
13 beyond what's actually been happening for many
14 years.

15 MR. GARRY: I believe the AFC did
16 identify that there were impacts on this, because
17 of this project on the potential EMFs and the
18 interference. It would be an increased incidence
19 of interference. That's the original condition
20 for addressing complaints.

21 I mean, this primarily is to benefit the
22 City of Manhattan Beach residence, and I probably
23 would defer to them on really how far they could
24 take this with the notice thing.

25 MS. JESTER: The reason we had brought

1 up the noticing initially was because if you have
2 interference, who do you call? You know, I
3 wouldn't know who to call: Do I call Edison? Do
4 I call my service provider for my telephone? Do I
5 call my service provider for my computer?

6 HEARING OFFICER SHEAN: Yeah, cable TV
7 or something like that.

8 MS. JESTER: You know, as a regular
9 citizen you would have no clue who to call. So
10 this gives people that opportunity to say, oh,
11 maybe this is why, let me find out. And I have
12 somebody to call.

13 HEARING OFFICER SHEAN: Okay.

14 APPLICANT ATTORNEY MCKINSEY: Well,
15 we're going to agree to the language because we
16 agreed to it originally and those concerns, the
17 only way to really raise those concerns is to have
18 it in there. We just may end up with a lot of
19 complaints that are going to be kind of difficult
20 to resolve, and we'll have to deal with that if
21 that occurs.

22 MS. JESTER: Thank you.

23 PRESIDING COMMITTEE MEMBER PERNELL:

24 Thank you.

25 HEARING OFFICER SHEAN: All right. Was

1 that the only T Line Safety and Nuisance matter?

2 MS. JESTER: Yeah, 2 is fine.

3 PROJECT MANAGER REEDE: Hearing Officer
4 Shean, may we take a five-minute break so I can
5 get the phone plugged back in?

6 HEARING OFFICER SHEAN: Okay. We're
7 going to take a technology break here.

8 (Brief recess.)

9 HEARING OFFICER SHEAN: We're back on
10 the record.

11 With Water and Soils, it seems like
12 there is no issue there. Is there objection to
13 taking that by declaration?

14 MS. JESTER: I have one issue, and I
15 don't know if this is the appropriate location or
16 not. We had talked at one of the hearings about
17 adding a condition somewhere, either Soils or
18 maybe it's appropriate somewhere else, that
19 requires that there be some testing of the soil to
20 ensure that the plants that are planted can
21 actually live and thrive.

22 There is a lot of potential
23 contamination existing on the site, and so that's
24 an issue with the existing soil as well as the new
25 soil that's brought in for the berm. I've worked

1 on a lot of projects where the dirt just can't
2 even -- plants just die.

3 HEARING OFFICER SHEAN: Okay, and this
4 is the visual screening planting you're talking
5 about?

6 MS. JESTER: Yes.

7 HEARING OFFICER SHEAN: Okay.

8 MS. JESTER: So maybe it's more
9 appropriate under there.

10 HEARING OFFICER SHEAN: Why don't we do
11 that.

12 MS. JESTER: Okay.

13 HEARING OFFICER SHEAN: So other than
14 that, do you have some objection?

15 We're taking Water and Soils by
16 declaration.

17 Okay. Trying to return to some highly
18 productive work, we thought we'd dive into some
19 significant subjects here, and we might as well
20 take the most significant one, which is Biology,
21 essentially Aquatic Biology. We have Mr. Luster
22 from the Coastal Commission on line with us as
23 well as the National --

24 PROJECT MANAGER REEDE: Brian Chesney,
25 C-h-e-s-n-e-y, from National Marine Fisheries

1 Service; correct, Brian?

2 MR. CHESNEY: [telephonically] Yes, I'm
3 on here.

4 PROJECT MANAGER REEDE: Okay.

5 HEARING OFFICER SHEAN: And is there
6 just the two of you? Is there a third person on
7 line?

8 All right. Hearing none, we at least
9 know who is involved, all right.

10 Well, I guess we all know that this is
11 the biggie, so why don't we -- I think, first of
12 all, what might be helpful to the Committee is to
13 understand sort of what the objectives are of both
14 the staff and the applicant with respect to what's
15 supposed to happen from a biological ecosystem in
16 the Bay so that we know, then, what our objectives
17 and goals are, and then we can see from there how
18 to address them.

19 So can at least the staff sort of give
20 us an indication in terms of for the ecosystem
21 that's in the Bay, what are your goals that you're
22 looking for as they relate in general and then the
23 project that impacts specifically?

24 SENIOR STAFF COUNSEL ABELSON: Well, let
25 me start by saying that this issue has

1 unfortunately been an issue of disagreement and
2 contention for the better part of two years. The
3 staff is concerned that we fulfill entirely our
4 obligations under the California Environmental
5 Quality Act to ensure that the project, as
6 proposed, does not cause a direct impact or a
7 significant cumulative impact to the biology of
8 the affected region.

9 It is our strong belief that a project
10 that is roughly going to triple the level of water
11 intake over existing conditions, pulling in
12 something on the order of 200+ million gallons a
13 day, which is on the order of 200+ Olympic-sized
14 swimming pools a day of water, will, in fact,
15 cause a significant cumulative impact to Santa
16 Monica Bay, an area that is already severely
17 degraded from a variety of factors.

18 And we have been seeking quantification
19 of the scope of that impact in the manner that we
20 would view as scientifically reliable and
21 credible. There is a standard protocol that is
22 being used for all power plants in California,
23 which is a certain type of biological study that
24 would in particular analyze the nature of the
25 entrainment impacts at the site in question.

1 We have believed from the beginning,
2 have recommended and have urged from the beginning
3 that the applicant undertake that study, that that
4 study reveal whatever it reveals in terms of the
5 scope and nature of the harm that's likely to
6 occur, and that we then proceed to discuss what,
7 if anything, can be done in the way of mitigation
8 or alternatives.

9 Mr. McKinsey is here and he undoubtedly
10 will speak for the applicant's position on this,
11 but boiling it, Mr. Shean and Mr. Pernell, to its
12 essence, the disagreement that we have today is
13 profound and it is fundamental.

14 The applicant maintains that their
15 project is not exceeding the current baseline
16 levels in their current NPDES license, and,
17 therefore, whatever will happen is no worse than
18 what is happening today under CEQA. In addition,
19 the applicant maintains that even if staff is
20 correct that the baseline is much lower, three
21 times lower in staff's opinion, that their
22 scientists have concluded there is no significant
23 impact based on certain studies that they have
24 both done and presented to the Commission and to
25 the staff.

1 We disagree with both of those points,
2 and the bottom line is that we are very, very of
3 the opinion that this issue is going to need to be
4 litigated. This Committee is going to have to
5 resolve this dispute.

6 Now, I will say one other thing and then
7 I would like to defer to others who have opinions
8 and thoughts on this. Today the applicant has
9 submitted to us and I presume to others as well a
10 proposal -- They refer to it, I believe, as an
11 enhancement proposal -- to attempt to address
12 certain biological concerns that the staff has.

13 We have not had any opportunity to
14 carefully review that study or that suggestion or
15 that proposal, but I can assure the Committee and
16 I can assure you, Officer Shean, that it would be
17 our intent to take a reasonable period of time to
18 thoroughly understand that idea which is just
19 coming to our attention today, to try to determine
20 whether or not it addresses the concerns that
21 staff has been voicing, and then to respond in
22 absolutely good faith and as promptly as we can as
23 a technical matter as to whether or not that
24 resolves this issue, leaves us exactly where we
25 were before the proposal was submitted to us, or

1 moves us partway toward resolving the issue.

2 And I cannot tell you today whether that
3 would take us one day or one week, but I can
4 assure you that we would need some time beyond
5 today. There is no way that we could give any
6 kind of meaningful comment on the record today on
7 that proposal that was submitted.

8 HEARING OFFICER SHEAN: I fundamentally
9 understood this to be your position and you've
10 reiterated your position, and this is why I want
11 to take this up a notch in terms of what your
12 goals are. You've said fundamentally not to cause
13 a significant direct or cumulative impact.

14 Now, it's not a question of merely how
15 that could be accomplished but in terms of the
16 ecosystem goals for the Bay, it would be, for
17 example, it is your goal not to cause the
18 impingement and entrainment of more aquatic
19 organisms, and I'll, I guess, ask you that
20 question, is that among your goals?

21 SENIOR STAFF COUNSEL ABELSON: Yes,
22 certainly. Any biological impact which we have
23 identified in detail in our FSA, the nature of
24 those, that could result from this project should
25 not be in any way significant relative to the

1 current baseline.

2 And the impacts that can occur and we
3 believe will occur in the project as currently
4 proposed are first and foremost in massive
5 entrainment of the small fish and benthic
6 organizations that are the building blocks
7 essentially of the whole ecosystem out there.

8 The entrainment of somewhat larger fish
9 on the screens, and finally the cooking, if I can
10 use a colloquialism, of any critters that happen
11 to get in the way of the plume going out after the
12 cooling is used. That latter point is not an
13 issue of major concern because it adds to the
14 prior two issues, and the one that is the biggest
15 concern, quite honestly, is the entrainment issue.

16 Again, we are talking about massive
17 amounts of water being pulled into this intake as
18 the once-through cooling system for this project.
19 And with it, billions, and I believe -- I have
20 Noel Davis here with me and she can correct me if
21 I'm wrong -- I think even trillions of small fish
22 babies and fish food going in along with it every
23 day of the year as this project operates.

24 PROJECT MANAGER REEDE: May I interject
25 and not speak from a legal perspective, but staff

1 has not been provided sound scientific site-
2 specific, and I emphasize site-scientific, there
3 have been no studies performed at the intake
4 related to entrainment at the El Segundo
5 generating station for intake outfall, number one.

6 We do not have --

7 HEARING OFFICER SHEAN: Okay, we
8 understand that, we do understand that.

9 PROJECT MANAGER REEDE: And I have to
10 emphasize that --

11 HEARING OFFICER SHEAN: Well, you don't
12 need to emphasize something we already know,
13 because we can't know it any more than we know it.

14 Have you considered, during your
15 investigation of the potential for impacts, the
16 use of a marine life exclusion system, and I guess
17 if you can just answer that straight up.

18 SENIOR STAFF COUNSEL ABELSON: I believe
19 the answer is that our scientists are fully aware
20 of the nature of that option in general. It's
21 certainly been discussed and seriously considered
22 in other procedures in front of this agency, if
23 you're thinking about something like that,
24 something that's called a Gunderboom, for
25 example --

1 HEARING OFFICER SHEAN: Right. The
2 common term for it is a Gunderboom.

3 SENIOR STAFF COUNSEL ABELSON: -- the
4 problem in this particular situation is that
5 because of the absence of data that Mr. Reede just
6 mentioned, our ability to determine with any
7 degree of scientific accuracy and, frankly, legal
8 accuracy, as far as we're concerned, whether the
9 Gunderboom would help, hinder, significantly help,
10 minimally help is something that with the absence
11 of data that we're struggling with we have felt
12 there is no value in basically doing that with the
13 data that's lacking.

14 So what we have done, and again, I'm
15 sure you're aware of this, but for the
16 Commissioner's benefit and again for the public
17 record, what we have done in addition to asking
18 repeatedly for quality data which would allow us
19 in turn to look at some of the options such as the
20 one you're mentioning, we have looked at another
21 way to address the issue which is basically how
22 can we eliminate, since that's actually what CEQA
23 prefers, how can we eliminate the impact
24 altogether, as opposed to mitigate it?

25 And it appears that there is a

1 potentially feasible alternative design, and I'd
2 like to use the term advisedly alternative in this
3 case, in which instead of using once-through
4 cooling, drawing the water from the ocean, the
5 applicant would run a pipe 3000 feet, less than a
6 mile, to the nearby Hyperion wastewater treatment
7 plant which has hundreds of millions of gallons of
8 treated reclaimed wastewater that it is currently
9 doing nothing more with than treating and then
10 discharging.

11 And it is our belief that it is feasible
12 for the project, in lieu of the Bay, which is
13 where we're concerned, to use reclaimed wastewater
14 instead, thereby removing the impact from the Bay
15 entirely, and that is basically what we have
16 recommended as an alternative if the data is not
17 going to be provided.

18 HEARING OFFICER SHEAN: And I guess my
19 question would be in terms of the marine life
20 exclusion system as a technology, my understanding
21 is that that has at least been certified once at
22 the Energy Commission in the Contra Costa
23 decision; is that correct?

24 STAFF BIOLOGIST/BOTANIST YORK: That's
25 correct.

1 HEARING OFFICER SHEAN: That is correct.
2 And the purpose of its certification in that
3 proceeding was to reduce entrainment and
4 impingement impacts of that project; is that also
5 correct?

6 STAFF BIOLOGIST/BOTANIST YORK: Yes.
7 This is Rick York. That is correct.

8 HEARING OFFICER SHEAN: Okay.

9 STAFF BIOLOGIST/BOTANIST YORK: I'm the
10 staff biologist for the Energy Commission.

11 HEARING OFFICER SHEAN: So as a general
12 proposition, the Energy Commission has reviewed
13 these MLES systems and found them to have a
14 salutatory effect in terms of entrainment and
15 impact; otherwise, presumably, we would not have
16 certified, is that --

17 STAFF BIOLOGIST/BOTANIST YORK: We
18 certified them for Contra Costa. They have been
19 considered and discussed for other facilities like
20 Morro Bay and found to be infeasible there. And I
21 could tell you today that what we found is that
22 we're very uncomfortable with the technology.
23 It's been used and shown to be somewhat
24 successful, mainly on the East Coast. Some of the
25 situations that we may want to use them here would

1 be inappropriate --

2 MR. LUSTER: Excuse me, this is Tom
3 Luster. I'm not hearing anything said right now.

4 HEARING OFFICER SHEAN: All right.

5 STAFF BIOLOGIST/BOTANIST YORK: -- and
6 possibly one of the most inappropriate would be
7 this one for this facility, since there are --
8 they may not be appropriate --

9 HEARING OFFICER SHEAN: Can you hear any
10 better?

11 MR. CHESNEY: I can't hear either. This
12 is Brian Chesney. I've been having problems
13 pretty much the whole time. I think I hear the
14 Energy Commission staff, but not the other
15 speakers.

16 PROJECT MANAGER REEDE: Okay. Go ahead,
17 Rick.

18 STAFF BIOLOGIST/BOTANIST YORK: What we
19 have found is that they are going to be using a
20 Gunderboom for the Contra Costa facility. We've
21 considered the Gunderboom for the Morro Bay
22 project and it was found to be infeasible there
23 for navigational reasons that would cause a
24 navigational hazard for boats. We don't know
25 anything about how it would be appropriate for

1 this facility, but we'd have serious concerns
2 about having a Gunderboom in this situation, given
3 the rough seas that are likely to occur off the
4 coastline of California, off of El Segundo.

5 HEARING OFFICER SHEAN: Okay. But up to
6 this point, the MLES as an option is something
7 that you have not looked into, either in terms of
8 its efficacy on entrainment and impingement, or
9 feasibility from an engineering, navigation, or
10 other perspective; is that correct?

11 MR. LUSTER: Excuse me, could someone
12 please reiterate what was just said? We're not
13 able to hear on the phone.

14 PROJECT MANAGER REEDE: Rick, could you
15 come around, sit over here and speak, please.

16 SENIOR STAFF COUNSEL ABELSON: The
17 answer to your question, Hearing Officer Shean, is
18 that's true.

19 STAFF BIOLOGIST/BOTANIST YORK: Yes,
20 that's true.

21 HEARING OFFICER SHEAN: Okay.

22 PROJECT MANAGER REEDE: Could you
23 restate for the other parties what you were
24 saying.

25 STAFF BIOLOGIST/BOTANIST YORK: The

1 Energy Commission has licensed the Contra Costa
2 power plant, and in that case a Gunderboom was
3 part of the facility that was licensed.

4 Gunderboom technology has been considered for the
5 Morro Bay project, which is I believe still in the
6 hearing stage now, and it is no longer, I believe,
7 technology that's being considered as a mitigation
8 measure for impingement and entrainment
9 mitigation.

10 It was found to be infeasible for that
11 project due to, among other reasons, navigational
12 hazards that it would impart in the Morro Bay
13 area. We have not talked about the feasibility of
14 the Gunderboom for the El Segundo project. This is
15 the first time we've heard about it, today.

16 I do know a little bit about the
17 technology and I would think that one of the
18 things we need to consider for this project is
19 that it may not be feasible given the location of
20 the intake out in areas that have very rough seas
21 at times, it just may not be feasible for this
22 project.

23 We would need to look into that,
24 obviously.

25 PROJECT MANAGER REEDE: But both those

1 other plants had 316(b) studies, and the
2 Gunderbooms were suggested as mitigation versus
3 this plant having no study and a Gunderboom being
4 considered.

5 STAFF BIOLOGIST/BOTANIST YORK: That is
6 correct.

7 MR. CHESNEY: This is Brian Chesney.
8 Can I interject for one second?

9 HEARING OFFICER SHEAN: Certainly.

10 MR. CHESNEY: In regards to the
11 Gunderboom, I've been working on the Morro Bay
12 project as well, and we definitely frowned on that
13 alternative, because, as the gentleman just
14 mentioned, Morro Bay can be subject to heavy seas,
15 even within the Bay, and there is a high potential
16 for extreme bio-fouling, which has been shown in
17 studies even on the East Coast where the
18 Gunderboom has been implemented to interfere with
19 its efficiency and reducing entrainment.

20 Sometimes the bio-fouling could actually
21 cause this curtain to just fall and sink, and then
22 it loses all its ability to prevent entrainment
23 and impingement. And in Santa Monica Bay you can
24 even have a worse problem in terms of problems
25 with the high seas, because it's in direct

1 exposure to heavy swell.

2 So I really would doubt that the
3 Gunderboom would be a viable alternative. I'm not
4 against it being analyzed, but I just think it's
5 going down a road to no avail.

6 HEARING OFFICER SHEAN: Okay.

7 MR. LUSTER: This is Tom Luster. May I
8 interject as well?

9 HEARING OFFICER SHEAN: Yes. Go ahead,
10 Tom.

11 MR. LUSTER: May I interject as well?

12 HEARING OFFICER SHEAN: Yes. Go ahead,
13 Tom.

14 MR. LUSTER: It's my understanding that
15 one of the issues with the Gunderboom is it's
16 difficult to make it work --

17 PROJECT MANAGER REEDE: Could you speak
18 up, Tom, please?

19 MR. LUSTER: Okay. Is this better?

20 PROJECT MANAGER REEDE: Yes.

21 MR. LUSTER: It's difficult for the
22 Gunderboom to work in situations where you have
23 reversing tidal flows and in areas of swift
24 currents. And so its use in coastal situations is
25 limited.

1 I understand there may be some
2 alternative configurations they can use, but
3 that's a very site-specific analysis and would
4 require some, what I imagine to be pretty specific
5 engineering studies to determine whether or not it
6 would work at the El Segundo intake.

7 PROJECT MANAGER REEDE: I had a question
8 for Mr. Chesney.

9 You had mentioned that there is the
10 potential for navigation problems with the
11 Gunderboom. We have the Chevron marine terminal
12 fairly close by the intake/outtakes from El
13 Segundo. Do you see that as potentially being a
14 problem?

15 MR. CHESNEY: Being someone that boats
16 in that area quite a bit, I definitely see that as
17 a problem. But, again, I am not the agency to
18 make the call on navigational issues. But if I
19 were the Coast Guard, I would think that would be
20 a major concern. For the amount of water that's
21 going to be withdrawn, you're going to need a
22 large amount of surface area so you're going to
23 have -- there is going to be a large area that's
24 going to have this current.

25 And that's going to be a significant

1 navigational hazard to recreational boaters and
2 recreational fishermen. And, you know, just being
3 one that's out there in that area quite a bit
4 myself, I just know that's going to be an issue
5 with the Coast Guard.

6 PROJECT MANAGER REEDE: Okay, thank you.

7 HEARING OFFICER SHEAN: Okay. I guess
8 what flows from this discussion is it's apparent
9 that if we look at the effect of a Moss Landing
10 litigation that, at least this ought to be looked
11 at at a prima facie or perhaps more detailed
12 level, and we have a fairly good idea, at least
13 from some of the participants of what the issues
14 that they'd look at from their side, I guess since
15 the applicant has indicated that they're trying to
16 be forthcoming with this, do you have some
17 considerations you want to sort of put on the
18 table at this point or maybe even after lunch
19 after you're had an opportunity to think about
20 it -- Okay.

21 APPLICANT ATTORNEY MCKINSEY: Thank you,
22 Hearing Officer Shean. I'd like to kind of start
23 by me kind of summarizing our position. It was
24 fairly accurately described by Mr. Abelson, except
25 I might emphasize that there really may be two

1 fundamental steps involved in resolving --

2 MR. LUSTER: Excuse me, this is Tom
3 Luster. I'm not able to hear right now.

4 PROJECT MANAGER REEDE: Rick, would you
5 switch, and John, would you come up here, please.

6 APPLICANT ATTORNEY MCKINSEY: We may
7 essentially have really two fundamental steps in
8 resolving our issues. First, there is a
9 fundamental question about what the scope of this
10 project is that you use as the baseline for
11 measuring impacts. And obviously that drives the
12 resulting measurement of impacts.

13 If we define the permitted capacity of
14 the plant as the baseline, then this project would
15 cause no impacts. If we define the baseline as
16 some recent history of flow through intake
17 structure number one and then we conclude that the
18 project is going to cause increased flows in
19 intake number one and that's been the staff's
20 position, then you're going to have some degree of
21 impacts due to some increase in flow. And the
22 question would then be what are those impacts and
23 are they or are they not significant.

24 Finally, you could conclude that you
25 ignore the fact that there is an NPDES permit and

1 an operating intake structure, and you treat all
2 the flows from the project and those entrainment
3 impacts. And you measure them to see whether
4 they're significant or not.

5 And that is a legal issue that will be,
6 and we've maintained from the start that there is
7 precedent under CEQA for considering a permitting
8 capacity, but there is not a clear resolution to
9 this. The Supreme Court has not addressed this
10 issue and circuit courts, excuse me, appellate
11 divisions have reached different results. And
12 that makes this even more difficult for the
13 Committee to know how to move forward.

14 Once you decide the scope of the project
15 that you're going to define impacts from, the next
16 question is how you measure those impacts and then
17 decide whether or not they are significant. The
18 fundamental disagreement that we have had with the
19 staff is over the appropriate way, if there is
20 only one way, or the appropriate ways that you
21 could estimate entrainment impacts, which is the
22 pulling in of benthic and larval forms of fish and
23 other types of crustaceans in their baby form, and
24 then presumably they're destroyed as they go
25 through the cooling system.

1 The problem or at least the disagreement
2 that we have had is over what would be a valid
3 scientific method of estimating what those impacts
4 are. This project began with a focus on the Clean
5 Water Act, Section 316(b), which requires studies
6 for installation of a new intake facility. And in
7 some projects even that are making use of an
8 intake facility, they sometimes qualify as a new
9 one all over again, and thus, they have to perform
10 a new 316(b) study before they can be permitted.

11 We did not require a new 316(b) study
12 for this project because we were not interfering
13 with the intake structure and its operation. It's
14 a current, fully functioning operational intake
15 structure and we want to make a continuing use of
16 that with the new facility. And so there was
17 essentially a normal way that the data was being
18 presented to the Energy Commission in nearly every
19 case that has been before the Energy Commission
20 involving a once-through cooling system, and we
21 were not obligated under the Clean Water Act to
22 produce that type of study.

23 So the fundamental disagreement we've
24 had is whether or not there are other ways to
25 measure data besides the current approach that's

1 being employed under 316(b) which is proportional
2 entrainment. And also we've had disagreement over
3 the sources of data and the locations that you
4 could use that data from, and the ways that you
5 could sample that would make up the appropriate
6 foundation if you used a different methodology
7 other than proportional entrainment to measure
8 impacts.

9 And so the second issue that's going to
10 be presented before the Committee is going to be
11 whether or not we've provided an adequate and
12 scientifically valid method of estimating impacts.
13 The piece I would add that may not have come out
14 really clearly is another very important question
15 of what is a significant impact. And we've got a
16 question of both direct and cumulative impacts.

17 And even if we take the staff's
18 assumption that there is going to be an increase
19 in flow and that that increase in flow is the
20 appropriate scope of the project to consider for
21 impact purposes, the next question is if you could
22 measure the impacts associated with that flow, how
23 many organisms will be entrained? What is going
24 to be the effect on the population, and how are
25 you going to define what a significant impact to

1 that population is.

2 And that leads into partly the
3 cumulative impact issue of whether or not the
4 Santa Monica Bay is at a point where it's the
5 straw that broke the camel's back. It doesn't
6 matter how minute the impact is, any increase
7 whatsoever is a significant impact, or whether it
8 requires a larger increase in order to be a
9 significant impact.

10 Our studies and our data and our
11 analyses that we have performed say that even if
12 we assume the staff's baseline of a threefold
13 increase that we do not have a significant impact,
14 and we feel that the data that we've used and the
15 locations that were used are completely
16 scientifically supportable for estimating impacts
17 under the California Environmental Quality Act,
18 which is not precision. It means that you have to
19 be able to make a reasonable estimate and then,
20 using that estimate, determine whether or not you
21 have a significant impact.

22 And that really is an articulation of
23 where we've been for the last two and a half years
24 on this project. What we've realized is because
25 of these very tough issues that will be presented

1 to the Committee and we've been searching for a
2 while now to try to find ways to eliminate the
3 impacts, if there was a way that we could agree
4 to -- that would eliminate the question of whether
5 or not there is an increase in impacts, that would
6 eliminate the issue.

7 And what we have proposed today is the
8 latest result of brainstorming and thinking in
9 terms of trying to find ways to assure that
10 regardless of the outcome that this project won't
11 cause any new increases.

12 And I understand the staff's position
13 completely, that they've just received this and
14 they really can't comment on that. One of the
15 things we proposed in these new conditions of
16 certification is a marine life exclusion system.
17 And I need to explain that this wasn't something
18 we just threw out.

19 We've met with Gunderboom, which is
20 currently the main company that is marketing such
21 a system, Ron Cabe is holding up a piece of the
22 fabric, and it's nothing really incredible, it's
23 fabric that is very strong that has micro holes in
24 it and you can make the holes at whatever size you
25 need to so that any of the baby fish that are that

1 size or larger don't go through it, and you
2 basically create a large tent structure.

3 But up to this date, the Gunderboom
4 systems that have been installed were accurately
5 described just now as a curtain. They actually go
6 from the bottom and go all the way up above the
7 water, and, thus, they create a navigational
8 hazard.

9 What we have asked Gunderboom to
10 evaluate at an initial level was did they think
11 that this would be doable under a very unique and
12 new application which would be entirely submerged,
13 literally a tent, over the intake structure. And
14 we had the same skepticism, and that's why we've
15 never raised this before of would this really be
16 workable or not or would this be a waste of time
17 and a disaster.

18 And what we've reached, the conclusion
19 at this point is, that we really think it's quite
20 possible that it will work, that engineering-wise,
21 a structure can be built to be as strong as it
22 needs. The bio-fouling issues, we had evaluated
23 quite a bit of the Athens generating station on
24 the Hudson River in New York where they have the
25 most data about the Gunderboom system, and we

1 think that the bio-fouling issues have been
2 resolved.

3 And that's why we propose this as part
4 of a condition of certification. So I want to
5 articulate, don't just to conclusions about a lot
6 of these issues about the Gunderboom. This is
7 part of what has to get evaluated. The reason why
8 we, in the condition we proposed, we are also
9 slightly concerned that ultimately it still might
10 not be workable. And if that were to be the case
11 and if we had a condition that said we had to do
12 it, we would have a fundamental problem.

13 What we are proposing in one of these
14 conditions of certification is a combination.
15 One, we're saying at the outset, if we can't find
16 another way to eliminate impacts, we will cap the
17 total flow through the entire facility, units
18 three and four combined with units one and two, in
19 order to ensure that this project does not cause
20 an increase in flow.

21 That would be a little painful for us
22 but it provides something that we have complete
23 control over, how much we run the cooling systems;
24 thus, it gives us an assurance that we would have
25 a condition of certification that we could

1 definitely meet and control. But then it says,
2 "or install a marine life exclusion system such as
3 Gunderboom or any other technology that might at
4 the time accomplish that.

5 And I say at the time, because there are
6 a lot of other things unfolding at the same time
7 as we're doing this. But the EPA is in the middle
8 of completing regulations that we're going to have
9 to comply with when they're completed for this
10 facility, as will all facilities on the West Coast
11 and in the United States.

12 And those regulations may articulate
13 something such as the marine life exclusion system
14 on facilities. They may articulate that we have
15 to have reduction in flows. They might even
16 articulate for some plants that they have to
17 abandon their intake structures.

18 And so we're going to be -- If we
19 receive our certification and we begin
20 construction, if we know that at the outset we
21 have the ability to eliminate flows, we'll have a
22 resolution that would ensure there are no
23 entrainment impacts.

24 In the meantime, through the NPDES
25 renewal processes with the LA Regional Water

1 Quality Control Board with the new regulations,
2 there may be another decision. They may say
3 install Gunderboom. They may also say something
4 else is a better solution. And at any of those
5 points, we would have the ability to revisit this
6 condition should the Water Board order something
7 different on the system.

8 And this gets at the real fundamental
9 problem we partly have with a lot of other
10 proposed issues, is that the Regional Water
11 Quality Control Board really regulates that intake
12 structure and makes decisions as to what its
13 design will be and how it will be operated. And
14 we've seen that in Morro Bay and in Moss Landing,
15 in terms of the Energy Commission has to depend,
16 to a certain degree, on the Regional Water Quality
17 Board for their input.

18 But regardless, the condition is
19 designed to say take a cap or install Gunderboom
20 and even then, the condition before that is one
21 where we have to perform a full feasibility study
22 on Gunderboom, report that to the Regional Board,
23 as well as the compliance project manager, and
24 obviously that would mean if it looked like that
25 wasn't a feasible solution or if for some reason

1 we recognized that there might be something else
2 coming down the road, we could just operate with
3 the cap for a while.

4 It wouldn't necessarily require an
5 immediate change or modification in the structure,
6 because we would have the ability to operate under
7 a cap facility-wide to ensure that there is no
8 increase in flows. And this is all very new, and
9 I understand the staff's position that they can't
10 make a decision yet, they need to read the
11 language we've proposed, which isn't really hard
12 language, which is designed to get the concept out
13 there as a way to eliminate our concerns over
14 flows.

15 The other things that we've proposed are
16 a better condition that relates to the
17 relationship between our NPDES permit and the LA
18 Regional Water Quality Control Board and our
19 Energy Commission decision, and how we're going to
20 operate and what we're going to do in the future
21 with 316(b) studies and the NPDES renewal.

22 And then we've also proposed an
23 enforcement condition in which we would fund Fish
24 and Game wardens to enforce a lot of existing
25 regulations such as rock fish regulations, which

1 would ensure that regardless of the fact that
2 we're stopping flows, we're also adding a net
3 benefit to the community.

4 When we spoke with Fish and Game over
5 this they were very excited because they said that
6 one of their fundamental problems right now, they
7 have a lot of regulations on the book and they
8 don't have enough money to enforce them.

9 And we like that as a tangible
10 enhancement, because it produces a very specific
11 result. And you can target it. You can very
12 specifically note there will now be less rock fish
13 being taken from the Bay. They are also very
14 interested in other species such as white abalone
15 funding, but that's kind of what we were trying to
16 find as an enhancement condition, regardless of
17 everything else that would add to it another step
18 and ensure that this project is actually providing
19 a net benefit.

20 And I don't expect the staff to endorse
21 that today or reject it today, but I wanted to
22 make a really clear understanding of what we're
23 trying to get out there.

24 We also want to bring this before
25 several of the other agencies to see if they like

1 these ideas and we're able to gain this support on
2 this project as a whole through these ideas. The
3 one nice piece of this is that the Energy
4 Commission would be certifying something that
5 doesn't really require any type of new measurement
6 of impacts. Because the ultimate fallback would
7 be a cap on the facilities operation.

8 And so we don't have to analyze what
9 would be the impacts of installing a Gunderboom.
10 We have a fallback to ensure that there isn't any
11 future injury. This issue is something that we're
12 prepared and we're continuing to prepare to have
13 to defend our views and show the Committee very
14 clearly that we've got sound data and it shows we
15 don't have significant impacts, but we would much
16 rather find a way to reach agreement on this
17 issue, because this is a very difficult topic and
18 presenting it is something that we feel very
19 challenged in trying to accomplish.

20 So we are hoping that by getting these
21 ideas out on the table, we may find a solution to
22 this entire biology issue.

23 SENIOR STAFF COUNSEL ABELSON:

24 Mr. Shean, just one quick word in response.

25 First of all, I think the presentation

1 by Mr. McKinsey is fine, and I think it accurately
2 summarizes the differences that we have. They are
3 very --

4 MR. LUSTER: Excuse me, I'm not able to
5 hear you, Mr. Abelson.

6 SENIOR STAFF COUNSEL ABELSON: They are
7 very fundamental differences, but they are
8 differences that are not for today's workshop.
9 They are differences, if they remain, for hearing.

10 With regard to the proposal that is just
11 on the table today, I would respectfully ask the
12 Committee that since we have many other items,
13 many of which quite possibly can be resolved today
14 to discuss and since there is, as has been said by
15 all of us, no way we can respond to this today,
16 that we basically table this for some reasonable
17 period in the future so that staff can have an
18 opportunity to understand the proposal, to
19 evaluate the proposal, to determine whether or not
20 the proposal, as I said a moment ago, does not
21 resolve our concerns at all, resolves them
22 entirely and, therefore, there is nothing to
23 litigate, or resolves them in part but there are
24 still some residual issues.

25 And I would ask in efficiency terms, in

1 terms of today, that perhaps we consider moving on
2 to other topics.

3 MR. CHESNEY: This is Brian Chesney with
4 Marine Fisheries, if I could just interject one
5 moment?

6 HEARING OFFICER SHEAN: Go ahead,
7 please.

8 MR. CHESNEY: It was hard to hear the
9 last gentleman, but I think the gist of what he
10 was saying is that we need to basically reconvene
11 and discuss this issue in greater detail, and I
12 would be in full support of that.

13 In Morro Bay, we had a biological
14 workshop for an entire day, and that's what I
15 think would be needed for this project as well.
16 It sounds like there are still a lot of issues
17 that need to be fleshed out.

18 So I definitely think it would be very
19 useful for us to reconvene in perhaps another
20 workshop format to discuss the biological issues
21 in greater detail.

22 HEARING OFFICER SHEAN: All right. This
23 is Garrett Shean. I'm sure we anticipate doing
24 that, and I guess I have one question, then, for
25 everyone who is at the table.

1 Are there any other options, absent the
2 data that you think you would get in the 316(b)
3 study or 316(b)-like study, are there any other
4 options that will minimize or eliminate
5 entrainment or impingement that in a workshop
6 setting or some other setting the Committee ought
7 to at least be examining on the record so that we
8 assure that for purposes of the record established
9 in this case that we have considered all
10 reasonable and prima facie feasible measures to
11 either eliminate or reduce to a level of
12 insignificance the potential impacts of the
13 project?

14 SENIOR STAFF COUNSEL ABELSON: My belief
15 is this, that basically the applicant is well
16 aware of the various technologies that are out
17 there. Our staff is well aware of the
18 technologies that are out there. The applicant
19 has made a proposal today. We hadn't heard it
20 before, it's an interesting proposal and one that
21 I'm sure staff will look at.

22 I would second the notion that I heard a
23 moment ago from the National Marine Fisheries
24 representative that we have a workshop, but I
25 believe the proper way to do that is for that to

1 be a staff workshop. If we're going to have
2 hearings on the issue, then we should have
3 hearings on the issue. But if we're going to have
4 a workshop, then we need to allow staff, the
5 applicant and any other intervening parties that
6 are interested to explore the issues, and we're
7 perfectly supportive of that.

8 And if, in the course of that, some
9 other options come out that the applicant has
10 thought of that they now think is worth suggesting
11 to this, I'm sure we would be happy to consider
12 them.

13 At the moment, Mr. Shean, the only
14 alternative we know of is data, which we haven't
15 got, getting out of the Bay entirely, which is
16 what the reclaimed wastewater option would have
17 done and we believe is feasible, or denying the
18 permit.

19 There is a new option that has been put
20 on the table today and it's probably worth
21 exploring carefully and thoughtfully. At the
22 moment I don't know of any others on behalf of
23 staff.

24 HEARING OFFICER SHEAN: At the moment
25 you don't know of what?

1 SENIOR STAFF COUNSEL ABELSON: Of any
2 other options, other than those four that -- on
3 behalf of staff.

4 HEARING OFFICER SHEAN: Okay. So in
5 terms of, based upon not necessarily your lawyer's
6 expertise but your passing on to us information
7 that you would otherwise have available from
8 professional staff in this aquatic biology area,
9 there is no other, I'll use the word option that
10 would address the reduction or elimination of
11 impingement and entrainment effects, if any, of
12 the project; is that right?

13 SENIOR STAFF COUNSEL ABELSON: Not that
14 we know of at this time.

15 HEARING OFFICER SHEAN: Okay. And is
16 the same true from the applicant?

17 APPLICANT ATTORNEY MCKINSEY: Yes. The
18 only other thing I would add, and I didn't mention
19 this, but we obviously disagree on the feasibility
20 of the alternative cooling proposal and that -- I
21 don't know if that's really a biology issue as
22 much as an alternatives question.

23 But that's another issue that we have is
24 that we don't think that that alternative is
25 actually feasible, and that's why we don't really

1 have it on the table as something that we agree we
2 can accomplish.

3 HEARING OFFICER SHEAN: Okay, and that's
4 what you stated in your prehearing conference
5 statement.

6 MR. LUSTER: This is Tom Luster, may I
7 interject?

8 HEARING OFFICER SHEAN: Yes, go ahead.

9 PROJECT MANAGER REEDE: Can you speak up
10 directly into the mouthpiece, please?

11 MR. LUSTER: Okay, is that better?

12 HEARING OFFICER SHEAN: Better.

13 MR. LUSTER: I believe earlier in the
14 review process Energy Commission staff did some
15 analysis of other options such as dry cooling, or
16 wet-dry cooling and found those to be infeasible
17 based on the initial feasibility analysis.

18 PROJECT MANAGER REEDE: Right.

19 MR. LUSTER: I know those have been
20 looked at in more detail in other power plant
21 proposals.

22 PROJECT MANAGER REEDE: Yes.

23 MR. LUSTER: I just wanted to mention
24 that those had been looked at to some degree
25 earlier in the process and found to be infeasible.

1 HEARING OFFICER SHEAN: Right, and I
2 think my question was directed to is there
3 anything we have not looked at before that ought
4 to be added to the list.

5 MR. LUSTER: Right, okay.

6 HEARING OFFICER SHEAN: And I think
7 we've now gotten to the point where no one knows
8 of an alternative option, a third option, if you
9 will, that has not been explored that ought to be.

10 Is there any comment from any other
11 party who is present, and has the Water Board --

12 Okay, why don't you go ahead from the
13 City.

14 MR. GARRY: Yeah, I just want -- Oh,
15 sorry, again, my name is Paul Garry with the City
16 of El Segundo. The City of El Segundo doesn't
17 think that additional studies are needed at this
18 time anymore to go ahead with a decision on the
19 project. And we also think that the alternative
20 cooling study and that option would really not be
21 feasible for that project to go forward, and
22 that's all I wanted to really state on that, that
23 those are the positions of the City that no
24 additional studies are needed and the alternative
25 cooling is not feasible.

1 HEARING OFFICER SHEAN: Okay. How about
2 from the Water Board? Can you sort of -- Since
3 this seems to draw you in, do you have any
4 comments with respect to that?

5 Sure, why don't you come on up here, and
6 if you would just identify yourself for the
7 record, please.

8 ASSOCIATE WATER SOURCES CONTROL ENGINEER
9 RIZK: Yes, sir. My name is Tony Rizk. I'm with
10 the Regional Water Quality Control Board. Can
11 everyone hear me?

12 MR. LUSTER: Yes, I can hear you.

13 MR. CHESNEY: Yes, thanks.

14 ASSOCIATE WATER SOURCES CONTROL ENGINEER
15 RIZK: The Regional Water Quality Control Board
16 seems to be getting drawn back to this issue, just
17 because it's a very complex and it's a very
18 involved issue. And we certainly respect and
19 appreciate and welcome all the input that's been
20 provided.

21 When we're dealing with issues such as
22 marine biology in this complex environment, the
23 truth is somewhere in the middle and it takes a
24 lot to find it. So in that spirit, I want to
25 thank everyone for their input.

1 With that, the Water Resources Control
2 Board and the Regional Water Quality Control
3 Boards have been charged with the regulation of
4 the intake structures as well as the thermal
5 discharges. When we look at El Segundo power
6 plant, we have to look at El Segundo power plant
7 in the context of nine power plants intaking about
8 four and a half to five billion gallons per day
9 through our day.

10 And we have to look at it from a more
11 comprehensive perspective. So although we respect
12 a lot of the input concerning the studies, we have
13 to look at all the studies that have been done in
14 the Bay. And we cannot simply rule out one or the
15 other, just because it occurred 2000 feet away or
16 a mile away or five miles away or even 50 miles
17 away within the Bay of Santa Monica.

18 With that, we also have to look at the
19 regulatory environment. The Regional Board
20 mission is to protect and enhance the aquatic
21 environment. We protect under the existing rules
22 and regulations. We enhance by developing new
23 regulations and applying new regulations and
24 participating in the development of new
25 regulations.

1 In that context, we look at the existing
2 NPDES program, the previous 316(b) guidelines that
3 have been issued, good engineering practice, best
4 professional judgment. In the context of the new
5 regulations, the enhancing part, we look at the
6 316(b) rules for existing power plants that are
7 coming, we look at the total maximum daily load
8 development rules that we are doing for the Santa
9 Monica Bay, and we look at our stormwater laws and
10 a host of other regulatory issues that we have
11 about 180 people in the Los Angeles and Ventura
12 Counties that are dealing with this issue.

13 We come to El Segundo. We have taken a
14 position of we respect everyone's opinion. We
15 appreciate and understand everyone's concern. At
16 the same time, we believe that our framework
17 enables us to be much more effective upon the
18 passage of the new 316(b) rules for existing power
19 plants.

20 Thus, when this issue first came up, in
21 the absence of what we call a smoking gun, dead
22 fish washing on the shoreline, people complaining
23 they cannot find fish anymore, and so on and so
24 forth, we have to work within our legal framework.
25 The 316(b) rules, as they are evolving, do that.

1 So what we have taken the approach,
2 although we have no objection to the California
3 Energy Commission using its authority under the
4 Warren-Alquist Act, and we have stated that in
5 writing to you, our position is we will be a
6 little bit more patient, and I'm using this word
7 loosely, to get the 316(b) rules in effect, which
8 should address issues such as what are we
9 measuring at? How do we define entrainment? How
10 do we define impingement? Do we count the species
11 or do we weigh them? Do we account for death
12 rates in the little microinvertebrates or we
13 don't?

14 All these are the very issues that may
15 sound trivial for some of us looking at the, well,
16 fish are dying, fish are dying, but we have to
17 consider, how can we systematically determine that
18 impact?

19 Another issue is economic aspects. The
20 new 316(b) rules are supposed to be looking at
21 those issues. A third one is which is better, to
22 prevent or to mitigate? And that's a very complex
23 issue as well. Is it better to make them stop the
24 intake, disconnect it and dismantle it? Or is it
25 better to require them to do mitigation measures

1 that will enhance the water quality within our
2 bay? Those are the complex issues that we are
3 going to be dealing with in the next year, two
4 years, three years, four years.

5 This is kind of in a nutshell what I
6 would like to share with everyone. We welcome the
7 opportunity to work with the California Energy
8 Commission and all interested agencies. We
9 appreciate all the input, and we promise you that
10 when we get involved, we are going to be looking
11 at all of these things in great detail.

12 By the same token, we are going to be
13 working with a discharger whom we regulate to deal
14 with this issue, and we are hoping that you will
15 be proactive and you will help us, work with us,
16 work with all the agencies so that we can address
17 these issues in a timely manner in the context of
18 our legal framework, which, again, are our
19 existing laws and regulations and the upcoming
20 316(b) rules.

21 Any questions I can take?

22 PRESIDING COMMITTEE MEMBER PERNELL: I
23 have a question.

24 ASSOCIATE WATER SOURCES CONTROL ENGINEER
25 RIZK: Yes, Commissioner?

1 PRESIDING COMMITTEE MEMBER PERNELL:

2 First of all, thank you for being here. Just two
3 questions: One of them is you mentioned that you
4 look at a very comprehensive study of all of the
5 ecosystems and the various studies. Is that
6 ongoing and how long will that take?

7 ASSOCIATE WATER SOURCES CONTROL ENGINEER

8 RIZK: That is certainly ongoing under the Santa
9 Monica Bay Restoration Program, which is part of
10 the Regional Board, as well as the BAG surveys.
11 And how long is it going? It's been going on for
12 the last 15, 20 years, and it's going to continue.

13 PRESIDING COMMITTEE MEMBER PERNELL:

14 Just --

15 ASSOCIATE WATER SOURCES CONTROL ENGINEER

16 RIZK: Thus --

17 PRESIDING COMMITTEE MEMBER PERNELL: I'm

18 sorry.

19 ASSOCIATE WATER SOURCES CONTROL ENGINEER

20 RIZK: Go ahead. Go ahead, Commissioner.

21 PRESIDING COMMITTEE MEMBER PERNELL:

22 Well, just a followup on that. So am I to
23 understand that you won't have a position on this
24 project until that study is complete?

25 ASSOCIATE WATER SOURCES CONTROL ENGINEER

1 RIZK: The new 316(b) rules for existing power
2 plants do put a requirement for reduction of
3 impingement and entrainment, but will also clarify
4 how do we determine what that impingement and
5 entrainment is.

6 Our intent is to follow that.

7 PRESIDING COMMITTEE MEMBER PERNELL: All
8 right, and then my final question is the new
9 316(b) study or regulations, when will those be
10 complete?

11 ASSOCIATE WATER SOURCES CONTROL ENGINEER

12 RIZK: The US EPA is expected to promulgate what
13 you call the 316(b) rules for existing power
14 plants in August 2003.

15 PROJECT MANAGER REEDE: I'm sorry, that
16 has changed.

17 SENIOR STAFF COUNSEL ABELSON: It's
18 changed. The notice was released last week that,
19 as was true with the new regs which were extended
20 repeatedly as the issues get controversial, the
21 regulations for existing facilities, which is what
22 we're talking about --

23 MR. LUSTER: Excuse me, I'm not able to
24 hear Mr. Abelson.

25 PROJECT MANAGER REEDE: The regulations

1 for existing facilities are expected now to be
2 issued in February 2004.

3 MR. LUSTER: Okay.

4 SENIOR STAFF COUNSEL ABELSON: So there
5 has been a six-month extension at the moment.

6 But I also would like to say,
7 Commissioner, so that we can keep this issue in
8 context, we've never quarreled with the Water
9 Board doing its job appropriately under the LORS
10 requirement that this agency needs to look at.

11 There is an NPDES permit in place. It
12 will be renewed and reviewed in whatever, another
13 two or three years. There are some regulations,
14 the content of which nobody knows, that are
15 several years in the future, that may or may not
16 affect this project, depending on what is
17 eventually adopted.

18 We are charged, under the California
19 Environmental Quality Act, as the Water Board has
20 expressly acknowledged in writing to us, with
21 responsibilities to ensure the project will have
22 no significant impact. So quite honestly, the
23 issues that we have to address are separate and
24 distinct from the issues that the Water Board
25 looked at when they issued the permit four years

1 ago or whatever, or that they may have to look at
2 when these new regulations come out three or four
3 years from now, or whenever they eventually
4 surface.

5 HEARING OFFICER SHEAN: Could you
6 explain why you think they are separate? Why
7 are -- If CEQA issues do not cause significant
8 impacts, directly or cumulatively, how does that
9 differ from their mission or goal?

10 SENIOR STAFF COUNSEL ABELSON: Well, I
11 think there is, you know, Mr. Shean, when you're
12 dealing with regulatory agencies such as the Air
13 Board and the Water Board, I mean, there are very,
14 very specific sets of tests that they have to go
15 through, very specific exams about best available
16 control technology and things of this nature that
17 they have to evaluate.

18 We need to take a baseline of a project
19 as we find it, when it was submitted to us --
20 That's what CEQA is about -- determine whether or
21 not the project is going to change. Mr. McKinsey
22 has correctly noted that there is a fundamental
23 disagreement about that as a matter of law, and
24 then determine what the impacts of that project
25 that is seeking licensing from this agency at this

1 time is going to do.

2 And what we have determined and stated
3 on the record is that this project will have a
4 very significant impact at a cumulative level.
5 That's a separate responsibility legally, it's a
6 separate determination factually than what the
7 Water Board was required to do perhaps two or
8 three years ago when the license was last renewed,
9 and what they may be required to do in two or
10 three more years when the license comes up again
11 and/or these new regulations go into effect.

12 These new regulations might impose
13 nothing new, they might impose a 90-percent
14 reduction in impact on entrainment, but those
15 regulations, whatever they say, were not in effect
16 when Mr. Rizk and his folks had to issue their
17 permit three years ago.

18 We have to look at the situation on the
19 ground today under CEQA, which is a different
20 legal construct, and determine whether or not
21 there is a significant adverse impact. We've made
22 that determination and you know our position on
23 it.

24 HEARING OFFICER SHEAN: Okay. Let me
25 just expand upon this, or at least pursue it a

1 little bit. So your view of staff is that
2 whatever review they did for the license renewal,
3 for the NPDES permit renewal was not a review that
4 included the issue of whether the continued use of
5 the inflow and outtake would cause either a direct
6 or cumulative impact?

7 SENIOR STAFF COUNSEL ABELSON: I'm not
8 prepared to answer that question today. In a
9 nutshell, they analyzed it at a different time
10 with a different set of standards. They didn't
11 even have this project in front of them at the
12 time, so it was simply a whole different fact
13 pattern that we're confronted with and that we're
14 legally charged with addressing.

15 Whether they evaluated the impacts of
16 the former plant or not, you know, I don't know.

17 APPLICANT ATTORNEY MCKINSEY: I'd like
18 to respond a little bit to that. I agree with
19 Mr. Abelson that there is no -- that what the
20 Energy Commission is trying to analyze now is a
21 very different project and facility than what the
22 Regional Board considered when they renewed the
23 NPDES permit several years ago; however, the
24 Regional Water Quality Control Board is a
25 California state agency that is delegated federal

1 authority. And in their permit renewals, they do
2 have to satisfy the California Environmental
3 Quality Act.

4 One of the frustrating aspects of this
5 project for us has been that we have a permit to
6 operate an intake facility at its permitted
7 capacity of 208 million gallons per day, and that
8 capacity is being authorized by the Regional Water
9 Quality Control Board with its renewals that says
10 it satisfies the California Environmental Quality
11 Act.

12 Now, I agree with Mr. Abelson that they
13 are taking this in a different context and they
14 are making their own California Environmental
15 Quality Act determination about this project, but
16 the frustrating aspect of this is that we have an
17 agency that has allowed this facility, continues
18 to allow this facility to operate intake number
19 one at 208 million gallons per day, and we have
20 another agency that is saying we feel that the
21 operation of this is a significant impact.

22 And that's part of what has made this a
23 very awkward topic; however, Mr. Abelson is
24 correct in that they're assessing this under the
25 California Environmental Quality Act purposes, and

1 very specifically, and it gives them an
2 independent authority over the Water Board.

3 The Water Board is not tasked with
4 performing the California Environmental Quality
5 Act compliance for this application, the Energy
6 Commission is. But nevertheless, the Water
7 Board's input is relevant and we also feel that it
8 is relevant that the Water Board has allowed and
9 continues to renew this permit as it's come up
10 over the years, and that does include each time
11 that it does satisfy the California Environmental
12 Quality Act.

13 HEARING OFFICER SHEAN: Okay. Let me
14 just ask you, if I may, in consideration of what
15 we just talked about and the review that may occur
16 with the applicant's new proposal, do you have in
17 mind anything additional as another option that
18 maybe should be being considered that we haven't
19 talked about yet, but should consider in this
20 review right now of the staff's option of using
21 wastewater, the applicant's option of a
22 combination of Gunderboom or CAPS, is there
23 something else that you think that ought to be
24 within the scope of our review as a, if I may, a
25 third option?

1 ASSOCIATE WATER SOURCES CONTROL ENGINEER

2 RIZK: Officer Shean, this is a very eloquent and
3 difficult question. Once you get into evaluation
4 of alternatives, sometimes you rob Paul to pay
5 Peter, or is it the other way around?

6 It's very difficult to come out with an
7 option that will make everyone happy; however,
8 with that, the Regional Board will be looking at
9 not only best available technologies for
10 mitigation as well as the option of requiring
11 discontinuance of the intake structure, but will
12 also be looking at effective mitigation measures.

13 To speak a little bit loosely here,
14 there is no question that some fish are being
15 caught. There is no question of that. Now, the
16 tradeoff, and this is one of the things that will
17 be coming out of the 316(b) rules, is the plants.
18 How do you offset that issue?

19 You could prevent the fish from getting
20 caught by stopping or putting high-technology
21 filters, or you could say where fish are dying,
22 I'm going to go and plant more fish. I'm going to
23 do offset mitigation measures that would allow the
24 compensation for this environmental impact, and
25 would allow an adequate ecological as well as an

1 economic recovery for that loss.

2 If I were to throw an alternative
3 option, this would be something I was to look in
4 to closely, from where the Regional Board's
5 experience has been and some of you in the
6 regulated community including cities know, we have
7 what are called supplemental environmental
8 programs, where once you make a violation, you pay
9 a fine. But then you have an option: you could
10 clean it up or you could offset it.

11 And we will certainly be willing to
12 explore offset mitigation measures once we
13 determine what that impact is and once we
14 determine what our objective is. And the 316(b)
15 rules for existing power plants will do that for
16 us.

17 HEARING OFFICER SHEAN: Okay. To some
18 degree, if I understand correctly, their proposal
19 has kind of an offset element in the idea that the
20 California Department of Fish and Game will be
21 preventing, what is it, illegal fishing or
22 poaching or something like that?

23 APPLICANT ATTORNEY MCKINSEY: It's the
24 current regulations; for instance, the California
25 Department of Fish and Game recently banned

1 commercial rock fishing in certain areas. There
2 are restraints on when and how many rock fish you
3 can catch and all the other fishing regulations
4 that are out there. Basically, a lot of them are
5 going unenforced. There are just not enough, if
6 there are any game wardens out there in those
7 areas.

8 So the proposal that we've made in that
9 one is to provide funding, which through an MOU is
10 guaranteed to establish a certain amount of
11 enforcement, a game warden or two that would be
12 out there enforcing those regulations, and Fish
13 and Game is very comfortable that that is going to
14 provide a wonderful enhancement. And that's an
15 example of an enhancement as well as what Mr. Rizk
16 was describing.

17 HEARING OFFICER SHEAN: Okay. So it's
18 either keep fish that exist in the Bay from being
19 poached, or breed them somewhere else and toss
20 them in the Bay, is that the idea?

21 ASSOCIATE WATER SOURCES CONTROL ENGINEER
22 RIZK: Or do alternative mitigation. We have
23 numerous issues that impair our bay. There has
24 been a lot of discussion, and well-intended
25 discussions about, well, this is an impaired bay.

1 Well, we know that.

2 The question we need to be asking
3 ourselves quite often -- and forgive me here for
4 just kind of thinking out loud, this does not
5 necessarily reflect the official Regional Board
6 position -- one thing we should be asking
7 ourselves is, okay, we know that the bay is
8 impaired: Which is more economically feasible,
9 and which is a more viable alternative?

10 Require a 50, or 100, or \$500 million to
11 work with one power plant to make them stop the
12 intake, or is it to take that same amount of money
13 and put it into treatment of DDT plume, do it in
14 the treatment of stormwater drainage, do it in the
15 collection of trash from our cities?

16 These are very complex issues, and, you
17 know, GOd knows, I do not claim knowledge, and at
18 the Regional Board we do not claim that we know
19 all the answers, but we want to be able to explore
20 these issues and look further to being proactively
21 putting kind of, what's the old saying, get the
22 biggest bang for their buck.

23 (Laughter.)

24 ASSOCIATE WATER SOURCES CONTROL ENGINEER

25 RIZK: Thank you.

1 MR. CHESNEY: Brian Chesney. Can I
2 interject?

3 HEARING OFFICER SHEAN: Go ahead.

4 MR. CHESNEY: In regards to offsetting
5 the impacts, I want to make a few points. One, if
6 avoidance wasn't feasible, which again I want to
7 emphasize is our stance, that's what we would
8 recommend, but if that is not feasible and you
9 wanted to take an approach that would offset the
10 entrainment impacts, you would definitely, for
11 one, have to get a better handle on what you're
12 impacting.

13 So, again, if you're going to go that
14 route, you're going to have to do, or at least the
15 Fishery Service would recommend that you do a more
16 reliable study on the actual impacts of the
17 intake. And then once that's established, you can
18 start talking about potential projects that might
19 offset the level of entrainment and impingement.

20 And, again, the representative from the
21 Water Board mentioned a few of those projects, but
22 you can also -- a few of the types of those
23 projects, but you can also do things like creation
24 of artificial reefs, you can do wetland
25 restoration, wetland acquisition so there is a

1 whole suite of potential projects that can enhance
2 habitat.

3 And, just so you know, Morro Bay, the
4 Duke Energy power plant is looking into this sort
5 of thing as well. So that's just for your
6 knowledge.

7 But, again, I do want to point out that
8 we would prefer avoidance. I don't want to
9 necessarily support this habitat enhancement
10 approach. But if you are going to go down that
11 road, then again, I want to emphasize that you
12 need to have a reliable study to figure out what
13 you're actually impacting.

14 HEARING OFFICER SHEAN: Okay.

15 PRESIDING COMMITTEE MEMBER PERNELL:
16 This is Commissioner Pernell. When you say
17 reliable study, are you talking about the 316(b)
18 or some other type of study?

19 MR. CHESNEY: Yes, I'm directly
20 referring to a 316(b) study, and one that is not,
21 does not rely upon other proxy studies, one that
22 is actually done at the intake.

23 So, again, I'm just getting back to an
24 earlier discussion with the studies that El
25 Segundo has already developed to --

1 PRESIDING COMMITTEE MEMBER PERNELL:

2 And, in your opinion, that's the only reliable
3 study that can be undertaken?

4 MR. CHESNEY: Yes.

5 PRESIDING COMMITTEE MEMBER PERNELL:

6 Okay.

7 MR. CHESNEY: I mean, how else could you
8 know what you're impacting?

9 PRESIDING COMMITTEE MEMBER PERNELL:

10 Okay, you just answered the question.

11 MR. CHESNEY: I mean, I think it's a
12 pretty clear, in our eyes it's a pretty clear
13 point. How can you mitigate for something if you
14 don't know what you damaged?

15 HEARING OFFICER SHEAN: Okay. Is there
16 anybody else who wants to be heard on this who is
17 here?

18 PROJECT MANAGER REEDE: I just had a
19 quick question.

20 HEARING OFFICER SHEAN: Sure.

21 PROJECT MANAGER REEDE: Dr. Rizk, when
22 we met with the Water Quality Control Board back
23 in January, it was stated that you did not have
24 any entrainment data related to the NPDES permit
25 when it was renewed, nor -- well, also, you had

1 relied on the Ormond Beach study for the renewal
2 and the Scattergood study, and that they did not
3 actually have any site-specific entrainment data;
4 is that still correct or did you find anything?

5 HEARING OFFICER SHEAN: Sounds like
6 cross-examination to me.

7 ASSOCIATE WATER SOURCES CONTROL ENGINEER
8 RIZK: Yes.

9 HEARING OFFICER SHEAN: Okay. We're not
10 going to do that.

11 ASSOCIATE WATER SOURCES CONTROL ENGINEER
12 RIZK: I would like to provide some thought --

13 HEARING OFFICER SHEAN: My little lawyer
14 here detected a cross-examination question.

15 ASSOCIATE WATER SOURCES CONTROL ENGINEER
16 RIZK: Officer Shean, if you wish I can just
17 provide some clarification, if necessary.

18 HEARING OFFICER SHEAN: I don't think
19 it's -- That takes us off in a different
20 direction.

21 ASSOCIATE WATER SOURCES CONTROL ENGINEER
22 RIZK: Okay, thank you.

23 HEARING OFFICER SHEAN: Thank you very
24 much for your help.

25 ASSOCIATE WATER SOURCES CONTROL ENGINEER

1 RIZK: Thanks a lot.

2 Thank you, Commissioner.

3 PRESIDING COMMITTEE MEMBER PERNELL:

4 Thank you.

5 MR. LUSTER: This is Tom Luster.

6 PROJECT MANAGER REEDE: Tom, speak into
7 the phone, please.

8 MR. LUSTER: Okay. Is that better?

9 PROJECT MANAGER REEDE: Yes.

10 MR. LUSTER: I'm interested in the whole
11 issue of using the currently draft rule of the EPA
12 as the basis for the certification decision in
13 front of us now. I'm pretty uncomfortable with
14 that approach.

15 I understand the Water Quality Board's
16 use of the draft rules as guidance and how it
17 interrelates with the other provision measures
18 they use; however, I think it is inappropriate to
19 base a certification decision at this time on a
20 future or potential future rule with what are now
21 entirely unknown requirements.

22 PROJECT MANAGER REEDE: Could you speak
23 into the mouthpiece directly, please?

24 HEARING OFFICER SHEAN: Well, let me
25 say, Mr. Luster, with regard to your comment,

1 we're not going to do that.

2 MR. LUSTER: Okay.

3 HEARING OFFICER SHEAN: So you don't
4 need to worry about it.

5 MR. LUSTER: Okay. Very good.

6 HEARING OFFICER SHEAN: We will not make
7 a decision based upon a draft rule that has not
8 been adopted by anybody.

9 MR. LUSTER: Okay, thanks. That was my
10 concern.

11 HEARING OFFICER SHEAN: All right.
12 Any comments from any of the other
13 parties?

14 All right. Shall we take a lunch break?

15 PROJECT MANAGER REEDE: I have an issue
16 in Air Quality that we might be able to resolve
17 fairly quickly.

18 HEARING OFFICER SHEAN: Okay.

19 PROJECT MANAGER REEDE: Because we have
20 the people from the -- we have two gentlemen,
21 Mr. Coats and Mr. Yee from South Coast Air Quality
22 Management District, and there is really only one
23 outstanding issue on Air Quality. And if I could
24 call my staffer and have him call them, we could
25 resolve that.

1 HEARING OFFICER SHEAN: Sure.

2 PROJECT MANAGER REEDE: Could we just
3 take a five-minute break and take five minutes to
4 call --

5 PRESIDING COMMITTEE MEMBER PERNELL:
6 Well, wait a minute --

7 HEARING OFFICER SHEAN: Okay, wait,
8 wait. Why don't you let the Committee run the
9 show here.

10 PRESIDING COMMITTEE MEMBER PERNELL: Let
11 me say on this issue, it seems to me that there
12 is -- we're not going to get to a consensus on
13 this. I think that we need a workshop. I would
14 encourage everybody to participate, and if it's
15 not done there, then it's going to have to be
16 brief, and the Committee will decide. It is my
17 interest to bring this project before the full
18 Commission as soon as possible, so I'm not
19 encouraged about waiting four years for something
20 to happen down the road.

21 I would encourage the parties to get
22 together, especially the Regional Water District
23 who seem to have a lot of knowledge in what it
24 would take to mitigate for less than significant,
25 and everybody sit down at a workshop and work this

1 out.

2 Believe me, you don't want the Committee
3 deciding this issue for you. I would recommend
4 that you try and do it among yourselves.

5 Thank you, Mr. Shean.

6 HEARING OFFICER SHEAN: Sure. There is
7 an old saying in the law, which is, you know, if
8 you let the judge decide, it's like going to Las
9 Vegas and putting your money in the slot and
10 pulling the handle, but you can directly control
11 your destiny if you agree on what you're going to
12 do.

13 So I think that's, at least for the
14 immediate future, the charge of the Committee to
15 the applicant and the staff and the Board and the
16 Coastal Commission, and any others who are
17 interested to do that. Attempt to control your
18 own future rather than throw it into our hands.

19 PRESIDING COMMITTEE MEMBER PERNELL:

20 Okay.

21 PROJECT MANAGER REEDE: May we go to Air
22 Quality, Commissioner Pernell?

23 PRESIDING COMMITTEE MEMBER PERNELL:

24 Yes.

25 PROJECT MANAGER REEDE: After a five-

1 minute break so I can --

2 HEARING OFFICER SHEAN: Sure. We'll get
3 a hold of Mr. Loyer, and this way you guys won't
4 have to wait until after lunch.

5 MR. LUSTER: James?

6 PROJECT MANAGER REEDE: Yes?

7 MR. LUSTER: So is the Marine Biology
8 section done?

9 PROJECT MANAGER REEDE: We're done.

10 PRESIDING COMMITTEE MEMBER PERNELL: Off
11 the record.

12 (Brief recess.)

13 HEARING OFFICER SHEAN: We're back on
14 the record. We're just about ready to get going
15 to lunch, but we'll do the Air Quality stuff
16 first, and we have representatives here from the
17 South Coast Air Quality Management District.

18 If you would just identify yourself for
19 the record, and then we'll go ahead.

20 SOUTH COAST AIR QUALITY MANAGEMENT
21 DISTRICT SENIOR ENGINEER YEE: Yes, Officer Shean.
22 This is John Yee with the South Coast Air Quality
23 Management District.

24 SOUTH COAST AIR QUALITY MANAGEMENT
25 DISTRICT SENIOR ENGINEER COATS: And I'm Kenneth

1 Coats, SCAQMD.

2 HEARING OFFICER SHEAN: Thank you. We
3 appreciate your coming here today.

4 Do you know where to start from?

5 PROJECT MANAGER REEDE: Yeah, I guess.
6 I'll begin.

7 There is one outstanding issue,
8 basically, and that relates to the requirement for
9 offsets under California Environmental Quality Act
10 purposes. At our workshop October the 9th,
11 Mr. Yee brought up the subject of the community
12 bank, which the South Coast Air Quality Management
13 District has, and he subsequently sent me
14 information, a summary of the minutes of the Air
15 Quality Management District's meeting in which it
16 addressed the community bank.

17 It basically talked about how many
18 pounds were in this -- how many pounds of
19 mitigation primarily for PM 10 and SOX --

20 SOUTH COAST AIR QUALITY MANAGEMENT
21 DISTRICT SENIOR ENGINEER YEE: Actually, it did
22 look at all pollutants.

23 PROJECT MANAGER REEDE: Oh, it looked at
24 all pollutants, and the ratio. Now, when I speak
25 to the ratio, I'm talking about a ratio of 1.2 to

1 1 for mitigation purposes when emission reduction
2 credits are taken from not only the priority
3 reserve but also the community bank.

4 If, in fact, the ratio is 1.2 to 1, it
5 provides enough credits so that the applicant has
6 enough credits to meet CEQA mitigation
7 requirements. And we needed the Air Quality
8 Management District here to confirm what the ratio
9 is and what they are willing to do to establish
10 that the applicant is, has availability of those
11 emission reduction credits to eliminate our CEQA
12 mitigation concerns.

13 HEARING OFFICER SHEAN: Okay. Shall
14 we --

15 PROJECT MANAGER REEDE: Okay, and I'd
16 like to --

17 HEARING OFFICER SHEAN: And can you
18 provide that confirmation, then?

19 PROJECT MANAGER REEDE: Right, and we
20 had requested that South Coast Air Quality
21 Management District give us a letter to that
22 effect, as to how many pounds of priority reserve,
23 how many community bank pounds of emission
24 reduction credits would be available to the
25 applicant. And if we find out, in fact, that

1 these emission reduction credits are available to
2 the applicant in the quantities that we have found
3 that they need under CEQA, there is no longer an
4 issue under Air Quality.

5 HEARING OFFICER SHEAN: For the staff.

6 PROJECT MANAGER REEDE: No, for CEQA.

7 HEARING OFFICER SHEAN: For the staff.

8 PROJECT MANAGER REEDE: For the staff.

9 Correct, for the staff. I understand there are
10 other parties here and I apologize. But I have to
11 focus on staff.

12 SOUTH COAST AIR QUALITY MANAGEMENT

13 DISTRICT SENIOR ENGINEER YEE: Okay. Well, this
14 is John Yee with the South Coast AQMD. I fully
15 understand Mr. Reede's question. I did want to
16 preface that one of the items is that whenever we
17 do have a new project which comes into the Basin
18 such as this where you're going to have an
19 increase in emissions over what is existing, the
20 increase in emissions or the total project needs
21 to be offset or mitigated.

22 And in this case, the project or the
23 proponent is mitigating the emissions via one of
24 our -- actually, via two vehicles: one, for
25 different pollutant they're obtaining ERCs from

1 the open market; and two, they're utilizing our
2 district, what we call our emission reductions
3 bank.

4 And by accessing the bank, they're doing
5 that twofold: They're proposing to use our NSR
6 exemption, which is outlined in our rule. It goes
7 to the effect of people that are -- utilities
8 which are installing advanced combustion turbines
9 which are replacing existing boilers.

10 The other aspect of that, which it also
11 takes from our district account, is their proposal
12 to use the priority reserve from the district.
13 And that also pulls from what we call the district
14 account. So both of those sources pull from the
15 district account.

16 What I did want to preface is that our
17 report which I gave to Mr. Reede, which is our
18 annualized report for NSR, goes into how we pull
19 from those accounts if they're accessed. And, as
20 you can see, it's actually very -- it's pretty
21 descriptive in our report on how these ratios that
22 are -- that we do pull from our account from.

23 The ratios on there, I did want to say
24 that Mr. Reede did ask for a letter from us to
25 verify these ratios and actually indicate that

1 there is adequate emissions in our district
2 account. And we have prepared a letter, but it is
3 not yet available to submit to the CEC. It will
4 be shortly available after our management has
5 fully reviewed it.

6 So I didn't really want to go into the
7 ratios right now. The letter will go fully into
8 the ratios, but the ratios are explained in our
9 agenda item which has been approved by our Board,
10 which I believe Mr. Reede has.

11 PROJECT MANAGER REEDE: Okay. So one of
12 the things that we have to do is know exactly what
13 the mitigation is.

14 AQMD, and I'm reading from your report,
15 uses an offset ratio of 1.2 to 1 for its federal
16 accounts, and I would presume that's the ER --
17 your priority reserve in the community bank.

18 SOUTH COAST AIR QUALITY MANAGEMENT
19 DISTRICT SENIOR ENGINEER YEE: That's correct. In
20 actuality, the definition of that is if it's a
21 major source, it accesses the federal accounts.

22 PROJECT MANAGER REEDE: Okay. A major
23 source, which this would be, accesses the federal
24 accounts.

25 SOUTH COAST AIR QUALITY MANAGEMENT

1 DISTRICT SENIOR ENGINEER YEE: Right.

2 PROJECT MANAGER REEDE: So if our staff
3 can base that information on the AQMD ruling, we
4 would then no longer have an issue with the
5 applicant obtaining enough emission reduction
6 credits to fully mitigate the project.

7 HEARING OFFICER SHEAN: Okay, and let me
8 just say when you're talking about fully mitigate,
9 you're -- the status is they have an FDOC that was
10 the District's determination of compliance. And
11 the staff believes there is the need for
12 additional offsets of PM 10 and SOX to not have an
13 impact, and that these are the, if I may, offsets
14 that would be available at a ratio and in
15 sufficient quantity to satisfy the staff's view of
16 what's needed for CEQA purposes; is that correct?

17 SENIOR STAFF COUNSEL ABELSON: Yes.

18 HEARING OFFICER SHEAN: Okay. Now, with
19 respect to the applicant, what are your views with
20 regard to this?

21 APPLICANT ATTORNEY MCKINSEY: You know,
22 our -- what we wanted to hear, and I think we're
23 hearing it is that the FDOC, as it's written,
24 provides adequate assurances to the staff that
25 whatever emission offset or mitigation

1 requirements need to be made are satisfied.

2 And so if that's what staff's position
3 is, then we're fine. But I want to make sure
4 there isn't a disconnect when I hear that the
5 staff thinks the FDOC is going to be modified, but
6 that the staff is comfortable with the FDOC and
7 the conditions of certification that are both in
8 the FDOC as well as in our proposed project that
9 the staff will be happy.

10 And as long as there's not something
11 else laying in there that the Air District needs
12 to take another step, then we're okay, but --

13 SENIOR STAFF COUNSEL ABELSON: I think,
14 John, the issue can be summarized clearly as
15 follows: We believe there are some residual
16 emissions because of the particular rules that
17 were in the application that exempted a certain
18 amount of emissions. We believe that, based on
19 what Mr. Yee has told us and what we're able to
20 read in this document, that it appears, and I want
21 to limit it that far until we get this letter so
22 we actually lock it down, it appears that, to the
23 extent there are residual emissions, the
24 District's own internal processes and rules
25 provide a mechanism for addressing those.

1 When we get absolute confirmation of
2 that, hopefully in the very near future, if that
3 turns out to be correct -- 1.2 as Mr. Reede has
4 said -- then for staff, the CEQA issue that we
5 thought was there will have been addressed and
6 there will no longer be a CEQA issue. There has
7 never been a LORS compliance issue because the
8 district has issued an FDOC.

9 HEARING OFFICER SHEAN: So let me make
10 sure that I understand it. So we have the FDOC,
11 but your CEQA position squeezes more offsets out
12 of the applicant; is that correct?

13 SENIOR STAFF COUNSEL ABELSON: It may
14 not turn out that way, because we were -- I mean,
15 I think it's a question of how you want to put
16 your emphasis on which syllable, as it were.

17 I mean, what I'm understanding from
18 Mr. Yee is that the very process that they were
19 using would have, under their own mechanisms,
20 perhaps have captured this additional offset. And
21 if that's true and staff simply didn't capture it,
22 then that's fine.

23 PROJECT MANAGER REEDE: This is
24 something different.

25 (Laughter.)

1 HEARING OFFICER SHEAN: Well, look, if
2 the staff can't agree --

3 PROJECT MANAGER REEDE: Let me explain
4 it so it's easier.

5 HEARING OFFICER SHEAN: Okay.

6 PROJECT MANAGER REEDE: Whenever you
7 replace an old boiler system with a natural gas
8 combustion turbine, they only require I believe
9 it's 45-percent mitigation under their rule 1309;
10 is that correct?

11 SOUTH COAST AIR QUALITY MANAGEMENT
12 DISTRICT SENIOR ENGINEER YEE: Actually, what we
13 require is it's a megawatt-to-megawatt replacement
14 mitigation exemption, so --

15 PROJECT MANAGER REEDE: And that equates
16 to between 45 and 50 percent of what's actually
17 coming out of the stack.

18 HEARING OFFICER SHEAN: All right.

19 PROJECT MANAGER REEDE: So that delta
20 between 100-percent mitigation and, let's say, on
21 the high end, 55 percent, which is required under
22 South Coast rules, is the CEQA mitigation that we
23 talk about. Okay, so basically South Coast goes
24 this far and we're saying you've got to go to the
25 top of the bottle.

1 SENIOR STAFF COUNSEL ABELSON: But as to
2 the issue as to whether or not it's within the
3 FDOC or not I think is a fair question and we can
4 perhaps get further clarification after today's
5 workshop, even, if necessary.

6 What I'm understanding is this was
7 raised as a CEQA issue by our staff.

8 PROJECT MANAGER REEDE: Correct.

9 SENIOR STAFF COUNSEL ABELSON: But what
10 I believe I have understood Mr. Yee to be saying
11 is that the very way they administer their own
12 rules, it would have been dealt with as part of
13 their process anyway, in which case, as part of
14 their LORS compliance which we didn't fully,
15 perhaps did not fully appreciate or understand
16 when we started on this, this delta that James
17 just talked about was going to be captured anyway.

18 I'm not sure which is the correct
19 interpretation, it doesn't matter. If the 1.2 is
20 there, either way there is no issue between staff
21 and applicant on this point.

22 HEARING OFFICER SHEAN: Is that right?

23 PROJECT MANAGER REEDE: Is that Joe
24 Loyer?

25 MR. LOYER: [telephonically] Yes, I'm

1 here.

2 PROJECT MANAGER REEDE: Okay.

3 PRESIDING COMMITTEE MEMBER PERNELL: Let
4 me see if I understand this. You've indicated
5 that what you need is a letter from the Air
6 District.

7 PROJECT MANAGER REEDE: South Coast.
8 Yes, we need a letter from the Air District.

9 PRESIDING COMMITTEE MEMBER PERNELL: And
10 the Air District has indicated that that will be
11 forthcoming.

12 SOUTH COAST AIR QUALITY MANAGEMENT
13 DISTRICT SENIOR ENGINEER YEE: Right.

14 PRESIDING COMMITTEE MEMBER PERNELL: And
15 if you get the letter, is the issue off the table?

16 SENIOR STAFF COUNSEL ABELSON: As
17 between applicant and staff, but Mr. Shean
18 correctly points out there are other parties that
19 I think have some remaining concerns on Air
20 Quality.

21 PRESIDING COMMITTEE MEMBER PERNELL:
22 Okay. Well, let's hear from other parties.

23 MR. NICKELSON: Can I speak? My name is
24 Nick Nickelson. I'm an intervenor.

25 HEARING OFFICER SHEAN: Let's get your

1 mic a little closer to you, please.

2 MR. NICKELSON: Okay. If you look at
3 your FSA, page 4.1-52 and -53, you'll notice at
4 the first paragraph where it says, "These
5 unmitigated emissions will also impact 680,000
6 residents who live within the six miles of the
7 EFPR," my concern is that if you're producing 615
8 pounds of PM 10 each day and it's all been
9 mitigated by paper mitigation, and I've talked to
10 John and to also the gentleman from AQMD, that,
11 you know, this is a regional concern.

12 But I'm talking about the people -- your
13 people are saying that there is a concern for the
14 health of the people that live within six miles of
15 the project, and as an example where they're
16 saying there was 23 -- where you could purchase 23
17 pounds, it was all generated from and it was all
18 brought from areas that are outside and totally
19 disassociated from where we live here at the
20 beach.

21 And if that, all 615 pounds will be
22 mitigated from a regional bank, from regional
23 banks that are not from our area, my concern is
24 what is the impact still on people that live in
25 Manhattan Beach, in Hawthorne, and in El Segundo?

1 I can see that, you know, there's
2 probably nothing that can be done, though. We're
3 going to get it any way you look at it. I think I
4 understand a little bit better from the few
5 minutes I spoke to John. You know, regionally
6 it's not a problem. It's always going to be a
7 problem, though, for people that live right near
8 the facility.

9 MR. LAYTON: [telephonically] James?
10 James Reede?

11 PROJECT MANAGER REEDE: Yes?

12 MR. LAYTON: This is Matt Layton. I'm
13 hearing, like, every fifth word, or maybe every
14 tenth word. It's pretty pathetic.

15 Is there any way you guys can improve
16 the sound down there or get the mics a little bit
17 louder? It's really hard for us to hear.

18 PRESIDING COMMITTEE MEMBER PERNELL:
19 Mr. Nickelson, could you come and sit down at this
20 end of the table, please.

21 MR. LAYTON: I don't know if it's the
22 phone at your end or just the weather outside.

23 UNIDENTIFIED SPEAKER: No, it's the
24 phone. It was doing this earlier.

25 PROJECT MANAGER REEDE: No, this is a

1 different phone.

2 MR. LAYTON: All right.

3 HEARING OFFICER SHEAN: I think, to
4 capture the general concern, it is one that we've
5 had in every proceeding, which is when you have
6 programmatic offsets that take from areas that are
7 not within the immediate locale of the project,
8 that the citizenry who are generally within the
9 six-mile radius that we analyze for purposes of
10 health impacts almost uniformly say that the issue
11 for them is they are taking the brunt of the
12 impacts, whereas the offsets are being obtained
13 from non-local areas.

14 MR. NICKELSON: Well, a question: You
15 know, like on the EJP, environmental justice
16 impact -- that's on page 4.1-44 -- it said,
17 "According to the modeling that was provided by
18 the applicant." You know, the people in Manhattan
19 Beach would be subjected to 42 times more than the
20 people in Hawthorne, which is the nearest EJP.
21 And I'm just saying okay, if they can mitigate the
22 EJP requirement by saying, hey, listen, this is a
23 rich community, Manhattan Beach, and they're going
24 to be exposed to 42 times more of PM 10 than would
25 be the case if they lived in Hawthorne, the

1 nearest EJP, okay, that's a clean mitigation.

2 But I'm just saying that the same thing
3 carries over to the people that living near the
4 project, if all the mitigation is being done for
5 the 615 pounds a day that is going to be dumped
6 into the atmosphere, you know, I have a difficult
7 time believing the fact that we'll be subjected to
8 no more PM 10 living in Manhattan Beach, a mile
9 away from where it's being emanated from, than if
10 I lived in Big Bear or Diamond Bar or someplace
11 like that, that it's going to be -- you guys at
12 AQMD, and Diamond Bar is not going to be affected
13 any differently than we are.

14 I have a difficult time trying to
15 comprehend that, and maybe somebody could help me
16 with that.

17 APPLICANT ATTORNEY MCKINSEY: You know,
18 I would like to say something if I can. I was
19 explaining this to Nick during our break, that
20 reading the sentence that you cited on 53, 4.1-53,
21 I kind of understand where some of your concerns
22 come from, because I think I disagree with that
23 sentence. And I can at least try to explain a
24 pretty clear understanding --

25 MR. NICKELSON: What sentence? I'm

1 sorry.

2 APPLICANT ATTORNEY MCKINSEY: The
3 sentence you quoted, "The unmitigated emissions
4 will also impact the residents"?

5 MR. NICKELSON: Yes.

6 APPLICANT ATTORNEY MCKINSEY: The way
7 that the Air Quality program works is they have an
8 entire basin, and they often recognize regions
9 within that basin where they feel that the air
10 circulates such that they work on a regional
11 basis. And then often they will find that there
12 are localized impact problems.

13 The emission reduction credits that are
14 required are not intended to address localized
15 impact issues.

16 MR. NICKELSON: Right.

17 APPLICANT ATTORNEY MCKINSEY: They're
18 intended to look at the region and the air basin,
19 and that's why they don't have a requirement that
20 there be a particular proximity between the
21 emission reduction credit that's being obtained
22 and the source that's being added to the
23 environment.

24 The localized effects are handled
25 through modeling: what's going to happen when

1 that new and increased emission flows out, where
2 it's going to go, and what the concentrations are
3 going to be where people are going to breathe it.
4 And they have standards and requirements that have
5 to be met for those initiatives. And that is what
6 is accomplished by setting a stack height
7 primarily, and then maximum concentrations of the
8 emittants that come out of the top of the stack.

9 And occasionally when they do all that
10 modeling, they find a problem. They can't make
11 the stack high enough or they can't reduce the
12 concentration low enough to eliminate that local
13 effect, and then you may have a real problem
14 because it may be impossible to eliminate it.

15 But what the Air District does when they
16 make their determination of compliance is that
17 they're satisfied that both pieces are
18 functioning: that the localized effects, the
19 requirements for the concentrations of
20 contaminants at ground level where people breathe
21 have been met; additionally, that their goal at
22 reducing the overall concentration in the air
23 basin -- you know, the air that's often much above
24 your head that's not breathable and how it comes
25 down -- their air basin improvements are

1 accomplished.

2 And that's what the emission reduction
3 credits are going towards. This sentence, the
4 reason why we disagree with that sentence is that
5 sentence suggests that if there was indeed a
6 shortfall in emission reduction credits because of
7 the perceived air permit deficiency, that that was
8 somehow causing an unmitigated localized effect.

9 And unfortunately we don't have I think
10 the author of this sentence here to maybe
11 explain --

12 PROJECT MANAGER REEDE: Yeah, Joe Loyer
13 is on the phone.

14 APPLICANT ATTORNEY MCKINSEY: -- but
15 that sentence I don't think is correct, because
16 it's suggesting that the failure to obtain basin-
17 wide emission reduction credits or regional,
18 because in the South Coast there are regions that
19 are defined, is going to cause a localized effect.

20 MR. NICKELSON: Well, John, let me say
21 something else, then. In this FSA it states that
22 every year for the past ten years there is a
23 station in Hawthorne that tracks to determine if
24 this exceeds, PM 10 exceeds what is allowed. And
25 it does. And every year it's failed.

1 Now, you're telling me that by adding
2 these, you know, putting these two new units
3 online, increasing the PM 10 into the atmosphere,
4 that it's not -- it's going to be better? It
5 doesn't make sense.

6 APPLICANT ATTORNEY McKINSEY: And your
7 criticism brings a really good point about
8 criticism of the air program as a whole in that
9 what it's actually measuring is that there will
10 not be an increase -- there will not be a
11 significant harm done.

12 And one of the reasons why, for
13 instance, they skip a car, a tailpipe emission,
14 every car that gets added to a region is going to
15 add emissions.

16 MR. NICKELSON: Right.

17 APPLICANT ATTORNEY McKINSEY: They have
18 to reach some point where they say if it crosses
19 this threshold it's a problem. And so one of the
20 requirements of all of that modeling is to be
21 satisfied that the effect in Hawthorne and the
22 effect everywhere where that plume is calculated
23 to go, that it doesn't actually cause an increase
24 in concentrations that would trigger anything
25 that's considered to be an unacceptable health

1 problem or health hazard.

2 MR. NICKELSON: You're not saying that
3 it -- You're saying that it could cause, it will
4 cause an increase, but it's not an increase to a
5 point that it will be unhealthy for the people in
6 Hawthorne --

7 APPLICANT ATTORNEY MCKINSEY: That's
8 exactly what the program is intended to do. The
9 criticism people often have is its modeling, its
10 predictions, its calculations, and the other thing
11 they have is that you're still adding something
12 into the mix.

13 But from the laws that are in place that
14 the government can enforce, that's what it can do.
15 We can only say have we met those thresholds. Has
16 essentially this emission been dissolved enough
17 that we don't see an increase. And by dissolving
18 it out, it's starting to reach the point where the
19 offsets are adding to the effects of the basin and
20 it's that combination of the two that is where
21 this program has evolved. We handle the localized
22 effects by requiring that it be dissolved and
23 spread out to the point where you don't see health
24 effects.

25 In the meantime, we have a program to

1 address the health of the entire basin at the same
2 time.

3 MR. NICKELSON: Can I ask if the Coastal
4 Commission agrees with the things that you're
5 saying?

6 PROJECT MANAGER REEDE: The Coastal
7 Commission is not on the phone right now.

8 HEARING OFFICER SHEAN: Yeah, they've
9 signed off.

10 MR. NICKELSON: Oh, they shut off?

11 HEARING OFFICER SHEAN: Yeah.

12 PROJECT MANAGER REEDE: Only Matt Layton
13 and Joe Loyer, my air quality engineer, are on the
14 phone right now.

15 MR. LOYER: Yeah, I'm here. I could
16 hear about every fifth word of Mr. McKinsey had to
17 say, so I really can't say if what he was saying
18 was correct or not.

19 MS. MURPHY: Can I ask Mr. McKinsey a
20 quick question?

21 Michelle Murphy, intervenor.

22 PROJECT MANAGER REEDE: You're going to
23 have to really speak up, or else you're going to
24 have to come over here.

25 MS. MURPHY: It's just one short

1 question.

2 Sometime in the last two years, after
3 the Air Quality Control Act was gutted, you told
4 us we were going to have a visual enhancement,
5 because the stacks could be shorter now, they
6 wouldn't interrupt our view. Actually, what's
7 happening is we're having an air quality
8 disenchantment, right?

9 APPLICANT ATTORNEY MCKINSEY: No, the
10 actual reason for that was, and there is a lot of
11 criticism and some of it may be fair about how
12 this whole Clean Air Act program works, but the
13 standards for how you go about calculating and
14 modeling out that diffusion of the plume were
15 revised.

16 MS. MURPHY: Didn't they lower the
17 stacks from the original --

18 APPLICANT ATTORNEY MCKINSEY: And, in
19 fact, what we became aware of is that there was
20 another way that we could model that was
21 considered as accurate or more accurate, and using
22 that modeling program the stacks did not have to
23 be as high as they were in order to diffuse out
24 the plume to the point where it met all the health
25 standards.

1 MS. MURPHY: So you're diffusing it less
2 than you originally planned to diffuse it and it's
3 going to be more concentrated.

4 APPLICANT ATTORNEY MCKINSEY: Well, in
5 theory, but, I mean, I'm not an air quality
6 engineer.

7 MS. MURPHY: Is it to the degree that
8 would make it --

9 APPLICANT ATTORNEY MCKINSEY: Well, hear
10 me out. But when you lower a stack height, there
11 is an assumption that the particles and the
12 emissions are going to gradually go down, and
13 that's part of the modeling. So, in theory, as
14 you lower the stack height, that means that
15 they're not reaching as far, but I don't know that
16 that's always the case.

17 A lot of times you have updrafts and
18 other effects. The modeling, though, nevertheless
19 said that the stack height did not have to be any
20 higher than what we now have it to be in order to
21 meet all of those health requirements out there.
22 And the reason why we went about that was because
23 it did add a significant visual benefit by
24 reducing the height of the stacks.

25 MS. MURPHY: All right.

1 PROJECT MANAGER REEDE: All right.

2 HEARING OFFICER SHEAN: All right.

3 MR. NICKELSON: Let me ask a question
4 too, because it says that it assumes, too, that
5 you're going to purchase 198 credits. You know,
6 in the Coastal Commission and the FSA it said that
7 there is an assumption, and that's just an
8 assumption, it's not -- You're going to definitely
9 purchase 23, and then it shows that if there's
10 198, we're going to assume that you're going to
11 purchase those and then it leaves you 158 credits
12 short.

13 APPLICANT ATTORNEY MCKINSEY: Well, the
14 air permit decision by the South Coast and the
15 echoing Energy Commission analysis are using
16 already the emission reduction credits that we
17 have purchased. And then we have committed to
18 purchasing or something close to purchasing prior
19 to reserve emission reduction credits.

20 The Energy Commission's criticism and
21 issue with that was that they felt that there was
22 still a shortage because of what Mr. Yee discussed
23 about the program that was in effect for megawatt
24 reduction, and the use of the priority reserved
25 credits. And I think what the Air District --

1 what the Energy Commission has now found, if it
2 indeed bears out, that their concerns will be
3 satisfied by the fact that there is a program in
4 place and rules and regulations that ensure that
5 the Air District is responsible with ensuring that
6 those offsets are allocated and covered.

7 And so this question may be more of the
8 Energy Commission, but in terms of our response to
9 it, we felt that we obtained what the Air District
10 was telling us to obtain, and they told us to
11 obtain more credits, that we had satisfied the air
12 permit. And the Energy Commission I think had an
13 issue with that air permit which may now be
14 resolved, because indeed it turns out that every
15 year on some kind of basis the Air District is
16 allocating from within a bank of unused credits to
17 make sure that they're blocking that 150 pounds
18 and however much SO2 there was.

19 MR. NICKELSON: But the FSA has stated
20 that you were purchasing 23 pounds a day of PM 10
21 ERC credits, and 293 pounds a day of priority
22 reserve PM 10 credits. It's assumed that you're
23 going to. Are you going to?

24 APPLICANT ATTORNEY McKINSEY: We are
25 obligated to.

1 MR. NICKELSON: You are obligated to?

2 PROJECT MANAGER REEDE: They don't have
3 a choice.

4 MR. NICKELSON: Okay.

5 APPLICANT ATTORNEY MCKINSEY: In fact,
6 some of them -- When they said purchasing, I think
7 some of them were already purchased. The only
8 thing that isn't really executed is the priority
9 reserve. That is just part of the issuance of the
10 air permit and the pain of the fee we have to pay.

11 We can't start construction until we
12 have done that.

13 MR. NICKELSON: Okay, and those 293
14 credits, like you say, like the 23 credits could
15 come from anyplace in the region. It's not going
16 to come -- Like the 23 credits didn't come from
17 someplace that was close to it.

18 APPLICANT ATTORNEY MCKINSEY: Correct,
19 yes.

20 MR. NICKELSON: And that caused concern
21 to the Energy Commission and it said so in the
22 FSA, that that was a concern to them, that the 23
23 credits came from outlying areas.

24 But what you're saying is it's coming
25 from the region, all 293 plus the 23 will come

1 from God knows where.

2 APPLICANT ATTORNEY MCKINSEY: There are
3 some regional constraints, but nevertheless, the
4 Air District would allow credits to come from
5 areas that are not local to the source. There is
6 no local requirement for emission reduction
7 credits. The ones we've purchased and the ones
8 that will be coming from the priority reserve.

9 MR. NICKELSON: Okay. So Mr. Gurion and
10 City of El Segundo have said they have given
11 possible offset as being, replacing lawnmowers
12 that run on gas with electric and a number of
13 other things that are in -- and I mentioned to
14 you. Those seem like those are real-world things
15 that would impact our area because they're coming
16 from our area.

17 That's not the intention and now that
18 would be -- you will get all your mitigation, even
19 the 150, through paperwork and nothing through
20 actual going out --

21 APPLICANT ATTORNEY MCKINSEY: Well,
22 really, it is paperwork, it's always paperwork.
23 But your criticism that I think is valid is
24 they're coming from anywhere within the Air
25 District or sometimes within a regional basis.

1 And that is the case not just for the ones that
2 the Energy Commission perceived to be not present,
3 but is the case for all of our offsets.

4 But that goes back to my original point,
5 that the Clean Air Act and the other laws that are
6 in place primarily have a structure in which they
7 use modeling and concentrations and not exceeding
8 limits to handle the local concern, and then the
9 emission reduction credits are not focused on
10 coming from a localized effect because that's been
11 handled, they're focused on the whole basin.

12 The proposals that are being made by the
13 City of El Segundo are actually similar to one of
14 the ideas we had had originally which was street
15 sweeping. One of the reasons we liked that is it
16 was localized. But we ran into one of the
17 problems with trying to make your own emission
18 reduction credits is they have to be approved by
19 an agency, and so it would be fine for us to try
20 to find ways to do localized benefits, but they're
21 not going to count as emission reduction credits.
22 They would simply be something else that was being
23 accomplished either as an enhancement or perhaps
24 there was some other particular reason why there
25 was a localized effect that wasn't being properly

1 accounted for.

2 But to us, those are enhancements that
3 aren't different from any other enhancements that
4 we could accomplish, that we're already meeting
5 all of the requirements we need to meet which are
6 designed to ensure the health and safety of all
7 the citizens that are going to be breathing that
8 air.

9 And so those are new proposals that the
10 City of El Segundo is making, and if anything,
11 they would be some type of enhancement program
12 which we would be doing, almost to be a good
13 neighbor. The problem is I don't think those have
14 been evaluated yet, and are coming in pretty late.

15 MR. NICKELSON: Yeah. And what we're
16 saying too is that the 158 pounds of PM 10 that
17 the Coastal Commission was looking at -- not the
18 Coastal -- the Energy Commission was looking at
19 really are not going to impact whether or not this
20 is approved. It's going to happen because here we
21 have AQMD come in and say that hey, listen, we can
22 cover that.

23 PROJECT MANAGER REEDE: Right,
24 basically. AQMD is covering the shortfall that
25 under CEQA we found, based upon his comments.

1 MR. NICKELSON: Uh-huh.

2 PROJECT MANAGER REEDE: Okay.

3 MR. NICKELSON: Well, it's okay, James,
4 if it's not going to affect my daughter's health
5 and my wife and my friends, and, you know, I made
6 a comment about other people and I'm not implying,
7 you know, that that has anything to do. It could
8 be, you know, a number of reasons, although it
9 seems funny that they're right within a small
10 area, and I don't know what the effect would be
11 for the number of people and the total of
12 Manhattan Beach for cancer.

13 But, Jesus, you know what? It concerns
14 me that if we walk away from this that there could
15 be a negative impact from PM 10, you know, in SOX
16 emissions, you know, on the people that are living
17 right near there. You know, it could impact our
18 lives. Do you understand where I'm coming from?

19 PROJECT MANAGER REEDE: Yeah.

20 MR. NICKELSON: And what you're saying
21 is no, no, Nick, don't worry, it's not.

22 PROJECT MANAGER REEDE: No, I'm not
23 saying don't worry, it's not, but I'm saying that
24 under the law, the emission reduction credits
25 necessary to offset the impacts of what's coming

1 out of stack have been met. You're addressing
2 another issue --

3 MR. NICKELSON: Yes.

4 PROJECT MANAGER REEDE: -- that goes to
5 the health of the community, and while staff is
6 sympathetic to those particular issues, those
7 issues have not been addressed due to the fact
8 that we don't know whether there is a nexus
9 between the power plant and what has occurred to
10 these individuals in the community.

11 Somebody has been smoking four packs a
12 day for the past 50 years, there is not a nexus
13 between the power plant and that individual
14 contracting cancer. That's why -- you know,
15 that's a very grey area, and we have to look to
16 the law, remaining sympathetic to the community,
17 but we also have to realize that that's very real
18 to your community.

19 HEARING OFFICER SHEAN: Well, and I
20 think if we leave it at that, we're leaving an
21 element out, which is that in the AQMD's review
22 and in the review we do, there is a public health
23 element.

24 There is, on one hand, conformance to
25 the Clean Air Act and the new source review and

1 that does one thing, and then they do on top of
2 that or differentiate it from that essentially a
3 public health review that takes not only the
4 regulated pollutants but also some non-regulated
5 pollutants and assesses through modeling what is
6 going to be the impact of a more localized area
7 that, on the public health basis than on the Clean
8 Air Act basis, which is a more regional thing.

9 And I would think, and probably what
10 we'll do is just supply you with the public health
11 people who could at least answer your questions.
12 If they'll fully take care of your concerns I
13 don't know, but so that you can at least
14 understand how the modeling is done, what it
15 determines, and why on the basis of the modeling
16 you would conclude that for the people who are
17 within the area of the models, if there are not
18 going to be significant adverse health effects.

19 MR. NICKELSON: I guess the only thing
20 that still bothers me is that in the chart here it
21 states for the past ten years that in the City of
22 Hawthorne, you know, PM 10 has exceeded what has
23 allowed, and that is going to -- it's got to go
24 up. It's got to be worse after this because, you
25 know, there will be more emissions pumped that

1 way.

2 So, I mean, if it hasn't satisfied the
3 law so far, what you guys track, who do you punish
4 in this case? I mean, nobody or do you just let
5 it go, do you know what I'm saying? Well, it's
6 failed for the past ten years, your modeling.
7 Your charting here shows that it's not been
8 successful.

9 HEARING OFFICER SHEAN: Well, the feds
10 don't allow unbridled exceedances. If there are
11 exceedances that get you to non-attainment, then
12 other rules kick in in terms of how you basically
13 ratchet down the emissions.

14 MR. BERGER: Mr. Shean, if I may?

15 HEARING OFFICER SHEAN: Sure.

16 MR. BERGER: Karl Berger again, the
17 assistant city attorney for El Segundo.

18 Obviously, this is a hotbed topic for
19 residents here, but also for the City of El
20 Segundo. I mean, I understand the differences
21 between regulation and enhancement and what have
22 you, but I would, if I may, try to nail the
23 applicant down with regard to what I think
24 Mr. McKinsey was saying, that they would at least
25 listen to enhancements with regard to some of the

1 programs that the City of El Segundo has proposed
2 with trying to have real-world solutions to what
3 at least the residents in the City perceive as
4 local problems with regard to the pollution.

5 I understand the regional basis in the
6 modeling and what have you, but what the City is
7 concerned about is exactly what the intervenor has
8 stated, and I certainly can't state it any more
9 eloquently. I don't live in El Segundo, frankly.
10 But that is what the City is concerned about, and
11 if we could get some sort of commitment from the
12 applicant that they would be at least willing to
13 look at some of the real-world practical hands-on
14 types of enhancements that Mr. Garry has suggested
15 to some extent, that would go a long way, at least
16 with our concerns, I believe.

17 MR. GARRY: Yeah, I would just also add,
18 it seems to me that before the AQMD told us about
19 this community bank, the Energy Commission staff
20 was looking at tugboat replacement engines as a
21 way to mitigate these extra PM 10. So it seems
22 that there are options available to the Committee
23 to mitigate these measures and using the community
24 bank isn't necessarily the only way that the
25 Committee can mitigate those.

1 We've offered an alternative list of
2 potential ways that the Committee can look at
3 other emission credits potentially to get to that
4 point, and these would have a local element to it
5 which would get to where I think the local
6 intervenors would like to be.

7 PROJECT MANAGER REEDE: Commissioner
8 Pernell?

9 PRESIDING COMMITTEE MEMBER PERNELL: It
10 doesn't look like we're going to solve Air Quality
11 here. I understand that the Air District is going
12 to provide a letter to staff, but evidently the
13 City has some more concerns.

14 So if it can't be resolved, then we're
15 going to have to take this item to hearing, and
16 you can present your witnesses and whatever.

17 PROJECT MANAGER REEDE: Excuse me,
18 Commissioner Pernell, but if the Air Quality
19 District presents the letter, the proposed
20 condition of certification by the City of El
21 Segundo would then become moot. Because they're
22 looking at -- the City's Air Quality condition is
23 basically saying within 60 days certification,
24 project owners shall investigate alternative
25 methods of meeting PM 10 offsets.

1 Once we get the City's letter, the PM 10
2 offsets have all been met.

3 APPLICANT ATTORNEY MCKINSEY: Well,
4 that's for the Committee to decide, not for staff.

5 PRESIDING COMMITTEE MEMBER PERNELL:
6 Wait, wait, wait. The City as an intervenor has a
7 right to not agree with staff and Air Quality
8 District or applicant, and so what we're going to
9 do is put this topic over and let the City present
10 their case. And perhaps the City can work with
11 the applicant in the interim, but everybody is not
12 in agreement on this, so we can't sign off on it,
13 the Committee can't sign off on it.

14 Yes, sir?

15 MR. PERKINS: I'm Bob Perkins,
16 intervenor. I'd like to ask a procedural question
17 that has to do with the Committee's power. Does
18 the Committee only have the power to require the
19 applicant to buy enough credits to meet the Clean
20 Air Act, etc., or does it have the power to
21 prescribe which way it meets the Clean Air Act?

22 HEARING OFFICER SHEAN: I think the
23 answer is we could prescribe a way, so long as
24 it's an approved way. We can't go out and make up
25 the rules of how they would apply. It basically

1 is a matter that's administered by the local
2 district, it's a federal law, and we can only go
3 so far.

4 And I think where we feel the constraint
5 would be, we can't do something that the district
6 or some other agency has not stamped with a stamp
7 of approval and make up new offsets. Now, we
8 might think that we should be able to do that and
9 on a certain, you know, horseback level you'd say,
10 well, this is going to be effective.

11 But I think in terms of what we could
12 say is more than we used to comply with the Clean
13 Air Act that we have to operate within that bound.

14 MR. PERKINS: But if the City of El
15 Segundo were able to present to you an approved --
16 that is, approved by the appropriate agencies, not
17 by yourself --

18 HEARING OFFICER SHEAN: Right.

19 MR. PERKINS: -- method for the
20 applicant to get their credits that was more local
21 in nature, and if they can sell you that it was
22 more attractive, a better way for the world to
23 work, to use that method than the applicant's
24 proposed method, you would have the power to say
25 no, we're not going to use your method, applicant,

1 we're going to use the one El Segundo requires,
2 right?

3 HEARING OFFICER SHEAN: Yeah, I think
4 that is generally correct, because generally we
5 have favored local offsets where they're
6 obtainable. This is not something new to us.

7 MS. MURPHY: And you can approve
8 enhancements if they're agreed to by --

9 HEARING OFFICER SHEAN: I think what we
10 want to say, though, is I understand the
11 characterization of enhancement used here; as it
12 has been used in the past, it is basically an
13 offer by the applicant to do something above and
14 beyond what they're required to do to comply with
15 the law.

16 MS. MURPHY: Yes, right.

17 HEARING OFFICER SHEAN: And what we will
18 do is if they have agreed to do that, we will
19 memorialize that agreement as a condition. Okay,
20 no problem.

21 APPLICANT ATTORNEY MCKINSEY: You know,
22 I'd like to say one thing that I think might be
23 important for Mr. Perkins to understand, though.
24 The Energy Commission's hands are tied a little
25 bit in that the Air District writes the FDOC and

1 the Air District controls the ERCs. And if we're
2 talking about an actual Air District ERC, the
3 Energy Commission can't really change that without
4 the Air District's cooperation and compliance with
5 that.

6 We're talking about something that isn't
7 an ERC, a certificated emission reduction credit.
8 And that's something that does get beyond the
9 realm, but because of the dual nature of having
10 the Air District and the Energy Commission sharing
11 some jurisdictional responsibilities, there is
12 some hands-tying in there.

13 HEARING OFFICER SHEAN: Yes?

14 MS. JESTER: Laurie Jester with the City
15 of Manhattan Beach, just one point of
16 clarification.

17 SOUTH COAST AIR QUALITY MANAGEMENT

18 DISTRICT SENIOR ENGINEER YEE: Yes?

19 MS. JESTER: I heard the Energy
20 Commission say that you prefer local mitigation to
21 off-site mitigation. I'd like to know if the Air
22 Quality Management District, do you have any
23 policy, you don't care how something is mitigated,
24 as long as it's mitigated according to your rules?
25 Is that a fair assumption?

1 SOUTH COAST AIR QUALITY MANAGEMENT

2 DISTRICT SENIOR ENGINEER YEE: Simply speaking,
3 yes, that's true.

4 MS. JESTER: And could I ask one more
5 question?

6 SOUTH COAST AIR QUALITY MANAGEMENT

7 DISTRICT SENIOR ENGINEER YEE: Sure.

8 MS. JESTER: Do you -- Have you had a
9 chance to review this list from El Segundo, and is
10 there anything on there that pops out at you as
11 being infeasible? We talked about tugboats last
12 time, and I don't know why that didn't go
13 anywhere. And I know that the applicant tried the
14 street sweeping, and so obviously it seems to me
15 they're willing to work with us and they are
16 willing to do something that would benefit the
17 local area instead of Pomona or Diamond Bar or
18 some other place.

19 So it seems to me if we can have local
20 mitigation, why not do it?

21 APPLICANT ATTORNEY MCKINSEY: You know,
22 I never did respond to the City of El Segundo's
23 question about whether we were willing to
24 consider. One of the problems we have at this
25 late date trying to talk about considering ways to

1 revise the permitting conditions are that we
2 already have a final determination of compliance
3 from the Air District, and we have a final staff
4 assessment from the staff.

5 And we've been trying to cooperate and
6 work with the City of El Segundo the last two and
7 a half years. And so if we were to try to reach
8 some type of agreement, I don't think we would
9 want to try to incorporate that into the decision.
10 I think that would have to be some type of MOU
11 between the City and El Segundo power.

12 So that would be more along the lines of
13 what we would want to accomplish. The Air
14 District has a tremendous workload and it took
15 quite a while for us to get a final determination
16 of compliance, and if we were to try to reopen and
17 modify the determination of compliance, it would
18 take quite a bit more time. But there still might
19 be a way to come up with some creative solutions.
20 I don't think we're actually -- it's just I know
21 one of the concerns we're going to have is that
22 it's kind of -- it's pretty late for us to try to
23 figure some of these things out.

24 We had presented, if I recall, for
25 instance, sodding a long -- maybe two years ago,

1 the City of El Segundo, is one idea we had of
2 trying to do local things. It never came to
3 fruition as we focused on other things with them,
4 and so partly we're kind of feeling like, you
5 know, we want to try to be as good a member of the
6 community as possible, but we've got to face the
7 reality that we want to get this process done, and
8 that's -- at this point, that's a pretty big
9 priority for us.

10 MR. NICKELSON: You know, I'm going to
11 say something that kind of started a lot of this,
12 but it makes -- for the first time I think I see
13 more clearly, you know, the fact, I was looking
14 at, like, the tugboat issue as being an issue
15 where you have a tugboat sitting off the beach 24
16 hours a day which doesn't happen. You know, it
17 goes back to Long Beach.

18 But it still does, if you put the new
19 engine in this, you know, it would mitigate, you
20 know, and I can see further, you know, going back
21 into a bank that AQMD has that somebody has put
22 those credits in by eliminating something, and
23 somebody else drawing them out.

24 It makes it a little bit clearer to me.
25 I still see how it could negatively impact my

1 family, you know, and the people that I care for,
2 but it does make better sense what you're saying,
3 John.

4 HEARING OFFICER SHEAN: Okay.

5 MR. GARRY: I just want to add one
6 thing.

7 HEARING OFFICER SHEAN: All right.

8 MR. GARRY: This is Paul Garry with El
9 Segundo again. This list that we've proposed
10 here, this was previously proposed by staff I
11 think in a data request months and months and
12 months ago, if not longer, so it should be nothing
13 new that we're requesting, you know, feasibility
14 of looking at local emission reduction areas.

15 So I think it's come across that somehow
16 we're submitting these at the last moment, and
17 that's not the case.

18 MS. MURPHY: Indeed, instead -- Michelle
19 Murphy, intervenor -- the unfair surprise that,
20 not just on this issue but this issue affects our
21 health so it's perhaps more important than any
22 other, of all these staff things that came up
23 three days ago and we had to respond to them is I
24 can't help believe -- I mean, I'm not sure about
25 the legal issues surrounding it, but it can't be

1 right, it can't be fair.

2 You can't say, okay, now you've got to
3 eat these emissions, and that's it. We just
4 decided today and we're lending you a day -- I'm
5 sorry that it's the last minute or you feel it's
6 the last minute, but for us it's our breath for
7 the next 50 years, so I think there may be some,
8 you know, at least legal or other recourse to slow
9 it down and try to look into it, and I'm going to
10 go home and start doing that.

11 APPLICANT ATTORNEY MCKINSEY: Well,
12 don't misunderstand my comments. My main
13 comment -- In fact, I understood you -- the City
14 of El Segundo did propose all of those specific
15 conditions. My point was that because we don't
16 have a regulatory obligation to accomplish them,
17 we focused on trying to accomplish those, and I
18 was really, really when I was referring to last
19 minute, I was referring just to the idea that this
20 was something that the City of El Segundo was
21 saying they felt they had to have in order to
22 support this project.

23 That was awkward for us just that in all
24 the dialogue through the last year, I don't think
25 any of those have come up. Or at least when

1 they've come up, we've indicated that that wasn't
2 something that based on those things they might
3 have wanted from us.

4 So my point is that that -- because we
5 have to try to do that outside of the permit
6 conditions and all we could really do is, if we
7 did it in time we could fold it into the permit as
8 something we agreed to do, at the point we're at
9 now if that's really a priority for the City of El
10 Segundo to accomplish the conditions that they
11 propose, we would prefer to try to do that outside
12 of this permit condition.

13 But I think your comment is valid, and I
14 don't think that the things that are being brought
15 up are last-minute at all, and so don't think that
16 I'm trying to say that just because a lot of these
17 objections are being brought up about the amount
18 of time we have to review things and decide things
19 that I object to that, and that to me is a very
20 important comment about making sure that you have
21 an adequate amount of time as we want to know what
22 we're agreeing to and what we're not agreeing to,
23 and so that we preserve our right in the
24 evidentiary hearings to present the evidence of
25 where we disagree with.

1 PROJECT MANAGER REEDE: Hearing Officer
2 Shean?

3 Mr. Loyer, are you still on the phone?

4 MR. LAYTON: Joe hung up because we
5 really can't hear anything.

6 PROJECT MANAGER REEDE: Okay.

7 MR. LAYTON: I don't know what else to
8 do. We hear every tenth --

9 PROJECT MANAGER REEDE: Who is on the
10 phone right now?

11 MR. LAYTON: We hear every tenth word,
12 so it's --

13 PROJECT MANAGER REEDE: [loudly] Who is
14 on the phone, please?

15 MR. LAYTON: -- very difficult for us
16 to answer any questions in the context of how they
17 were asked.

18 PROJECT MANAGER REEDE: What is your
19 name?

20 MR. LAYTON: This is Matthew Layton.

21 PROJECT MANAGER REEDE: Okay. Matt,
22 once we get the letter from the Air Quality
23 Management District, it's my understanding that
24 staff will be drafting a condition of
25 certification requiring the applicant to provide

1 certification that the remaining emission
2 reduction credits have been supplied by the Air
3 Quality District; is that typical for a condition
4 of certification?

5 MR. LAYTON: What I believe is that we
6 will be able to recommend that the offset package
7 is complete, and, therefore, the impacts are
8 mitigated.

9 PROJECT MANAGER REEDE: Okay.

10 HEARING OFFICER SHEAN: Okay. And I
11 think that does satisfy you, okay.

12 MR. LAYTON: Well, Mr. Loyer may
13 disagree because obviously he's not on line to
14 say, but this is what I understand is that if we
15 get the letter, then we will consider the 1.2 to 1
16 as satisfying what we needed, and then we can make
17 a recommendation based on that.

18 PROJECT MANAGER REEDE: Okay.

19 HEARING OFFICER SHEAN: Okay. I think
20 at this point we've gotten as far on Air Quality
21 as we can, but I understand that you're talking
22 about a public health issue.

23 I think what we should do is take our
24 lunch break, be gone for an hour; is that
25 sufficient?

1 PROJECT MANAGER REEDE: We can wrap it
2 up today if we only take a half an hour.

3 HEARING OFFICER SHEAN: Well, half-hour
4 is --

5 PROJECT MANAGER REEDE: It's right
6 across the street.

7 HEARING OFFICER SHEAN: All right.
8 Let's do this: 45 minutes, then. Forty-minutes
9 and we'll be back here, 2:30.

10 (Thereupon, the lunch recess was held
11 off the record.)

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1 A F T E R N O O N S E S S I O N

2 HEARING OFFICER SHEAN: We are going to
3 resume following the lunch break here.

4 Why don't we look at Transmission System
5 Engineering. There don't appear to have been any
6 intervenor or City or agency comments that I'm
7 aware of since the errata.

8 PROJECT MANAGER REEDE: Okay. And I've
9 just acknowledged Mr. Garry's head shake that the
10 City no longer has any outstanding issues with
11 Transmission System Engineering, and to the best
12 of my understand the applicant didn't.

13 So between the FSA and errata,
14 Transmission System Engineering is settled.

15 HEARING OFFICER SHEAN: Okay. Is there
16 objection to taking that on declaration, then?

17 PROJECT MANAGER REEDE: Declaration.

18 HEARING OFFICER SHEAN: Okay. We'll do
19 that.

20 PROJECT MANAGER REEDE: Okay. The next
21 issue is Socioeconomic that I would --

22 HEARING OFFICER SHEAN: Mr. Bunton is
23 unavailable, right?

24 MS. JESTER: I thought we were going to
25 do Noise right after lunch.

1 HEARING OFFICER SHEAN: We were going to
2 do Noise --

3 PROJECT MANAGER REEDE: We're waiting on
4 Mr. Bunton to call in.

5 MS. JESTER: Oh, okay.

6 HEARING OFFICER SHEAN: If he hasn't
7 called by 3:00, we'll pick it up.

8 MS. JESTER: Okay, thank you.

9 PROJECT MANAGER REEDE: And he's in
10 transit, he could be on a plane.

11 HEARING OFFICER SHEAN: Why don't we try
12 Socioeconomics, then.

13 Does anybody have an issue here in
14 Socioeconomics?

15 MS. JESTER: Yes, we did.

16 HEARING OFFICER SHEAN: I'm trying to
17 find where that is. Is it in your letter?

18 MS. JESTER: Yes. Where is it in the
19 errata, what page?

20 HEARING OFFICER SHEAN: Excuse me,
21 James, do you know on what page in your errata the
22 Socio information appears?

23 PROJECT MANAGER REEDE: There is no
24 Socio in our errata, to the best of my knowledge.

25 HEARING OFFICER SHEAN: Okay.

1 MS. JESTER: Maybe that's why I couldn't
2 find it.

3 HEARING OFFICER SHEAN: That's the
4 answer to that.

5 (Laughter.)

6 MS. JESTER: We talked about at the last
7 workshop that on page 4.8-11 of the final staff
8 assessment that we were going to put a discussion
9 that there are significant Air Quality impacts,
10 and there was a statement on that page that said
11 that there aren't any.

12 PRESIDING COMMITTEE MEMBER PERNELL: 4.8
13 dash --

14 HEARING OFFICER SHEAN: Eleven.

15 MS. JESTER: 4.8-11, the second
16 paragraph from the bottom, the first sentence
17 says, "Negative impacts, however, can be generated
18 if there are significant and adverse impacts, such
19 as Visual, Traffic, Noise, Air Quality."

20 But it says that there aren't any of
21 those impacts, and we were going to add a
22 statement that acknowledged that there were Air
23 Quality impacts.

24 HEARING OFFICER SHEAN: And what are you
25 referring to, just so we know? What are those --

1 MS. JESTER: What am I --

2 HEARING OFFICER SHEAN: Yes, what air
3 quality impacts are you specifically --

4 MS. JESTER: The PM 10 and the SOX.

5 HEARING OFFICER SHEAN: Which, if
6 mitigated, are insignificant? Do I understand
7 that correctly, or --

8 APPLICANT ATTORNEY MCKINSEY: The issue
9 when we met regarding the final staff assessment
10 was that the staff would testify that there were
11 unmitigated impacts --

12 PROJECT MANAGER REEDE: At that time.

13 APPLICANT ATTORNEY MCKINSEY: -- and
14 that was the deficit of PM 10 and SOX, and so then
15 you had said, well, staff, if you feel there are
16 unmitigated significant impacts in Air Quality,
17 then this sentence in Socioeconomics doesn't make
18 sense.

19 PROJECT MANAGER REEDE: All right. But
20 realizing that now that we've gotten the Air
21 Quality District to say that there are not going
22 to be any unmitigated --

23 MS. MURPHY: Locally unmitigated. We
24 just had an hour discussion on that.

25 PROJECT MANAGER REEDE: -- there are

1 not going to be unmitigated regulatory air
2 impacts, it would not be appropriate to change the
3 wording in that sentence, from staff's
4 perspective.

5 HEARING OFFICER SHEAN: Okay. Do you
6 have -- Do you want to make a presentation on
7 Socioeconomics in some respect?

8 MS. JESTER: Let me talk about the
9 second item and then I can make that decision.

10 HEARING OFFICER SHEAN: Sure.

11 MS. JESTER: The second one was a
12 condition that we requested a year ago, and this
13 was about temporary lodging being provided for
14 residents who provided written verification from a
15 doctor that the impacts of the construction are
16 detrimental to their health.

17 And the Energy Commission had rejected
18 that previously.

19 PRESIDING COMMITTEE MEMBER PERNELL: I'm
20 sorry I didn't get that.

21 MS. JESTER: Oh, I'm sorry. It's in my
22 letter. This is a new condition that's proposed:
23 "Temporary lodging shall be provided for residents
24 who provide written verification from a doctor
25 that the impacts of the construction are

1 detrimental to their health."

2 That's a condition that we proposed in
3 July of 2001. It was rejected by the Energy
4 Commission staff. We're requesting that the
5 Energy Commission staff consider that again.

6 PRESIDING COMMITTEE MEMBER PERNELL:

7 Okay.

8 APPLICANT ATTORNEY MCKINSEY: Laurie, is
9 that in your prehearing conference statement or is
10 that an earlier letter?

11 MS. JESTER: It's in a letter that we
12 submitted November 4th, and it's the same language
13 that was submitted in July of 2001.

14 PROJECT MANAGER REEDE: Excuse me, do
15 you have an extra copy of that letter, because I'm
16 at a disadvantage without having a copy of it.

17 HEARING OFFICER SHEAN: It's at the top
18 of page four.

19 APPLICANT ATTORNEY MCKINSEY: I'm using
20 the one I got from the e-mail version, and it
21 doesn't match the paper version --

22 MS. JESTER: It doesn't.

23 APPLICANT ATTORNEY MCKINSEY: No. The
24 electronic service goes from Visual to Traffic and
25 Transportation to Transmission Line Safety and

1 Nuisance.

2 MS. JESTER: Page four?

3 APPLICANT ATTORNEY MCKINSEY: Well, the
4 pagination is different, because it didn't have
5 the letterhead right.

6 HEARING OFFICER SHEAN: Noise?

7 MS. JESTER: That's strange.

8 APPLICANT ATTORNEY MCKINSEY: I don't
9 have those comments on that one.

10 HEARING OFFICER SHEAN: So it doesn't go
11 to Noise and then Socioeconomics?

12 MS. JESTER: Because I had -- I printed
13 mine off of the one that was docketed, and that's
14 the one I'm looking at.

15 SENIOR STAFF COUNSEL ABELSON: Go to
16 page three --

17 APPLICANT ATTORNEY MCKINSEY: I'm fine.
18 I'm missing page four. Thank you.

19 HEARING OFFICER SHEAN: All right. Is
20 that something you're going to want to make an
21 evidentiary presentation on?

22 MS. JESTER: Maybe I'd like to hear
23 staff's comments on that.

24 HEARING OFFICER SHEAN: Okay.

25 PROJECT MANAGER REEDE: Staff maintains

1 the same position, that this proposed condition is
2 too open-ended. It would be precedent-setting,
3 number one. Now, when I say open-ended, are they
4 talking about during the entire period of
5 demolition and construction, two and a half years?

6 HEARING OFFICER SHEAN: Well, let me
7 just state, remember our discussion about the use
8 of the word "legitimate" in terms of noise
9 complaints?

10 MS. JESTER: Mm-hmm.

11 HEARING OFFICER SHEAN: Historically
12 it's been the same issue here. What is -- There
13 is a no-standard standard, other than a doctor
14 writes a note and says this person needs to go to
15 Tahoe or Puerto Vallarta or some other place --

16 PRESIDING COMMITTEE MEMBER PERNELL: You
17 could write me a note for that.

18 HEARING OFFICER SHEAN: -- to get away
19 from the noise, okay.

20 MS. JESTER: It would have to be a beach
21 environment.

22 (Laughter.)

23 HEARING OFFICER SHEAN: And so that's
24 why historically we haven't done that, is that --

25 MS. JESTER: I can understand that.

1 HEARING OFFICER SHEAN: -- we did
2 have -- I mean, I will say in one case where we
3 knew we were doing -- at Huntington Beach -- 24-
4 hour construction, and the noise could have been
5 disruptive to sleep, we considered that.

6 But, you know, unless this is tied to
7 something --

8 PRESIDING COMMITTEE MEMBER PERNELL: But
9 even that didn't provide lodging. We had a -- I
10 think it was a condition that the heavy
11 construction can only be done at certain times on
12 the Huntington Beach one.

13 HEARING OFFICER SHEAN: Yeah, it
14 couldn't allow that, plus we had --

15 MS. JESTER: I think this would be
16 something we would be willing to compromise on.

17 HEARING OFFICER SHEAN: Well, it sounds
18 like --

19 MS. JESTER: It sounds like I'm going to
20 have support.

21 HEARING OFFICER SHEAN: -- it's an all
22 or nothing kind of a deal, okay?

23 MS. JESTER: Yeah, exactly.

24 HEARING OFFICER SHEAN: So if you want
25 to, we would provide you with an opportunity to

1 make your pitch at the hearing; is that -- do you
2 want that?

3 MS. JESTER: Yes, that's fine.

4 PROJECT MANAGER REEDE: Staff testimony
5 would be through declaration.

6 HEARING OFFICER SHEAN: Okay, and the
7 applicant too.

8 All right. So we're going to show that
9 other than your presentation on this lodging
10 issue, the applicant and the staff can submit it
11 on declaration.

12 MS. MURPHY: What about the air
13 pollution issue as well? I'm sort of mildly
14 outraged to think that you're saying that
15 regulatory compliance will be sufficient to not
16 affect property values? If people are dying,
17 they'll say, well, the regulation allows it, so
18 property values certainly --

19 PROJECT MANAGER REEDE: That's not what
20 I said.

21 MS. MURPHY: Well, you said regulatory
22 compliance, but there is going to be significant,
23 we know that, we just talked about that, air
24 quality --

25 PRESIDING COMMITTEE MEMBER PERNELL:

1 Yes, but what the Committee has to go by is the
2 Air District's. That's what we do --

3 MS. MURPHY: No --

4 PRESIDING COMMITTEE MEMBER PERNELL:

5 Well, wait a minute --

6 HEARING OFFICER SHEAN: If you want to
7 make a presentation --

8 MS. MURPHY: I do.

9 HEARING OFFICER SHEAN: -- then that's
10 what we're really talking about.

11 MS. MURPHY: Yeah, I'd like to join,
12 and -- Well, I can't understand how he can even
13 sit there with a straight face and say it, that
14 there is no impact when we've discussed there is a
15 lot of impact. It is the law that there is going
16 to be an impact, but they said there is no
17 impact --

18 SENIOR STAFF COUNSEL ABELSON: No,
19 actually, it's not the law that there is going to
20 be an impact, but you're entitled through our
21 procedures to make your presentation.

22 HEARING OFFICER SHEAN: Right, okay. We
23 will show that, and is that something you want to
24 do in association with the City or independently?

25 MS. JESTER: We'll discuss that and make

1 a determination.

2 HEARING OFFICER SHEAN: You'll discuss
3 it. We'll just show an opportunity to be heard on
4 it.

5 MS. MURPHY: Good, thank you.

6 HEARING OFFICER SHEAN: Yes, sir,
7 Mr. Perkins?

8 MR. PERKINS: I would ask that this --
9 If I understand right, this comment that started
10 this and this gesture brought up is not in a
11 condition. How do we do that? It's in the staff
12 report, not in the condition, right?

13 SENIOR STAFF COUNSEL ABELSON: Just for
14 clarification, you're saying that the particular
15 things that you all are suggesting be done, how do
16 you present, is that your question?

17 MR. PERKINS: Yes, since it is not a
18 condition.

19 SENIOR STAFF COUNSEL ABELSON: Well,
20 basically, if I could --

21 HEARING OFFICER SHEAN: Well, I mean,
22 are you proposing that there -- First of all, you
23 need to establish that there is a significant air
24 quality effect that does impact property values,
25 and then you have to go from there, what do you

1 want out of that? Or just the statement that it
2 does.

3 I mean, are you looking for compensation
4 or whatever? I mean, I --

5 MR. PERKINS: I understand. What
6 Mr. Jester asked for was a statement that mirrors
7 the finding of the Committee -- excuse me, of the
8 staff that there will be 48 times as much
9 pollution next door to the power plant as there is
10 in the City of Hawthorne as a result of the power
11 plant.

12 Now, and what she asked for is to be
13 reflected in the property values findings of the
14 staff that that might affect property values.
15 That's the suggestion. It isn't a condition. And
16 so I'm saying, you know, what should we do -- You
17 don't want to have a hearing on a non-condition,
18 do you?

19 SENIOR STAFF COUNSEL ABELSON: Sure.

20 HEARING OFFICER SHEAN: Well --

21 MR. PERKINS: Okay. Well, if that's
22 what it takes, if that's -- we should reserve that
23 right.

24 HEARING OFFICER SHEAN: I mean, yeah,
25 it's a fundamental fact as to whether or not there

1 is or isn't an impact, and if you want to examine
2 the staff's witnesses as to the statement and
3 prove the --

4 MR. PERKINS: The statement, if true,
5 would seem to require -- Oh, well, that's a legal
6 argument. I can wait and --

7 SENIOR STAFF COUNSEL ABELSON:
8 Mr. Shean, let me just try one thing to see if I
9 can help out just on the process point I think
10 you're raising. Staff is recommending certain
11 conditions.

12 MR. PERKINS: Right.

13 SENIOR STAFF COUNSEL ABELSON: Applicant
14 is advocating some other conditions. You may be
15 advocating some third conditions.

16 The fact that you don't see in our staff
17 document your conditions doesn't preclude you,
18 assuming you're reserving your right through this
19 process to do so, to show up at the hearing, make
20 your factual case as to why you need a condition,
21 and then present whatever the condition is that
22 you're recommending, and the Committee will make a
23 decision.

24 I mean, we're just -- we're all just
25 parties to this thing, so we all have our

1 positions as to what we think the conditions
2 should say. You're suggesting that if -- that all
3 you can do is challenge conditions that are in
4 there and that's not correct. I mean, you can
5 basically propose your own condition.

6 MR. PERKINS: Thank you.

7 HEARING OFFICER SHEAN: Okay. Well,
8 we're going to show you having an opportunity to
9 be heard on the matter.

10 MS. MURPHY: Thank you.

11 HEARING OFFICER SHEAN: Okay. Why don't
12 we go to --

13 PROJECT MANAGER REEDE: Land Use is
14 here.

15 HEARING OFFICER SHEAN: The Land Use
16 people are here?

17 MR. GARRY: Yes, I am.

18 HEARING OFFICER SHEAN: Okay.

19 PROJECT MANAGER REEDE: In the staff
20 errata, pages 16 -- well, beginning at page 16, we
21 address the comments of the City of El Segundo,
22 through page 22. I might add that the California
23 State Lands Commission responded with comments to
24 the final staff assessment. Some of the Land Use
25 conditions of certification that are shown here

1 are being shown for the first time. That's based
2 upon input of our sister state agency in order to
3 comply with their laws, ordinances, regulations,
4 and standards.

5 However, there were comments received
6 from both the City of El Segundo and the City of
7 Manhattan Beach that are related to various land
8 uses, including a Land Use table one that was
9 shown. This Land Use table one has subsequently
10 been revised to address both the City of El
11 Segundo's and the City of Manhattan Beach's
12 comments.

13 At this time, there are -- I don't know
14 whether they still exist, the City of El Segundo
15 concerns or City of Manhattan Beach concerns
16 relating to Land Use; however, there are some
17 minor word changes that will be required by our
18 compliance program manager or compliance project
19 manager prior to certification.

20 I would like to start with the City,
21 with your permission, to see if we answered or
22 responded to them to the point of resolution on
23 the items that were still under contention.

24 HEARING OFFICER SHEAN: Sure.

25 MR. GARRY: Yes. This is Paul Garry, El

1 Segundo. We had agreed with I think the vast
2 majority of the changes in the Land Use section.
3 We had in our recent letter pointed out I think
4 three conditions where I think there still needed
5 to be some revisions. The simplest one was
6 Land 3, which was just to reflect the
7 recodification of the Municipal Code that wasn't
8 caught, and I think that was just a slight
9 oversight. You caught it in Land 2, but not in
10 Land 3.

11 In Land 4, which is the condition for
12 the permitting and the approval of the staging and
13 laydown areas, I think it needed to be clear that
14 the applicant would still need to get permits from
15 the applicable jurisdiction for the use of those
16 laydown areas because some of those are not within
17 the Coastal zone, certainly, and they may have
18 their own zoning issues. So it didn't state that
19 before, they just -- in the condition.

20 SENIOR STAFF COUNSEL ABELSON: Could we
21 comment on that point?

22 HEARING OFFICER SHEAN: Well, are you
23 suggesting that there is a discretionary review
24 for the laydown areas, or is this the ministerial
25 thing?

1 MR. GARRY: Well, it would depend on
2 what the laydown areas and what it's being zoned
3 for and what they propose to specifically do on
4 that.

5 HEARING OFFICER SHEAN: Well, first of
6 all, my understanding is, to a certain degree, the
7 laydown areas have been identified. In one of the
8 early figures that they had -- Kramer comes to
9 mind and I think two others, I don't know whether
10 it was Fed Ex and one more?

11 And so if that has occurred within, as
12 defined by this project and identified in this
13 project, I think the staff is going to take the
14 view and probably the Committee is, is that we
15 considered the appropriateness of the use of
16 those, and that the only thing that requires
17 something above and beyond is if they had an
18 additional laydown area that was not currently
19 identified.

20 Is that different --

21 MR. GARRY: Well, it was my
22 understanding necessarily that the CEC doesn't
23 have the jurisdiction to impose that the City
24 allow a certain use on one of those laydown areas
25 if it's not on the power plant site.

1 And that's what it seemed to be saying
2 without the language I was suggesting.

3 HEARING OFFICER SHEAN: Okay.

4 SENIOR STAFF COUNSEL ABELSON: If I
5 could speak to that briefly, that's -- Mr. Garry's
6 understanding is not correct. Basically, this is
7 part of the project and the fundamental
8 responsibility for enforcement of all LORS under
9 the project, including local end-use LORS, resides
10 with this agency.

11 That doesn't mean that we're not
12 expecting and normally would receive direct input
13 from the affected jurisdictions, but the whole
14 notion of one-stop shopping of a single permit is
15 to minimize, you know, the number of entities that
16 you have to do business with.

17 So while I can understand probably as an
18 entity that doesn't deal with this agency often,
19 your impression that if it's off-site it's not
20 part of the project, that's simply not true as a
21 matter of either precedent or law for our agency.

22 HEARING OFFICER SHEAN: And my
23 understanding is this is the whole reason we're
24 doing the CEQA thing, for not only the traffic and
25 transportation and the parking areas, but also

1 the, quote, remote laydown areas as well.

2 MR. GARRY: Well, I think when the
3 actual -- Well, for instance, the one property
4 that's been identified is the vacant lot owned by
5 Federal Express. Right now it's zoned urban mixed
6 use, which is a commercial and office zone that,
7 you know, I don't know if that necessarily would
8 allow construction staging as a permitted use if
9 someone came in to want to just do that and
10 nothing else.

11 HEARING OFFICER SHEAN: Okay. Well,
12 then I think what you need -- If that's, the
13 City's view is that -- you need to come tell us
14 that that use as a laydown area either is or isn't
15 consistent with any of the LORS of the City.

16 MR. GARRY: It was my impression that
17 part of what the applicant was going to have to do
18 to be permitted to use one of those sites is get
19 that approval from the City, because the City
20 wasn't superseded in its Land Use authority on
21 those sites by this process.

22 HEARING OFFICER SHEAN: Well, and I
23 think the reason that that probably isn't the way
24 that it goes is if we were to permit all the rest
25 of the project, but they came to you for a permit

1 for the laydown area, and they have to have remote
2 laydown because they don't have enough space where
3 they are, and the City said no, then the project
4 is halted, right?

5 And that's why the one-stop jurisdiction
6 of the Energy Commission exists, to assure that
7 the entirety of the project is reviewed, and once
8 reviewed and if approved, that it can move
9 forward, other than the feds.

10 SENIOR STAFF COUNSEL ABELSON: But I
11 would like to echo something you said a moment
12 ago. I think this actually -- One is a
13 jurisdictional issue and that one I think we'll be
14 fairly clear on what our position is on that. The
15 second is a substantive issue that you're
16 concerned about: is there compatibility in the
17 zoning.

18 And if we haven't heard it already,
19 perhaps, and I'll offer Mr. McKinsey certainly an
20 opportunity to speak to this if he wants to as
21 well, but if there is some incompatibility, that
22 raises a LORS, what we call in our jargon a LORS
23 compliance issue, which I don't know whether
24 Mr. -- Oh, there you are -- I don't know whether
25 Mr. Hamblin has actually heard or even analyzed

1 that issue up to now. I don't know whether it's
2 new --

3 MR. GARRY: Well, and because, I think
4 I've been operating under the impression that we
5 didn't have to deal with potentially the LORS on
6 those individual sites at this point, because the
7 City would deal with that in its own permitting
8 process separately.

9 So we haven't really addressed, I don't
10 think looked at each site in that level to see if
11 we would agree or disagree with the staff's, you
12 know, opinion on the use of those sites and
13 compliance.

14 PRESIDING COMMITTEE MEMBER PERNELL: Let
15 me ask a question. Does the City have a zone
16 that's zoned laydown area?

17 MR. GARRY: Well, we have -- One of the
18 sites, the Kramer site is zoned heavy industrial,
19 where such a use would probably be, you know, more
20 consistent because of the industrial nature of the
21 laydown site, and less potential to impact other
22 uses around there.

23 If it's in a commercial-zoned site,
24 there would be more concern about the impacts of
25 that construction activity on the laydown area in

1 relationship to its neighbors.

2 PRESIDING COMMITTEE MEMBER PERNELL: So
3 in order for them to use that, they would have to
4 get a rezone from your Planning Commission, or how
5 does that work?

6 MR. GARRY: Well, we would have to -- It
7 would depend on the particular zone, and it might
8 be a conditional use permit or some other permit
9 to evaluate the impacts of that, or to look at
10 that.

11 PRESIDING COMMITTEE MEMBER PERNELL: All
12 right.

13 APPLICANT ATTORNEY MCKINSEY: When we
14 approached the City of El Segundo as well as some
15 of the neighboring jurisdictions, the four pieces
16 of property that we wound up designating in
17 addition to parking, because there are eight
18 locations where we said we may conduct parking, we
19 had four of those eight which we said are also
20 available for off-site storage. And we did that
21 only because the jurisdictions had indicated that
22 that was a potential use there.

23 And I guess what I'm getting at is as to
24 Kramer and Fed Ex, which are within the City of El
25 Segundo, for instance, we, meaning the City of El

1 Segundo, were told that that wasn't an issue for
2 the uses we perceived doing there. There may
3 still be some restrictions on what we could or
4 couldn't do there.

5 For instance, I don't know that all of
6 these sites, if any, would be necessarily heavy
7 construction-type use, and there might be some
8 issue around making sure we're clear on that, but
9 they're only on this list because in our previous
10 meetings with the City of El Segundo, they
11 indicated that those would be for that type of
12 acceptable use.

13 The third one that I believe is in the
14 City of El Segundo is the Chevron marine terminal.
15 The fourth one is called LAX Pershing and that I
16 believe is in the City/County of LA or under the
17 Airport Authority, one of the two.

18 And up until now, I don't think we had
19 an understanding that there was a problem with any
20 of those, in terms of being included as designated
21 for what we called storage of equipment. In fact,
22 we specifically pointed out that we're not doing
23 any assembly or subassembly there, it was simply
24 for storage.

25 So, I mean, I am interested in knowing

1 if we've got a problem with use on the Fed Ex
2 site, because that may -- that is something we
3 need to resolve if there is that conflict.

4 MR. GARRY: I mean, I don't think we've
5 analyzed it and had enough detail to say on any
6 particular site, I think. We were just looking at
7 more of the jurisdictional issue in this, in what
8 we're requesting here, and that was based on what
9 our understanding of how the process worked.

10 And that it --

11 HEARING OFFICER SHEAN: Okay. Well,
12 since we're not going to resolve it here, I think
13 what we probably will do is reserve the
14 opportunity for you to come forward with that in a
15 presentation at the evidentiary hearing. It would
16 seem to me, obviously it's fairly important for
17 the applicant to try to nail this down with you
18 guys sort of on a sidebar.

19 And if you think that the -- if you
20 think this would require a conditional use permit,
21 all I can tell you is if you look in the Valero
22 decision where there was a similar sort of
23 thing -- I think that's the one -- we basically
24 addressed specifically that the factual support
25 for granting a conditional use permit existed in

1 the record and, therefore, the basis for doing
2 that, even though there was not this specific
3 compliance with their LORS, avoided an override
4 situation because they otherwise satisfied the
5 requirements for a conditional use permit.

6 MR. GARRY: Maybe I can ask a question
7 to help clarify this. I don't recall how the
8 impact analysis, how detailed it was for each of
9 the laydown areas, if it looked at all the
10 neighborhood compatibility issues for each of
11 those --

12 HEARING OFFICER SHEAN: I was going to
13 say I directed that to them, and this to the
14 staff: You may need to go back and look at
15 whether or not each one of those areas is
16 sufficiently addressed.

17 First of all, I notice there are no
18 local photographs of any of these areas that would
19 identify what they would like. I think one is in
20 a rail -- the Kramer is in a railyard or somewhere
21 near the railyard, and stuff like that.

22 So, you know, for the record, the
23 Committee doesn't have a clear understanding, in
24 the absence of personally visiting these sites, of
25 what they look like and what kind of -- well,

1 basically, what the setting is and, therefore,
2 what the potential impact is.

3 PRESIDING COMMITTEE MEMBER PERNELL:
4 Okay.

5 HEARING OFFICER SHEAN: Okay?

6 Now, why don't we move on to your next
7 Land thing.

8 MR. GARRY: The last comment in Land was
9 related to Land 11, which is related to the
10 primary landscaping plan. And as probably
11 everyone is aware, the City in the past had made
12 efforts to request additional land be devoted to
13 public use on the property, and the City no longer
14 is, you know, is going to pursue that. But the
15 City has agreed with the applicant on this 1.2-
16 acre public use area at the perimeter.

17 And we're just trying to clarify in the
18 condition where it would be located, that it would
19 be public use and that it wouldn't be fenced, and
20 that it would be maintained by the applicant.

21 Since there was no -- There was a
22 previous condition where some of this would have
23 been detailed when it was proposed that it would
24 be taken over by the City or dedicated, but once
25 that condition, we resolved the language of where

1 it was going to be placed, we just want to clarify
2 the amenities and just kind of the responsibility
3 for maintenance.

4 APPLICANT ATTORNEY MCKINSEY: I'd like
5 to ask the staff, is it the staff's position
6 that -- I mean, I didn't think that the staff was
7 still recommending or indicating that it was going
8 to be a 1.2-acre public use area.

9 PLANNER II HAMBLIN: That's correct. I
10 mean, we did not have -- we originally had one in
11 the PSA. An identification for 1.2 was never
12 confirmed during negotiations.

13 Subsequent to that, staff went on and
14 presented an FSA and then also has done some
15 additional work in the errata to try to address
16 the City's concerns as well as staff has some
17 language today which we're still in the process of
18 shoring up and wordsmithing Land 11.

19 This was a question, what we're looking
20 at is an approximate area that's going to range
21 probably around 1.3 acres of total area, and staff
22 identified that it be on the site, but we weren't
23 identifying a specific southwest corner or
24 something like that that's being indicated by the
25 City.

1 SENIOR STAFF COUNSEL ABELSON: Let me
2 try to respond, though. I think your question, if
3 I heard it correctly, was is staff self-
4 recommending 1.2 or whatever the amount may be.
5 And I believe, Mr. McKinsey, that staff has tried
6 to capture in its FSA what it thought were
7 agreements between the City and you folks as to
8 what you -- I think you often refer to as
9 enhancements.

10 And if there is such an agreement, we
11 have some additional issues that we need to
12 discuss today. If there is no such agreement,
13 staff has never required it as part of LORS
14 compliance or as part of our CEQA analysis, so I
15 think, unless Mr. Hamblin corrects me, I think we
16 would be prepared if the parties -- if you folks
17 are prepared to do so, to simply drop the
18 condition altogether.

19 So it's a matter of what the
20 understanding is between the City and the
21 applicant.

22 HEARING OFFICER SHEAN: Well, now, am I
23 correct here that the applicant's agreement to
24 move the fence back three feet along the bike path
25 and provide park benches and so on like that was

1 going to provide the approximate amount of -- it
2 was going to provide some area which formerly was
3 not dedicated to public use and would now become
4 dedicated to public use?

5 PLANNER II HAMBLIN: Would address the
6 public use concern that was being expressed by
7 staff at the time.

8 APPLICANT ATTORNEY MCKINSEY: We had
9 originally proposed a 1.2-acre L-shaped area on
10 the southwest corner of the property that would
11 have been a public use area if an agency, a city
12 was willing to take it over.

13 After we proposed that, we also
14 discovered that there was a lot of concern that
15 that really wasn't a good idea, given its
16 location. There was a lot of local concern that
17 it would be a location for people to maybe sleep
18 there, pass out there, or cause other problems.
19 And in the meantime, we never had an agreement
20 with the City of El Segundo or any other entity
21 that was willing to take on that property.

22 And so we are not currently proposing a
23 1.2-acre L-shaped area. That area instead has
24 become a landscaped fenced area, and we said if
25 we're going to keep it, we want to keep it within

1 the perimeter of the property so that we can
2 control it. But it is a large landscaped area on
3 the southwest corner.

4 In the meantime, in the course of our
5 negotiations with the City of El Segundo, we
6 agreed to set back the -- and the Coastal
7 Commission -- to set back the fence that runs
8 along the west face between the bike trail and the
9 property where possible, and it's also mostly
10 being converted to a seawall that's undulating and
11 is landscaped, and most of that is under the
12 Landscaping conditions.

13 And that setback was designed where we
14 had space where there was one area we did not, to
15 basically make the bike trail more receptive and
16 to put some park benches in there. And so when I
17 read Land 11 in the final staff assessment, what
18 it indicates is just that, that we were supposed
19 to do some park-bench-type modifications to that
20 area to make it a little more receptive, so a
21 rollerblader or a walker could stop and sit on the
22 bench there, in addition to what we are putting
23 in, which are trees and planting. And that's what
24 we were comfortable with.

25 To the extent that this condition goes

1 into an area of use that we're donating is
2 something that we have not reached agreement with
3 anybody on. And since we had originally proposed
4 that, we heard some concerns over what that would
5 turn into anyway.

6 PROJECT MANAGER REEDE: Staff revised
7 Land 11 based upon the concerns that had been
8 expressed by the City of El Segundo and attempted
9 to clarify exactly what we were talking about.
10 And I didn't see a comment from the City of El
11 Segundo related to that, other than to add the
12 additional words, "1.2 acres of land."

13 MR. GARRY: Well, I think mine is a bit
14 different in that it tries to clarify that it
15 wouldn't just be, as I'm hearing now, the only
16 part that would be actually physically accessible
17 for public use would be a three-foot-wide strip
18 out of this 1.2-acre area.

19 And I don't believe that that was what
20 our understanding of what was being agreed to,
21 that it was, the public accessible area is that
22 small. And I don't believe that that's what the
23 City's intent in agreeing to that whole idea would
24 be, that that would be the full amount of that
25 that would be accessible by people.

1 And I didn't think that the staff's
2 revision in the errata kind of got to that point
3 either. That's why I suggested the additional
4 language which I thought would try to clarify, at
5 least what I thought that would be -- that was
6 what the City was agreeing to, not just moving the
7 fence back three feet, that the whole 1.2 acres
8 would be unfenced.

9 And to some extent, it would be
10 treated -- it would be no different than the rest
11 of the beach and what goes on there, you know. If
12 it's publicly accessible, the rest of the beach is
13 publicly accessible, so if things bad are
14 happening on the rest of the beach, how can you
15 say it's going to be any worse happening in this
16 area? You know, as far as security or any thing,
17 there are landscaped areas around the corner from
18 this area already.

19 So that's what our understanding of this
20 is.

21 HEARING OFFICER SHEAN: Can I just ask a
22 question for clarification. To the extent that
23 there is visual screening, if I understand it,
24 along an enhanced berm on the south side of the
25 property, et cetera, would part of the 1.2 acres

1 you're talking about include any of that?

2 MR. GARRY: I believe the 1.2 doesn't
3 extend quite as far up the west -- the south side
4 of the property to where the berm would be. I
5 don't know the whole area, but it's more the L-
6 shaped area, but not -- I don't think up all the
7 way to the new berm area.

8 HEARING OFFICER SHEAN: Okay. Well, I
9 don't -- This sounds like there is no consensus
10 with respect to this. Do you want an opportunity
11 to present that at the hearing?

12 MR. GARRY: I think we do need to
13 discuss some more, and perhaps we can talk to the
14 applicant --

15 HEARING OFFICER SHEAN: Okay. Well,
16 we'll at least reserve some time for you, so
17 you'll have that.

18 Okay.

19 SENIOR STAFF COUNSEL ABELSON: Also,
20 Mr. Shean, our staff has three other -- I don't
21 know the sequence that you're on in terms of who
22 you're consulting with, but our staff has three
23 other issues that we need to raise.

24 HEARING OFFICER SHEAN: Okay. Go ahead.

25 PROJECT MANAGER REEDE: Start out with

1 Land 1.

2 COMPLIANCE MANAGER STONE: Well, the
3 first three, we'll start out with Land 1. Oh, I'm
4 sorry, the name is Donna Stone, compliance project
5 manager for the CEC.

6 This is to the condition and it's not in
7 the errata. Land 1: The condition is fine as to
8 the verification, we just need some words in the
9 thing here. And I think it's already been agreed
10 in theory that the City has review and comment
11 privileges here, and we have review and approval.

12 So what we need here is some
13 specification, action that could go into the
14 condition, specification of what the documents are
15 that you want submitted to the City of El Segundo.
16 This reads that "The project owner shall comply
17 with the minimum design and performance standards
18 for the M2-zoned district set forth in the City of
19 El Segundo zoning ordinance."

20 That's fine, but then under the
21 verification, I don't know what documents it is
22 that you want the project owner to submit to you,
23 so it's hard for me to tell if they've done what
24 you're interested in having them do.

25 So I need the document specified, and

1 then I would like it to say, to submit whatever
2 documents that is to the City of El Segundo for
3 review and comment and to the CPM for review and
4 approval.

5 HEARING OFFICER SHEAN: Well, let me
6 also tell you that this looks like condition
7 creep, to some degree. We've got one now on
8 minimum design and performance standards out of
9 the zoning ordinance, and then you have another on
10 signs and then you have another one on, let's see,
11 what was it, parking.

12 And, you know, you're going to end up
13 with having independent conditions for virtually
14 everything that's in there in the zoning
15 ordinance. Why don't you just say comply with
16 their zoning ordinance and we'll be done with it,
17 so that we're not trying to specify all these
18 things?

19 It's like the fees that are to be paid
20 in the Socioeconomics conditions. If you already
21 know you're going to do one for police and fire
22 and libraries, and then I think there was another
23 one to deal with the streets thing that was going
24 to be added, you know, just -- they paid all
25 applicable fees.

1 There is no reason to just start
2 compounding conditions when fundamentally you're
3 either, and this is a LORS compliance issue, the
4 condition is you comply with the zoning ordinance.
5 And the fees issue is you pay all applicable fees.

6 Now, let's just get in and get out with
7 something that's simple.

8 PLANNER II HAMBLIN: Staff could do
9 that.

10 HEARING OFFICER SHEAN: Okay.

11 PLANNER II HAMBLIN: We have some
12 language already.

13 HEARING OFFICER SHEAN: Oh, yeah.

14 COMPLIANCE MANAGER STONE: Okay. So do
15 I need to go into Land 2, because it's basically
16 the same --

17 HEARING OFFICER SHEAN: Well, okay,
18 wait. We're going to send you away to make some
19 fixes on the entire document.

20 SENIOR STAFF COUNSEL ABELSON: That's
21 fine.

22 HEARING OFFICER SHEAN: You come back
23 with your best effort, and we'll look at that,
24 okay?

25 SENIOR STAFF COUNSEL ABELSON: That's

1 fine.

2 MR. BERGER: Can I make a suggestion?

3 That rather than refer to the zoning ordinance,
4 refer to the Municipal Code, rather than --

5 HEARING OFFICER SHEAN: Okay. Yeah, I
6 don't care how the reference is, let's just --

7 MR. BERGER: I'm just trying to
8 forego --

9 HEARING OFFICER SHEAN: It's a good
10 idea, okay. Simple is better.

11 SENIOR STAFF COUNSEL ABELSON: All
12 right. So I think that summarizes the issues that
13 staff has on Land -- One more? Okay.

14 PROJECT MANAGER REEDE: Inadvertently,
15 when we brought in the California State Lands
16 Commission's requested condition of certification,
17 we didn't notice until after the errata had been
18 printed, and I'm talking about page two of their
19 errata under CS -- yeah, page 22 of the errata,
20 the very last paragraph --

21 PRESIDING COMMITTEE MEMBER PERNELL:
22 Page 22?

23 PROJECT MANAGER REEDE: Correct, page
24 22. It said, "Modify the verification section as
25 follows." The first paragraph is okay. The

1 second paragraph should read, "El Segundo Power II
2 shall submit to the CPM a copy of the newly
3 executed lease agreement."

4 HEARING OFFICER SHEAN: You just want to
5 add the II, is that it?

6 PROJECT MANAGER REEDE: Well, from a
7 legal perspective, there are two different
8 entities. There is El Segundo Power, which holds
9 the lease --

10 SENIOR STAFF COUNSEL ABELSON: The
11 answer is yes.

12 PROJECT MANAGER REEDE: Yeah.

13 (Laughter.)

14 PROJECT MANAGER REEDE: Yeah, I want to
15 add "II."

16 HEARING OFFICER SHEAN: See, now we know
17 why we have condition creep. We go from "Yes,"
18 to -- but thank you.

19 PROJECT MANAGER REEDE: No, but there
20 are two different entities out there, and that
21 needs to be clarified.

22 SENIOR STAFF COUNSEL ABELSON: Yes.

23 HEARING OFFICER SHEAN: Yes, yes. Okay.

24 PRESIDING COMMITTEE MEMBER PERNELL: All
25 right. Anything else?

1 (Laughter.)

2 HEARING OFFICER SHEAN: All right. That
3 takes care of Land. We will reserve time for you
4 to put on your case on the -- if you want to -- on
5 the zoning on the laydowns and the 1.2 acres.

6 SENIOR STAFF COUNSEL ABELSON: Yes.

7 HEARING OFFICER SHEAN: Okay.

8 PROJECT MANAGER REEDE: The City of
9 Manhattan Beach had concerns. Were they addressed
10 by our errata?

11 MS. JESTER: All of our Land Use issues
12 have been addressed, thank you.

13 HEARING OFFICER SHEAN: All right.

14 MS. MURPHY: I have one off-the-wall --

15 HEARING OFFICER SHEAN: Okay.

16 MS. MURPHY: -- Michelle Murphy,
17 intervenor. I mentioned this years ago, when it
18 first started.

19 As far as I'm aware, there is no beach
20 access along that area there, at least at high
21 tide in the wintertime when the water hits the
22 rocks. That bike path is only for bikes. It says
23 on it, "Bikes Only." Walkers aren't allowed --
24 Actually, rollerbladers aren't allowed, but that's
25 silly.

1 But anyway, at certain times of the
2 year, there is no beach access across that whole
3 area. I mean, it seems to me it's a Land Use
4 issue and I didn't know if you wanted to address
5 it. Maybe it needs to have a law changed so that
6 people can walk on the bike path. They do,
7 anyway.

8 But because of the way the rocks are
9 there, you -- theoretically, the only way you can
10 access across that beach is to walk up to the
11 highway there.

12 PLANNER II HAMBLIN: I think that that
13 would be something we could probably look into. I
14 think there is a jurisdictional concern, because
15 from what I understand, Los Angeles County
16 actually maintains that under the auspices of the
17 California Coastal Commission. So it would go
18 probably beyond just us, or even getting us
19 involved, but we can look at that.

20 MS. MURPHY: Well, but what I -- I began
21 by saying two years ago that the power plant is
22 built closer to the beach than anything else for
23 miles and miles and miles, I think maybe all of LA
24 Basin. It's on the beach. Because it's on the
25 beach, it takes away beach access. You cannot

1 walk between here and there without breaking the
2 law; that is, being on a bike path and walking.

3 And I just -- This is -- I mentioned
4 this, but --

5 HEARING OFFICER SHEAN: You break the
6 law if you walk on the bike path?

7 MS. MURPHY: Yes. It says, "Bikes
8 Only."

9 MR. PERKINS: Yes, it's bikes only.

10 MS. MURPHY: It's not enforced very
11 much, but --

12 PROJECT MANAGER REEDE: So it's bikes
13 only.

14 MS. MURPHY: But it is the law, and I'm
15 just --

16 PRESIDING COMMITTEE MEMBER PERNELL: Is
17 that the City zoning or -- That's not a state,
18 county --

19 MS. MURPHY: It's the bike path and
20 it's --

21 PROJECT MANAGER REEDE: County?

22 MR. PERKINS: The County owns it. I'm
23 not sure who passes the buck to go on this thing
24 as it goes across their town, but the County owns
25 the bike path.

1 HEARING OFFICER SHEAN: Okay.

2 PROJECT MANAGER REEDE: And there's rip
3 rap boulders all on one side of the bike path and
4 the plant on the other side.

5 MS. MURPHY: And in the summer, there's
6 enough sand you can walk on the sand, but in the
7 winter there's often not enough sand. You are on
8 the bike path or you're nowhere. It's just a
9 concern of mine, and it seemed like a place to
10 raise it.

11 HEARING OFFICER SHEAN: Okay. It's a
12 question, though: The legality of the access, not
13 the physical, whether there is or isn't.

14 MR. PERKINS: It's a dangerous access.
15 The reason it's illegal to walk on the bike path
16 is that bikers are going 20 miles an hour down
17 there, and sometimes lots of them, a pedalathon,
18 if you will.

19 But I think what Michelle is driving at,
20 and maybe it's too late and not profitable in this
21 discussion, but the applicant does intend to set
22 aside some space on the landward side of the bike
23 path for public use. And if that were made so
24 that it were passable all the way through -- I
25 think it's all the way through with a small

1 exception is the current intention -- but if it
2 were possible to make that thing so you could walk
3 on what is technically applicant's land, the
4 entire length of there, landward of the bike path,
5 it would resolve that.

6 There still might be people who would
7 jaywalk on the bike path, but it would make it so
8 you could legally and safely get from one end to
9 the other, and it would be a neat thing. I don't
10 know if it's possible in this hearing.

11 HEARING OFFICER SHEAN: Okay.

12 MS. MURPHY: And I always thought there
13 were coastal access issues too, that say that
14 you're required to allow people to pass your
15 property, but I don't know. I just would have
16 thought that.

17 HEARING OFFICER SHEAN: Well, maybe we
18 can at least note it.

19 I'm going to --

20 MS. CRIPE: I'm an intervenor too, and I
21 think what a lot of people --

22 PRESIDING COMMITTEE MEMBER PERNELL:
23 Ma'am, we're going to need your name.

24 MS. CRIPE: Oh, I'm Elsie Cripe.

25 PROJECT MANAGER REEDE: Stand up close

1 to the mic.

2 HEARING OFFICER SHEAN: And we do need
3 you a little closer to the mic, please, so he can
4 pick you up.

5 MS. CRIPE: Oh, I'm sorry. I'm Elsie
6 Cripe and I live on 45th Street, and our concern
7 is absolutely with the Land, and, of course, we're
8 going to get to Noise.

9 We're just there. I mean, if there is a
10 staging, then we're going to have crushed rock
11 next to us. You say there's going to be no noise,
12 there's going to be no pollution. And
13 fortunately, we do have beach wind, but believe
14 me, there is noise. There is noise from just
15 trucks.

16 You took off or you added some panels.
17 And there was a beeping truck all day long, just
18 beeping. So we hear it all, and that's the only
19 reason we're here. We should get more people, if
20 they know the traffic congestion we're going to
21 have, they probably would be. But if it doesn't
22 bother you, people don't do anything about it.

23 But we are here because our concern is
24 tremendous.

25 HEARING OFFICER SHEAN: Okay. I think

1 what we'll do is keep this opportunity for you to
2 at least inform the record, because I didn't find
3 it anywhere in the reading, about this deal about
4 access during the winter and so on like that, and
5 maybe they can at least be encouraged, nudged in
6 the decision to -- with respect to whatever they
7 do do about the widening of this area to attempt
8 to accommodate pedestrian access so that these
9 people aren't hauled off by the scruff of their
10 neck, because they're walking on the bike path.

11 PRESIDING COMMITTEE MEMBER PERNELL:

12 Jaywalking on a bike path.

13 (Laughter.)

14 HEARING OFFICER SHEAN: All right. I
15 think our choice now is to -- if there is nothing
16 else on Land Use -- is to go back to Noise.

17 And my recollection is we were working
18 through some things for the City of Manhattan
19 Beach, and there was, like, one matter before we
20 got to your new Noise conditions.

21 PROJECT MANAGER REEDE: Is either Jim
22 Bunton or Tom Luster on? Who is on the line?

23 DR. GREENBERG: [telephonically] Alvin
24 Greenberg.

25 PROJECT MANAGER REEDE: Okay. Alvin

1 Greenberg is Waste Management, Haz Mat, and he is
2 also filling in for Public Health, which we
3 haven't hit yet.

4 HEARING OFFICER SHEAN: Well, we've
5 peripherally hit it.

6 PRESIDING COMMITTEE MEMBER PERNELL:
7 Yes.

8 PROJECT MANAGER REEDE: Well, do you
9 want to ask Public Health since he called in and
10 then go to Noise?

11 HEARING OFFICER SHEAN: No, let's go to
12 Noise.

13 PROJECT MANAGER REEDE: Okay. We're
14 going to go --

15 HEARING OFFICER SHEAN: We're eagerly
16 awaiting.

17 MS. JESTER: Yeah, so Jim Bunton is on
18 the line?

19 HEARING OFFICER SHEAN: No, no.

20 PROJECT MANAGER REEDE: Jim Bunton is
21 not on the line.

22 HEARING OFFICER SHEAN: He is SOL --

23 MS. JESTER: Okay.

24 HEARING OFFICER SHEAN: -- or AWOL.

25 (Laughter.)

1 HEARING OFFICER SHEAN: Or both.

2 MS. JESTER: Okay.

3 HEARING OFFICER SHEAN: Noise.

4 MS. JESTER: Noise. Noise 2 we had a
5 concern with previously. We had asked that
6 language be added, and I'm trying to find the
7 bullet point here. It's the -- Let's see, first,
8 second -- the second bullet point under Noise 2,
9 where the noise monitoring officer is required to
10 carry a portable electronic device, we had
11 requested that the words "an operational portable
12 electronic device" be added.

13 HEARING OFFICER SHEAN: And so he
14 doesn't carry around a non-operating device?

15 MS. JESTER: Well, I know a lot of
16 people that do that: the batteries are dead, you
17 know, they don't charge them --

18 HEARING OFFICER SHEAN: All right.

19 MS. JESTER: -- so we thought that
20 might be just a real simple word to add, an
21 operable device.

22 HEARING OFFICER SHEAN: Okay.

23 MS. JESTER: The second item on Noise 2
24 was another bullet item, and --

25 APPLICANT ATTORNEY MCKINSEY: Five from

1 the bottom on the original condition.

2 MS. JESTER: It's the fifth from the
3 bottom?

4 APPLICANT ATTORNEY MCKINSEY: On the
5 original condition.

6 MS. JESTER: Okay, there we go, thank
7 you. "The noise monitoring officer as appropriate
8 shall measure site fence line noise levels," and
9 we wanted the language added, "and/or measure
10 noise levels at the complainant's property line to
11 assure compliance," and so on. So adding that
12 **boldunderlined** language.

13 And the point there was because there
14 are such topography changes, if you measure at the
15 fence line that might not give you an accurate
16 depiction of what's actually being heard at the
17 residence, because it could be tucked back and
18 shielded by a berm or landscaping. So you should
19 do the measurements where --

20 HEARING OFFICER SHEAN: Okay, we got the
21 concept.

22 MS. JESTER: Okay.

23 HEARING OFFICER SHEAN: What do you guys
24 think?

25 PROJECT MANAGER REEDE: I'm all right.

1 APPLICANT ATTORNEY MCKINSEY: We're not
2 sure. That's a hard one to figure out in terms of
3 the implications. I'm more interested, and,
4 unfortunately, we don't have Mr. Bunton on the
5 line about what his intent is with that in the --
6 that original bullet item. It says the noise
7 officer is going to measure noise levels at the
8 fence line.

9 I don't envision how the noise officer
10 was going to use those noise levels with any
11 objectiveness to figure out whether or not there
12 is a legitimate complaint or not, unless he's
13 measuring pure tones or something that would be
14 easily distinguishable. If he's looking for a
15 particular sound level, that's going to be really
16 hard, except where there were original, in the
17 preconstruction survey sound levels established.

18 That's going to be a tougher one to
19 figure out. Or maybe, you know, even measure it
20 and listen to, like somebody turn something on or
21 off. So I'm not as clear about what was going on
22 in that sentence to start with to know really
23 exactly how that's going to affect it.

24 HEARING OFFICER SHEAN: Okay.

25 Do you guys have any idea from the

1 staff?

2 PROJECT MANAGER REEDE: No, we don't
3 appear to have a problem with adding "and at the
4 complainant's property," realizing that there are
5 topographical issues.

6 HEARING OFFICER SHEAN: Okay.

7 MS. JESTER: Okay. The next one is
8 Noise 4 and 5 --

9 APPLICANT ATTORNEY MCKINSEY: Excuse me,
10 I'm going to interrupt, because we're going to
11 accept that too.

12 HEARING OFFICER SHEAN: Okay.

13 MS. JESTER: Thank you. The next one is
14 Noise 4 and 5, and this relates to the steam
15 blows. And we don't have any time limits on those
16 steam blows, and we would request that they be the
17 same hours as regular construction hours, 7:30 to
18 6:00, Monday through Friday, 9:00 to 6:00 on
19 Saturday, none on Sunday and holidays.

20 SECRETARY LLOYD: Now, these are
21 intentional steam blows, and we absolutely agree
22 with that. Unintentional steam releases happen
23 whenever they happen.

24 HEARING OFFICER SHEAN: Yes.

25 MS. JESTER: If there's an emergency.

1 SECRETARY LLOYD: Right.

2 MS. JESTER: Right.

3 APPLICANT ATTORNEY MCKINSEY: There is
4 an issue that I'm not so sure we understand that
5 I'm trying to remember now. There is an initial
6 continuous blow that you do on the system, and you
7 can do it as a high-pressure blow or as a low-
8 pressure blow. And we had eliminated the high-
9 pressure blow.

10 When you go to the low-pressure blow, it
11 takes a lot longer to do. It makes it very quiet,
12 but I want to make sure that we're not trying to
13 say we're going to do something in the time frame
14 that takes, say, 13 hours to do and we have an 11-
15 hour time frame. And I don't remember how long
16 that initial, the one big test -- well, you do the
17 system where you let all the -- it's kind of a
18 cleaning --

19 HEARING OFFICER SHEAN: It's a cleaning,
20 a catharsis.

21 APPLICANT ATTORNEY MCKINSEY: I don't
22 know how many hours it's going to take as a low-
23 pressure blow. When you do it as a high-pressure
24 blow, it's pretty fast but it was very loud and we
25 decided that we weren't going to do.

1 So if we're setting a time limit, but
2 it's going to straddle that time limit, we've got
3 a big problem.

4 MR. GARRY: Can you just except out that
5 one startup?

6 APPLICANT ATTORNEY MCKINSEY: Well,
7 that's what I'm trying to avoid, this falls in --

8 PROJECT MANAGER REEDE: And we have
9 required mufflers for the blows.

10 MR. PERKINS: Is it possible to check --

11 PRESIDING COMMITTEE MEMBER PERNELL: Go
12 ahead.

13 MR. PERKINS: Is it possible to check
14 with your experts on how long those things take?
15 It seems to me we discussed this and it was a year
16 and a half ago, we discussed it for staff. But it
17 seems to me that it was not -- it was several
18 hours, but it wasn't, like, 20 hours, it wasn't,
19 like, 15 hours. I think you could get it done
20 during working hours, but can you at least confer
21 with your experts and find out when --

22 APPLICANT ATTORNEY MCKINSEY: Yes,
23 that's why I was indicating, we need to make sure
24 we know that it fits within that time frame.

25 MR. PERKINS: If you can't agree with

1 that because it takes too long, maybe we can work
2 something that says to the extent necessary or
3 something, language ought to be permissible, the
4 concept being that you try to do it in the
5 daylight hours, working hours.

6 MR. PERKINS: Will work within that,
7 yes.

8 PRESIDING COMMITTEE MEMBER PERNELL: Go
9 ahead.

10 HEARING OFFICER SHEAN: Okay.

11 SENIOR STAFF COUNSEL ABELSON: Other
12 than to say if it is 13 hours long, for example,
13 we sure would want that 13 hours in the daytime,
14 so with that cooperation, that's all they're
15 looking for.

16 APPLICANT ATTORNEY MCKINSEY: And I
17 think that comment goes directly to Noise 4 --

18 HEARING OFFICER SHEAN: Right.

19 APPLICANT ATTORNEY MCKINSEY: -- but I
20 think you had said Noise 4 and 5?

21 MS. JESTER: Right. You're right,
22 because 5 is just a notification, so it would just
23 be 4, you're correct.

24 Noise 6 we covered already. Noise 7 we
25 had no comments.

1 APPLICANT ATTORNEY MCKINSEY: Can I ask
2 a question? Did we resolve the parties' status on
3 Noise 6?

4 MS. JESTER: I thought that we did.

5 HEARING OFFICER SHEAN: Okay.

6 MS. JESTER: My understanding was we
7 were keeping the word "median" and adding it on A
8 bullet 4, where it was, and under the
9 verification, we didn't need to add the language,
10 "prior to site mobilization," because that was
11 already covered in A.

12 And then in A we were going to add some
13 language that said that a "noise survey needed to
14 be conducted prior to site mobilization,
15 demolition, and construction."

16 And then on B, C, D, and E, we were
17 going to add "review and comment by City of
18 Manhattan Beach and City of El Segundo." That was
19 my understanding.

20 HEARING OFFICER SHEAN: And one more:
21 "Legitimate" is going to be --

22 MS. JESTER: "Legitimate," how could I
23 forget that? "Legitimate complaints," we were
24 going to tie that into the conditions.

25 HEARING OFFICER SHEAN: Okay.

1 Okay, Mr. Perkins?

2 PROJECT MANAGER REEDE: We were going to
3 tie it into the Municipal --

4 HEARING OFFICER SHEAN: I think we were
5 going to tie it back to the conditions.

6 MS. JESTER: No, we were going to tie it
7 back into the conditions.

8 APPLICANT ATTORNEY MCKINSEY: Well,
9 that -- I guess that was partly my question is, is
10 that something that we needed to figure out? In
11 other words, we didn't finish figuring out
12 Noise 6; there's still that piece we've got to
13 figure out.

14 MS. JESTER: No, as long as you're
15 complying with the conditions. If you don't
16 comply with the conditions, then somebody has a
17 legitimate complaint.

18 APPLICANT ATTORNEY MCKINSEY: I follow
19 you. In other words, the idea of tying it back to
20 conditions is not we want to add more language to
21 do that, but simply conceptually speaking,
22 "legitimate" is referring to the conditions in
23 terms of what is or is not a legitimate noise
24 complaint.

25 MS. JESTER: Right.

1 HEARING OFFICER SHEAN: All right. If
2 you comply with the condition --

3 MS. JESTER: You're okay.

4 HEARING OFFICER SHEAN: -- a complaint
5 is not legitimate, right?

6 MS. JESTER: Right.

7 HEARING OFFICER SHEAN: But we're going
8 to get rid of those words.

9 MS. JESTER: Right.

10 MR. PERKINS: I'm sorry, are we through
11 with 6?

12 MS. JESTER: Yes.

13 MR. PERKINS: I just had one thing that
14 I wanted, and this is probably because I wasn't
15 paying enough attention earlier, but it is correct
16 that there is -- this is on the issue of
17 completing the noise survey before you start
18 tearing stuff down or doing construction -- and it
19 is true that Noise 6A requires that the plan be
20 submitted early, in plenty of time.

21 But I don't see where it says that the
22 report has to be approved before construction
23 starts, and that is of some significance only
24 because once you start tearing stuff down or
25 constructing, you can't do a preconstruction

1 survey. It becomes impossible. The conditions
2 have changed, you haven't got a precondition --
3 unless you want to rebuild the thing you tore
4 down.

5 So I would -- Maybe I'm missing it in
6 here, but if I'm not, I would ask that some
7 language that indicates that the report, and
8 that's mentioned in -- just below B I see it --

9 HEARING OFFICER SHEAN: Just above B.

10 MR. PERKINS: At both, yes, you're
11 right.

12 Well, anyway, I would ask that that be,
13 whether language is needed or not, but that it be
14 clear that that has to be approved before
15 construction starts so that you can get on with --
16 and not have to go back --

17 MS. JESTER: When is that?

18 MR. PERKINS: That's the CPM approval, I
19 think, after, you know, it's submitted to
20 Manhattan Beach, El Segundo, and approved by the
21 CPM. It's just a timing issue.

22 MS. JESTER: That was my understanding,
23 they were going to add that language.

24 MR. PERKINS: That's agreed? Oh, okay.

25 HEARING OFFICER SHEAN: That's what I

1 had.

2 MR. PERKINS: Oh, okay.

3 HEARING OFFICER SHEAN: Preconstruction
4 is preconstruction.

5 MR. PERKINS: Oh, my error.

6 HEARING OFFICER SHEAN: No, that's not
7 an error.

8 MS. JESTER: I think it's the location
9 of it. It shouldn't go right at A, it should go
10 at the very end of A, right above B, where it
11 says, "Following approval of the survey plan, you
12 have to implement the survey." And so that's
13 where it needs to say this -- say you need to
14 implement it prior to site mobilization,
15 demolition and construction.

16 MR. PERKINS: Okay.

17 HEARING OFFICER SHEAN: Okay.

18 MS. JESTER: Okay.

19 APPLICANT ATTORNEY MCKINSEY: We have no
20 problem with that, I just want to make sure we
21 understand what we're doing to this condition.

22 HEARING OFFICER SHEAN: We're getting
23 the preconstruction stuff buttoned up before
24 construction.

25 MS. JESTER: Okay.

1 HEARING OFFICER SHEAN: Okay.

2 MS. JESTER: Seven was fine. Noise 8,
3 we had some comments on that. The nighttime
4 exclusion area map was included, but the label on
5 it has "stockpile exclusion zone" shown on the
6 south end of the south tank, and we think that
7 needs to also say "and nighttime exclusion zone,"
8 so that we are using the same consistent language
9 that we use in the conditions. The condition
10 refers to not having construction in the nighttime
11 exclusion zone and certain regulations for that
12 area.

13 APPLICANT ATTORNEY MCKINSEY: I don't
14 have a problem with that. The way that gets
15 accomplished I think conceptually is that the
16 decision, if it's having that within -- because we
17 already have a staff assessment, but I think the
18 decision may need to include that map in the
19 decision.

20 MS. JESTER: Right.

21 APPLICANT ATTORNEY MCKINSEY: And so it
22 needs to designate the correct notation there, and
23 that makes sense.

24 MS. JESTER: Right. We were going to
25 include this map as part of the Noise section was

1 my understanding; isn't that correct?

2 APPLICANT ATTORNEY MCKINSEY: Well, you
3 know, I think it is in the staff's document. The
4 task is that the Committee now has to make a
5 decision on it and they have to write a decision.
6 So, I mean, the way that's being directed very
7 effectively is that -- to the Committee to include
8 that in there. And I'm saying we don't have a
9 problem with that.

10 MS. JESTER: Okay.

11 HEARING OFFICER SHEAN: Wait a minute,
12 it may well be the Committee comes back to either
13 you or to the staff, because we're trying to work
14 up to graphic presentations that more closely
15 depict what is going to go on and what the
16 mitigation will be than what we've seen, so let me
17 say perhaps bring it all together.

18 Okay. We understand that.

19 MS. JESTER: Okay.

20 APPLICANT ATTORNEY MCKINSEY: Yeah, and,
21 in fact, what we will do is we'll modify --
22 because we're the ones who at least have the
23 original, I think, document we can work with
24 that's either a CAD file or some other graphical
25 document, so we can make the change and get it

1 back out there in one way or another, make sure
2 that the right version gets into the decision.

3 MS. JESTER: Okay. On page 4.6-27, at
4 the very top, there is a discussion on pure tones,
5 no pure tones being allowed. And this section is
6 underneath, is the subsection, Other Areas of the
7 Project Site.

8 So it seems to me that there are no
9 regulations for pure tones on the tank farm site.
10 And this section needs to apply to the entire
11 project site, not just the tank farm site.

12 So I think either this section just
13 needs to be moved to the front, before the
14 subheadings of Tank Farm and Other Areas of the
15 Project Site, or that language needs to be copied
16 to the Tank Farm area.

17 HEARING OFFICER SHEAN: Okay. Do you
18 have that in mind, then? Just move that to above
19 Tank Farm Area?

20 PROJECT MANAGER REEDE: Noise 6, on page
21 4.6-23, in the second paragraph of Noise 6 it's
22 already calling on "No new pure tone components
23 may be introduced." "No singing piece of
24 equipment shall be allowed to stand out as source
25 noise."

1 APPLICANT ATTORNEY MCKINSEY: Noise 6 is
2 an Operations.

3 MS. JESTER: That's Operations, not --

4 APPLICANT ATTORNEY MCKINSEY: This is
5 the construction condition, so it's saying no pure
6 tones during construction either. And I remember
7 when this condition originally was out there, I
8 don't think Mr. Bunton intended to suggest that
9 that was restricted to other areas, because that
10 was just the -- originally it was a very short
11 condition, and it had -- it said as to normal
12 noise and then said as to pure tones, and that was
13 the latter paragraph in the condition and it just
14 kept staying at the end.

15 HEARING OFFICER SHEAN: Okay.

16 APPLICANT ATTORNEY MCKINSEY: One way to
17 do that might be to just change the header in
18 front of that paragraph, or maybe move it up.

19 MS. JESTER: "All Areas of the Site" or
20 something?

21 APPLICANT ATTORNEY MCKINSEY: Because
22 the upper one doesn't say "All Areas," so there
23 isn't currently a section that's designated All
24 Areas. Maybe it needs to move up before the Areas
25 one, or just a header at the top of that, "Pure

1 tones on all areas," but we don't have a problem
2 with that, in any case.

3 HEARING OFFICER SHEAN: It looks like a
4 cut-and-paste above "Tank Farm Area," okay.

5 PROJECT MANAGER REEDE: We'll resolve
6 it.

7 MS. JESTER: Okay, thank you.

8 The next one was when the condition
9 actually begins, and we've got at the beginning of
10 Noise 8, we don't really say when this starts.
11 We've got the tank farm construction and we've got
12 the other areas of the project site, but the
13 condition needs to start at site mobilization.

14 And I'm not quite sure where that should
15 go. It seems like it should go right at the
16 beginning. Maybe it needs to say, "Heavy
17 equipment operation and noisy construction
18 beginning at site mobilization," or --

19 APPLICANT ATTORNEY MCKINSEY: Or I'd say
20 that "This condition applies comprehensively from
21 the time that this project begins the compliance
22 phase until it's out of the construction period
23 and in the operational phase," when the
24 construction conditions -- In other words, right
25 now it's really applying even more than that.

1 HEARING OFFICER SHEAN: Yeah, this is
2 currently grey as it's written, and putting in
3 some other something might confuse that.

4 MS. JESTER: So your interpretation of
5 this is that it starts when?

6 APPLICANT ATTORNEY MCKINSEY: It starts
7 at the beginning and ends at the end.

8 MS. JESTER: And where does it say that?

9 APPLICANT ATTORNEY MCKINSEY: It says
10 you shall not --

11 PROJECT MANAGER REEDE: You shall not do
12 heavy equipment operation or noisy construction.

13 MS. JESTER: Well, it says heavy
14 equipment, noisy construction, and demolition. I
15 would say site mobilization, which is just moving
16 trailers onto the site, which I don't think fits
17 in any of those categories --

18 (Phone beep heard.)

19 PROJECT MANAGER REEDE: Who is on the
20 phone?

21 MR. RINGER: [telephonically] Mike Ringer
22 from the Energy Commission, joining.

23 PROJECT MANAGER REEDE: Okay.

24 HEARING OFFICER SHEAN: Go ahead.

25 MS. JESTER: I think you could argue

1 that some of the things that fall under the
2 category of site mobilization are not heavy
3 equipment operation, are not noisy construction,
4 and are not demolition; those are very narrow
5 words.

6 MR. BEHRENS: We don't want to have
7 focused activity that we're concerned about, we're
8 concerned about whatever happens on the site. So
9 the attempt is to throw a bigger net around this,
10 not to penalize you but to make sure that it
11 encompasses whatever activity you may do, relative
12 to the expansion of the project and noise.

13 HEARING OFFICER SHEAN: So you're
14 looking for something like, beginning with site
15 mobilization, heavy equipment operation, noise
16 construction, blah, blah, blah; is that about
17 right?

18 MS. JESTER: Yes, yes.

19 HEARING OFFICER SHEAN: Okay. Go ahead
20 and do that.

21 MS. JESTER: Thank you.

22 I think this next one we've got covered,
23 where I have "No construction-related activities
24 should occur on Sundays or holidays," and I think
25 that's clear throughout, unless somebody -- I

1 wrote this comment down and now I can't find where
2 I -- Oh, I see, at the Other Areas of the Project
3 Site, that's where it was, under that first
4 bullet.

5 It's got 7:30 to 6:00, 9:00 to 6:00 --
6 Well, never mind. I think that's okay.

7 The next comment relates to -- Oh,
8 that's this one --

9 MR. BEHRENS: Noise 8?

10 MS. JESTER: Right, Noise 8, the very
11 first paragraph on page 4.6-25, and I'm sorry I'm
12 jumping around here.

13 We've got the noise levels limited to
14 the L-50 plus 5dBA or 65, whichever is higher.
15 And we had requested that that read, "whichever is
16 lower" for continuous noise, and for intermittent
17 noise, "up to 30 minutes in one hour, the maximum
18 noise levels shall be ambient plus 10dBA."

19 This is language that we had requested I
20 think back in July 2001, and I apologize we did
21 not catch it in the July 2002 version where it was
22 not included. And after I went over my notes more
23 thoroughly I found that language again.

24 So basically, the difference is the
25 lower instead of the higher, and then the

1 intermittent noise criteria.

2 MR. BEHRENS: This is more in compliance
3 with the Municipal Code. It actually gives more
4 relief to the contractor because he does have the
5 ability to operate at a little higher levels, but
6 for a shorter period of time.

7 PROJECT MANAGER REEDE: I would have to
8 wait until Mr. Bunton is consulted on this.

9 HEARING OFFICER SHEAN: And do you know
10 what you guys think about it?

11 SENIOR STAFF COUNSEL ABELSON: I don't
12 think we know what our position is on that is yet
13 either.

14 HEARING OFFICER SHEAN: Okay. Let's
15 just reserve some time for you on that.

16 MS. JESTER: Okay. The next --

17 PROJECT MANAGER REEDE: And one
18 question, it would be restricted to that issue?

19 PRESIDING COMMITTEE MEMBER PERNELL:
20 Well, no --

21 HEARING OFFICER SHEAN: So far.

22 PROJECT MANAGER REEDE: Okay.

23 HEARING OFFICER SHEAN: I mean, we've
24 got a couple of things that they are --

25 PRESIDING COMMITTEE MEMBER PERNELL: On

1 Noise, yeah.

2 HEARING OFFICER SHEAN: Yeah, that
3 they're asking for.

4 MS. JESTER: The next one is a condition
5 we had asked for back a year ago, and the
6 Commission had not supported it but we want to try
7 again. This was funding the cost of independent
8 monitoring of the noise levels by the City of
9 Manhattan Beach during construction of the
10 project.

11 We anticipate that there may possibly be
12 some disputes between what the noise levels are,
13 and if there are actual violations. And we're not
14 a bottomless pit, as far as funding monitoring of
15 that, and so we would request that the project
16 owner fund that. That's something that actually
17 is a pretty typical condition that we put on
18 projects where the applicant submits a study and
19 then they also pay for the cost of the City to
20 hire someone to review that study.

21 PROJECT MANAGER REEDE: Staff rejected
22 that particular condition of certification because
23 CEC monitors the project rather than the City. If
24 the City desires to monitor it, they are welcome
25 to go ahead, but we're also monitoring the

1 project.

2 And in keeping with the other conditions
3 that she is about to read, 12, 13, and 14, we had
4 reviewed them previously and found them
5 unacceptable to Energy Commission staff and
6 potentially precedent-setting.

7 MS. MURPHY: Can I ask one question?

8 HEARING OFFICER SHEAN: Okay, you're
9 kind of jumping, but yeah, go ahead.

10 MS. MURPHY: I'm sorry. How many power
11 plants are 30 feet away from houses? Is that
12 usual?

13 PRESIDING COMMITTEE MEMBER PERNELL:
14 We've got some in the middle of neighborhoods.

15 MS. MURPHY: Yeah?

16 PRESIDING COMMITTEE MEMBER PERNELL:
17 Yes.

18 MS. MURPHY: I mean, is it common?

19 HEARING OFFICER SHEAN: It's not totally
20 exceptional.

21 MS. MURPHY: It's unusual, though. It's
22 not the usual thing for power plants. You're
23 talking about precedent-setting, and I get this
24 impression all through this proceeding that the
25 staff will only do what the staff did last week.

1 It doesn't matter the particular conditions of our
2 site --

3 HEARING OFFICER SHEAN: Okay. Well,
4 we're going to give the City the opportunity to
5 present their pitch on this at the evidentiary
6 hearing.

7 MS. MURPHY: Okay, and I also heard once
8 that there is only one other place in California
9 that is that close to a power plant, that has
10 houses that close, but I might be wrong, I just
11 thought maybe you knew.

12 HEARING OFFICER SHEAN: All right. I
13 don't know. It is unusual, but it's not that it
14 hasn't happened before.

15 MS. MURPHY: Okay.

16 MS. JESTER: The next comments on
17 Noise 8, if you go to the errata, the staff
18 errata, page 24 at the bottom, where it has Phase
19 Two Demolition Period, there is a sentence at the
20 beginning that says, "All construction activities
21 will be restricted to 7:30 to 6:00," and then you
22 go to the next page in it -- Actually, it expands
23 on that and has the complete condition, 7:30 to
24 6:00, 6:00 to 9:00, not on Sundays and holidays.

25 It just doesn't seem necessary to have

1 that first sentence, so I would suggest striking
2 that. It's just repeated twice, but it's
3 incomplete the first time and it's complete the
4 second time.

5 PROJECT MANAGER REEDE: Well, the first
6 time we're talking about everything. The second
7 time we're talking about the exclusion area. And
8 I think we're starting to border on wordsmithing
9 at that point.

10 HEARING OFFICER SHEAN: Well, they're
11 trying to be helpful here.

12 MS. JESTER: That's not the way I'm
13 reading it.

14 HEARING OFFICER SHEAN: Okay, if that's
15 not the way you're reading it, we'll just give you
16 a shot at commenting on that, because I see that
17 the reading is susceptible to the interpretation
18 you got, so let's --

19 She just wants you to be mindful of what
20 she's just said.

21 PROJECT MANAGER REEDE: Right.

22 HEARING OFFICER SHEAN: And if you mean
23 to distinguish the two, maybe you can separate
24 them into different paragraphs or in some other
25 way avoid some confusion as to why it's included

1 twice.

2 MS. JESTER: So you're saying your
3 intent was to further restrict certain areas?

4 PROJECT MANAGER REEDE: The exclusion
5 area.

6 MS. JESTER: The exclusion area? My
7 understanding was the exclusion --

8 PROJECT MANAGER REEDE: The first part
9 is the entire site: "Entering and exiting the
10 site hauling material construction activities
11 shall avoid the southerly end of the tank farm.
12 All construction activities will be restricted to
13 7:30 a.m. to 6:00 p.m."

14 MS. JESTER: Right. What --

15 PROJECT MANAGER REEDE: "Moreover,"
16 which starts a new idea --

17 MS. JESTER: Right.

18 PROJECT MANAGER REEDE: -- "Moreover,
19 other than vehicles entering and exiting the tank
20 farm, equipment will not operate in the designated
21 nighttime exclusion area located south of the
22 south tank."

23 Now, still talking about that nighttime
24 exclusion area, "During the hours of 9:00 a.m. to
25 5:00 p.m., the nighttime exclusion area may be

1 accessed by passenger vehicles or pedestrians to
2 inspect tanks. Except as further restricted
3 above, all demolition and construction shall occur
4 between these hours that are shown." And "No
5 demolition on Sundays."

6 APPLICANT ATTORNEY McKINSEY: James,
7 we're okay with the change, because there is a --
8 there's an "Except as other further restricted
9 above," and it says, "all demolition and
10 construction," I'm okay with her change, but I
11 think actually that sentence came when we
12 originally wrote the tank farm plan. That
13 sentence was there.

14 And as we made more details to the end
15 of it, we left that one unconfirmed, and I can
16 kind of see the confusion that it brings up. I
17 think it's okay to delete that one.

18 PROJECT MANAGER REEDE: Well, just for
19 clarification purposes, and everyone else agrees,
20 I'll delete it.

21 HEARING OFFICER SHEAN: Okay, do that.

22 MS. JESTER: Okay. I want to make sure
23 that I am understanding this.

24 So you're saying the tank farm area can
25 only -- I'm sorry, the nighttime exclusion area

1 can only be accessed 9:00 to 5:00 and I don't -- I
2 guess that's seven days a week because it doesn't
3 say --

4 APPLICANT ATTORNEY MCKINSEY: No, here's
5 how I read it and I think it's pretty straight.
6 That first sentence says on the nighttime
7 exclusion area that it's only from 9:00 to 5:00.
8 The next sentence says, "Except as further
9 restricted above," and it has "All."

10 MS. JESTER: Right.

11 APPLICANT ATTORNEY MCKINSEY: So "All
12 demolition and construction shall occur between,"
13 and then it sets the specific times, 7:30 a.m. to
14 6:00, Monday through Friday, 9:00 to 6:00 on
15 Saturdays. And then it says, "No construction or
16 demolition shall occur on Sundays or holidays."

17 I think that -- To me that says that
18 that nighttime exclusion of 9:00 to 5:00 is a
19 further restriction.

20 MS. JESTER: So that would be Monday
21 through Saturday, basically.

22 APPLICANT ATTORNEY MCKINSEY: Right.

23 MS. JESTER: Okay. So the sentence,
24 "Moreover, other than vehicles entering and
25 exiting the tank farm, equipment will not operate

1 in the designated nighttime exclusion area."

2 That's --

3 APPLICANT ATTORNEY MCKINSEY: That's
4 designed to restrict the activities in the
5 nighttime exclusion area, because that's the area
6 that's immediately adjacent to 45th Street.

7 MS. JESTER: But aren't -- isn't it
8 restricted by the next sentence that says you can
9 only go in the nighttime exclusion area from 9:00
10 to 5:00 Monday through Saturday, and you can only
11 have passenger vehicles and pedestrians there and
12 you can't have anything else, any -- Am I reading
13 that correctly? That's the only thing you can do
14 in that nighttime exclusion area. No?

15 APPLICANT ATTORNEY MCKINSEY: You know,
16 there's a typo in here. That sentence is trying
17 to describe during the nighttime exclusion area,
18 that we've still got to go in there. What we were
19 worried about was --

20 MS. JESTER: Right.

21 APPLICANT ATTORNEY MCKINSEY: -- you
22 know, if you had a fire in there, you can't put it
23 out until 9:00 in the morning.

24 MS. JESTER: Right.

25 (Laughter.)

1 APPLICANT ATTORNEY McKINSEY: To be able
2 to say that all we're going to do, I think it's
3 reversed, I think it's 5:00 p.m. to 9:00 a.m., is
4 that a passenger vehicle might have to drive into
5 there or an inspector --

6 MS. JESTER: To inspect or put out a
7 fire.

8 APPLICANT ATTORNEY McKINSEY: -- to
9 inspect the site. I mean, security guards going
10 onto the property, those kinds of things.

11 MS. JESTER: Right.

12 APPLICANT ATTORNEY McKINSEY: So I think
13 we may have swapped the "5" and the "9." That was
14 supposed to describe the nighttime exclusion
15 hours.

16 MS. JESTER: But shouldn't it be --
17 Actually, shouldn't it not be 9:00 to 5:00, it
18 should be anything outside of the 7:30 to 6:00 and
19 9:00 to 6:00?

20 APPLICANT ATTORNEY McKINSEY: No --

21 MS. JESTER: Any of the non-approved
22 hours.

23 APPLICANT ATTORNEY McKINSEY: No, it's
24 only -- it's supposed to draw a smaller period of
25 time. We can't go in there until 9:00 a.m. So

1 right now, if you -- that wasn't there, we could
2 go in there at 7:30 in the morning, but that's
3 designed to between those hours of 5:00 at night
4 until 9:00 the next morning, that period, the only
5 purpose we can go in there for is for inspecting
6 or passenger vehicle.

7 The idea is to keep the construction
8 activity out of there.

9 MS. JESTER: Right.

10 APPLICANT ATTORNEY MCKINSEY: Or even
11 any other vehicle, and then you read the previous
12 sentence and it says, "Vehicles exiting and
13 entering the tank farm," so there may be other
14 vehicles that might go into the nighttime
15 exclusion area during the day, but they can't go
16 in there until 9:00 a.m.

17 Passenger vehicles and inspectors are
18 the only ones that could go in there between 5:00
19 and 9:00.

20 MR. PERKINS: So my sense of how this
21 thing probably really ought to read is the
22 sentence that starts out, "During the hours,"
23 should actually say, "During the hours 5:00 p.m.
24 to 9:00 a.m.," but that means that you do not want
25 to delete the earlier limitation on construction

1 activities from 7:30 to 6:00, if I hear that
2 right, that once you flip those two numbers around
3 you no longer need or want to delete the earlier.

4 APPLICANT ATTORNEY MCKINSEY: No,
5 because you still have that last sentence that
6 says --

7 MS. JESTER: "Except as further
8 restricted above."

9 MR. PERKINS: Oh, I see. I see.

10 HEARING OFFICER SHEAN: All right. Put
11 the hours in the next version so that everybody
12 can swallow that when they get that revision,
13 that's fine.

14 Okay. Let's go to your other added
15 conditions now, because I think that's about where
16 we are, right?

17 MS. JESTER: Okay, yes. Actually, there
18 was one comment on Noise 9. It's the same thing,
19 that that should begin at site mobilization, and
20 it's not clear. It just talks about demolition,
21 construction and operation.

22 But again, site mobilization comes
23 before demolition, and there could potentially be
24 vibration impacts.

25 APPLICANT ATTORNEY MCKINSEY: That's

1 fine.

2 SENIOR STAFF COUNSEL ABELSON: That's
3 fine with us.

4 HEARING OFFICER SHEAN: Okay.

5 MS. JESTER: Okay.

6 HEARING OFFICER SHEAN: Add that
7 prefacing phrase.

8 Okay. Let's go to your conditions here.

9 MS. JESTER: These next conditions are
10 ones that we brought up in July of 2001, and
11 Energy Commission had rejected them. It's
12 something that we'd still like to discuss.

13 Noise 11 is sound insulation windows.
14 And that would be on the windows that have a
15 direct line of sight with the project.

16 HEARING OFFICER SHEAN: Okay. I think
17 we've read them, so you've got the windows, the
18 reimbursement for lost rents, the -- I don't know,
19 what should we call them, temporary construction
20 domes?

21 MS. JESTER: Yes.

22 HEARING OFFICER SHEAN: And then the --

23 MS. JESTER: Construction schedules.

24 HEARING OFFICER SHEAN: Yeah, I guess
25 that's -- Okay, and I think, and all I can say is

1 we're going to just have to add that to the list
2 of what you can present, because I think the fact
3 that it does not appear in the staff's errata --
4 Am I correct?

5 PROJECT MANAGER REEDE: Right.

6 HEARING OFFICER SHEAN: And you guys
7 probably are going to have --

8 MS. JESTER: Yeah, did the applicant
9 have any comments?

10 HEARING OFFICER SHEAN: Do you have
11 issues with that?

12 APPLICANT ATTORNEY MCKINSEY: Yeah, we
13 do.

14 HEARING OFFICER SHEAN: Okay. So we're
15 just going to let you present that at the
16 hearings.

17 MS. JESTER: Okay.

18 PROJECT MANAGER REEDE: That's it?

19 MS. JESTER: That was it.

20 HEARING OFFICER SHEAN: Is there
21 anything else on Noise?

22 PROJECT MANAGER REEDE: No, we're ready
23 to do Visual.

24 HEARING OFFICER SHEAN: Okay.

25 APPLICANT ATTORNEY MCKINSEY: Hearing

1 Officer Shean, could I just make sure we know
2 where we've got? I think we only have a couple of
3 things in Noise that are left?

4 MS. JESTER: Yeah.

5 PROJECT MANAGER REEDE: Noise 6,
6 everything is fine.

7 APPLICANT ATTORNEY MCKINSEY: Noise 6,
8 we want to agree on the language, finish fixing
9 it; Noise 5, the steam blow issue, and whether or
10 not it's going to take more than those hours; and
11 there was one other issue, I thought; was that --
12 that and then just the --

13 PROJECT MANAGER REEDE: Noise 9, site
14 mobilization.

15 APPLICANT ATTORNEY MCKINSEY: Yeah.

16 MS. JESTER: On Noise 8, you wanted to
17 check with Jim Bunton on the --

18 APPLICANT ATTORNEY MCKINSEY: Purpose of
19 that one.

20 MS. JESTER: Right, the 65 and 5, and
21 the continuous versus the intermittent noise.

22 MR. BEHRENS: Well, and also the higher
23 versus the lower, because I think that's
24 important.

25 MS. JESTER: Right.

1 APPLICANT ATTORNEY MCKINSEY: That was
2 the other one, Noise 8. And then did we have a
3 problem with -- on Noise 2, one of the changes,
4 the one that was five from the bottom on page 21
5 of Noise 2 in the FSA?

6 PROJECT MANAGER REEDE: Yeah, and I
7 needed to talk with Bunton about it, but I'm
8 pretty sure that that's going to be acceptable to
9 add the words, "And at the complainant's site."

10 MR. BEHRENS: That again moves 30 feet
11 away from your property line, so it's not punitive
12 for the applicant.

13 APPLICANT ATTORNEY MCKINSEY: Okay, and
14 that would be fine with us. I just want to make
15 sure you needed to verify it.

16 PROJECT MANAGER REEDE: Yeah, we didn't
17 have a problem with it and I'm sure Bunton would
18 not have a problem with it.

19 HEARING OFFICER SHEAN: Okay. So right
20 now we have the City of Manhattan Beach as the
21 party presenting testimony on Noise; is there
22 anybody --

23 MR. PERKINS: If Noise testimony will be
24 presented, we will present Noise testimony. We
25 previously reserved that.

1 HEARING OFFICER SHEAN: All right.

2 We'll reserve that.

3 MR. PERKINS: It is my sense that, so
4 you'll know where we're going, it's my sense that
5 most likely the wordsmithing that will follow this
6 and the meetings with Mr. Bunton that will follow
7 this will lead us to have agreement on everything
8 up to the dispute over Noise 8 higher or lower
9 things and Ms. Jester's proposed Noises 11 through
10 14.

11 I think that's where -- I think we're
12 going to be --

13 HEARING OFFICER SHEAN: I think that's
14 what we're going to get, right, and we may be able
15 to get that higher/lower thing too.

16 MS. JESTER: Right.

17 MR. PERKINS: Until we see the proposed
18 conditions, it's very hard to say, yeah, I'll sign
19 off on that.

20 HEARING OFFICER SHEAN: No, I
21 understand. Okay. We'll reserve time for you,
22 then.

23 PROJECT MANAGER REEDE: Hearing Officer
24 Shean, may we move into Visual, because I --

25 HEARING OFFICER SHEAN: I'm about ready

1 to do that.

2 Okay. Let's go to Visual.

3 PROJECT MANAGER REEDE: Who is on the
4 speakerphone?

5 MR. RINGER: Mike Ringer from the Energy
6 Commission.

7 DR. GREENBERG: Alvin Greenberg, Energy
8 Commission.

9 MR. RINGER: I don't know how we're
10 coming through, but we're only getting less than
11 half of what's being said down there. James
12 Reede --

13 PROJECT MANAGER REEDE: Yes, we already
14 understand that, but my voice is loud enough,
15 right?

16 MR. RINGER: You seem to be coming
17 through the best.

18 (Laughter.)

19 PROJECT MANAGER REEDE: Okay. I'm going
20 to try and get Tom Luster on the phone, but you go
21 ahead and start, please.

22 HEARING OFFICER SHEAN: All right.
23 Visual Resources, and I think what I'm showing is
24 that we had the City of Manhattan Beach and I
25 think there was something from El Segundo as well;

1 am I correct in that?

2 SENIOR STAFF COUNSEL ABELSON: Yes.

3 HEARING OFFICER SHEAN: Okay. Well,
4 let's give --

5 MR. GARRY: I have some comments too,
6 although we didn't file --

7 HEARING OFFICER SHEAN: All right.

8 MR. NICKELSON: Mr. Shean, we're going
9 to have a problem here, because we don't have
10 Mr. Luster and we don't have Mr. Reede. I guess
11 staff can try to respond as best they can to these
12 issues, but I'm a little hesitant, but let's go
13 ahead and plow ahead as best we can.

14 HEARING OFFICER SHEAN: Well, why don't
15 we give Ms. Jester a break here. She can get her
16 voice back, and we'll go to the City of El Segundo
17 first and you can go through some of that stuff of
18 yours.

19 MR. GARRY: This is Paul Garry again.
20 Our comment was on Vis 2, which is the perimeter
21 screening and landscaping plan. I think the City
22 and the applicant had basically come to an
23 agreement on how the landscaping in the tank farm
24 area would meet the City's requirements.

25 And I've added language, both number 7

1 and 8, I think to kind of tie back that to the
2 landscape concept plan that we've been reviewing
3 over the last two years, and also to clarify how
4 conformance with our requirements for landscaping
5 in the vehicle use area would be met with some
6 language to show where the trees, these required
7 trees would be scattered around the perimeter of
8 the tank farm area.

9 So that was our intent was to try to
10 clarify how that conformance would be achieved.

11 SENIOR STAFF COUNSEL ABELSON: Staff has
12 no problem with the language that Mr. Garry is
13 suggesting.

14 MR. GARRY: I'll just -- Because I know
15 the applicant has submitted some language as well
16 to Vis 2 related to trees in the tank farm area,
17 and I'm not sure if the intent of that language
18 was to address the same issue that we were trying
19 to address, but it comes at it from a slightly
20 different way.

21 So we probably want to hear from the
22 applicant on that.

23 APPLICANT PROJECT DIRECTOR CABE: You
24 mean 36 box trees?

25 MR. GARRY: Yes.

1 APPLICANT ATTORNEY MCKINSEY: So is it
2 the City of El Segundo's idea that this is a way
3 to address the openness of the paved area that's
4 south of the vehicle use, the parking area?

5 MR. GARRY: That our suggested language
6 is yes.

7 APPLICANT ATTORNEY MCKINSEY: Providing
8 the required trees on the berm and other areas
9 immediately adjacent to the portion of the tank
10 farm to be used for paved staging, not including
11 the area to be striped for vehicle parking.

12 So basically try to bring trees closer
13 to it?

14 MR. GARRY: Well, or actually planting
15 trees in the existing berm that would remain to
16 add additional landscaping features there where,
17 like particularly some of the west berms can be
18 retained, and right now that's not landscaped, and
19 adding some of those trees around that and some on
20 the south end, maybe even the north end, in lieu
21 of putting them right in the flat staging area.

22 And then we would work out the details
23 of, you know, through the review of the
24 landscaping plans down the road.

25 APPLICANT PROJECT DIRECTOR CABE: You'd

1 rather have that than the mobile trees on the area
2 down below; is that correct?

3 MR. GARRY: Well, I mean, we haven't had
4 too long to look at your proposal, but initially I
5 think we'd like to probably see permanent
6 landscaping probably in the ground is probably
7 preferred to the box tree concept.

8 APPLICANT ATTORNEY MCKINSEY: Well, and
9 I'm not convinced either that we might not already
10 have been doing this, just if you look at our
11 landscape concept plan, I think we were bringing
12 trees down on that east side, and I think on the
13 south berm, of course, we're doing a lot of the
14 planting.

15 The only area where we didn't have trees
16 that you might be talking about here is at the
17 remaining portions of the south berm --

18 MR. GARRY: Right.

19 APPLICANT ATTORNEY MCKINSEY: -- but
20 there I think that was partly because that also
21 affects your ability to see the beach and the
22 ocean a little bit. If you have trees on that,
23 it's just going to create a little more of a
24 barrier to people up by the gas station, for
25 instance, and probably up at the corner of 45th

1 and Vista del Mar Highland that may see less of --
2 I mean, right now I don't -- it's hard to tell,
3 but when we did our -- if you look at our
4 rendering from up there, there is a little more of
5 a view of the ocean and the beach. And if the
6 trees are coming up more, that may block that a
7 little.

8 So I don't know if that's -- And on our
9 landscape concept plan right now, there aren't any
10 trees going on in there. But, I mean,
11 conceptually I don't think we have a problem with
12 it, I just -- I'd like to hear what the other
13 parties, City of Manhattan Beach and Nickelson and
14 Murphy, Perkins have to say about that in terms
15 of --

16 MR. NICKELSON: Can I --

17 HEARING OFFICER SHEAN: Go ahead.

18 MR. NICKELSON: Nick Nickelson from
19 Manhattan Beach. I think what Paul Garry has put
20 together here is really exceptional, and that goes
21 along with, you know, the view along Vista del Mar
22 is atrocious. It's in such bad shape, you know,
23 nobody wants to even deal with it and nobody is
24 dealing with it.

25 APPLICANT ATTORNEY MCKINSEY: Along

1 where, Nick?

2 MR. NICKELSON: Along Vista del Mar.
3 That entire stretch of Vista del Mar. Okay, I'm
4 sorry, you're talking tank farm?

5 HEARING OFFICER SHEAN: Yeah, we're
6 talking tank farm. And, let me just say, right
7 now it doesn't sound like we have a meeting of the
8 minds. It's not that we won't get it, but that
9 you're not on the same page right yet.

10 Is that --

11 PRESIDING COMMITTEE MEMBER PERNELL: I
12 thought they were agreeing.

13 APPLICANT ATTORNEY MCKINSEY: I think
14 we're okay with that. I think we'd like to do
15 that instead of the box trees.

16 HEARING OFFICER SHEAN: Okay. You'd
17 rather do this than the box trees.

18 APPLICANT ATTORNEY MCKINSEY: Right.

19 HEARING OFFICER SHEAN: Okay. And let
20 me just tell you, I'm kind of worried about the
21 idea of, first of all, I think the Visual
22 Screening and Visual Impacts is best handled
23 mostly by the local people. It is not a good idea
24 to try to do central planning out of the polit
25 bureau in Sacramento as to what your area should

1 look like.

2 And so that's why we really want to make
3 sure that you local people, you know, understand
4 what it is that's going to happen and that it's
5 acceptable to you, both in terms of planting and
6 colors and everything else like that, so --

7 PROJECT MANAGER REEDE: May I then
8 suggest, Hearing Officer Shean, that we have as
9 part of that Biological workshop, perhaps dedicate
10 a half-day to resolving all of the visual issues?
11 Because staff did not get applicant's most recent
12 submittal on Visual 2, and --

13 SENIOR STAFF COUNSEL ABELSON: Yeah,
14 just to be clear, I think it was received in part
15 but our technical staff for some reason doesn't
16 have it and we're having trouble -- John, my
17 apologies -- we're having trouble locating it even
18 as we're speaking.

19 PROJECT MANAGER REEDE: Because as it
20 was e-mailed, it was recalled. And it -- the
21 recall killed both of them.

22 APPLICANT ATTORNEY MCKINSEY: I recalled
23 the memo?

24 PROJECT MANAGER REEDE: Yeah, a recall
25 went out on --

1 APPLICANT ATTORNEY MCKINSEY: Well,
2 there was a paper service on it as well, but --

3 MS. JESTER: You know what happened?
4 They sent out one, and it didn't have the
5 attachments. And then they sent out the second
6 one with the attachments and immediately after
7 they sent it --

8 PROJECT MANAGER REEDE: They recalled
9 it.

10 MS. JESTER: -- they recalled it.

11 MR. PERKINS: And if you want a
12 scapegoat, it's me, because I happened to be at my
13 computer when it came in, so I wrote back your
14 assistant and said, "Thanks for the e-mail.
15 Didn't get your attachments," and I think that's
16 what caused her to recall it.

17 APPLICANT ATTORNEY MCKINSEY: Right.

18 HEARING OFFICER SHEAN: Okay, and --

19 PROJECT MANAGER REEDE: So staff isn't
20 fully prepared to discuss it, because we don't
21 have the documents in front of us.

22 HEARING OFFICER SHEAN: Okay, okay.

23 APPLICANT ATTORNEY MCKINSEY: Well, I'll
24 tell you, though, we can -- If the other parties
25 are fine with that, we can not worry about that

1 one, that Vis 2 proposal.

2 MS. JESTER: Well, I'd like to make a
3 comment on it. I guess the way that I'm reading
4 the City of El Segundo's proposal is that you
5 would take all the trees that would be required
6 under the Code, required in the Vehicular Use
7 area, and take those and push those out in the
8 perimeter so that you have this big empty flat
9 ugly asphalt area, right? Is that what, the way
10 I'm reading?

11 MR. GARRY: Right, for the staging area
12 portion there would still be a parking lot portion
13 that would have trees in that, uniformly spaced to
14 meet the Code where cars would park. But for the
15 equipment area, that would be left open and the
16 trees that would normally be required to be
17 uniformly spaced throughout that would be planted
18 around the tank farm area.

19 MS. JESTER: Around, okay. And what's
20 the breakdown of that area? Am I sort of
21 remembering about one-third of it is actual paved
22 stripe area, and about two-thirds is just the open
23 area?

24 APPLICANT PROJECT DIRECTOR CABE: I
25 don't remember exactly what the proportion was,

1 Laurie.

2 MS. JESTER: And the striped area was on
3 the north side, and the unstriped area was on the
4 south side; is that correct?

5 APPLICANT PROJECT DIRECTOR CABE:
6 Correct.

7 MS. JESTER: Okay. I'm thinking that
8 maybe we can come up with something that's maybe
9 halfway in between. I don't like the idea of
10 trees in boxes, because these are just going to
11 die. It just won't work at all --

12 APPLICANT PROJECT DIRECTOR CABE: Well,
13 we're taking that off anyway.

14 MS. JESTER: Yeah. I mean, but maybe
15 there is a way to plant these trees in the ground,
16 but instead of having them evenly spaced, maybe
17 they could be grouped like a grove --

18 APPLICANT ATTORNEY MCKINSEY: No, we've
19 gone over that already, and --

20 MS. JESTER: You've gone over that?

21 APPLICANT ATTORNEY MCKINSEY: Yes.

22 MS. JESTER: That doesn't work?

23 APPLICANT ATTORNEY MCKINSEY: It won't
24 work.

25 MS. JESTER: That doesn't work, okay.

1 PROJECT MANAGER REEDE: So back to my
2 suggestion, Hearing Officer Shean --

3 HEARING OFFICER SHEAN: If we can't
4 resolve this now --

5 PROJECT MANAGER REEDE: -- we can
6 resolve it at the workshop and get everybody's
7 input --

8 MS. MURPHY: Because of the short time,
9 I was unable to make any -- I didn't file any
10 papers and I'd like to make a short statement
11 about my concerns?

12 HEARING OFFICER SHEAN: Sure, go ahead.

13 MS. MURPHY: Since you said we should be
14 doing here today anyway. Quickly, three things:
15 One, I want more flexibility in planting, because
16 every time you mention plantings in here it's
17 evergreen, drought-tolerant as much as possible.
18 I want, like you said, color. I want to look out
19 my window and see something that I -- I will see a
20 power plant, which I don't right now but I will,
21 and I want to see color and things to divert my
22 eye from the power plant.

23 And so I understand, and Luster is not
24 with us today, but they want no color because
25 that's not native, but neither is a power plant

1 native, so I hope something can be worked out
2 about this.

3 Two, I want ongoing care. What the
4 staff report talks about is every six months some
5 removal of debris. Well, this is a very busy
6 place, this beach, and there is trash that blows
7 into it behind fences and I can't reach it. Elsie
8 Cripes goes down there with a bag and picks up
9 some of the trash that blows right now, but it's
10 this side of the fence. The other side of the
11 fence we can't reach.

12 We don't need every six months, daily is
13 a little bit much but at least weekly someone to
14 come and clean out the place like good neighbors
15 would.

16 And also, renew plantings. They talk
17 about debris removal every six months. I want new
18 plantings more often than that. These things will
19 die. I want gardeners. I want you to be like
20 Chevron -- I've told this to you I don't know how
21 many times in the last two years -- Chevron has
22 beautiful, colorful -- I mean, you know, they make
23 nasty oil but when you look at them, it looks like
24 a park. And they have a bigger berm than you're
25 going to be able to do, I know, but I want colors,

1 I want, you know --

2 And I also don't want -- Back to the
3 plantings -- a list that says this will be it for
4 the next 50 years. It shouldn't say that because
5 they may develop a new orchid tree that will be
6 beautiful. You know, it shouldn't be this is the
7 only thing it can be, because there may be a need
8 for flexibility as time goes on.

9 And finally, the entire perimeter, not
10 just when I look out my window, because I drive by
11 it too. Currently, the visual people talked about
12 cutting down some of that haunted forest that's
13 there right now in order to make more view lines,
14 and I think we need to do more planting.

15 I think view lines are really kind of a
16 silly thing. There is nobody living there, there
17 is nobody stopping there. It's people just
18 zipping by at 50 miles an hour, except when they
19 stop for the traffic that will be coming out of
20 the construction.

21 But I think just covering it all over
22 with trees and colors would make it much better
23 than preserving artificial little tiny view lines.
24 And the whole perimeter needs to be thought of,
25 and it hasn't really been in this plan, the

1 staff's plan right now. They've taken care of us,
2 especially, particularly us, because the berm
3 really does hide the power plant from our house,
4 not from our next-door house or the other 50
5 houses up the street, but as you go all around it.
6 And that's where thousands of people are on Vista
7 del Mar.

8 Those are my three concerns.

9 HEARING OFFICER SHEAN: All right.

10 Well, why don't we just afford everyone an
11 opportunity to talk about Visual, and then we'll
12 know-- Because I think we want to have that at
13 the hearing anyway.

14 So this is one of the critical elements
15 for the case, so I think we can anticipate we're
16 going to want to hear from everybody, and it may
17 ultimately come down to in a Solomonesque kind of
18 way if there is anything left that can't be agreed
19 to among the parties, it's for the Committee and
20 the Commission to try to figure out, okay, how can
21 we basically try to do the best thing.

22 But I would, again, say to the extent
23 that I have a bias in the matter it's towards the
24 local people as opposed to the all-knowing
25 bureaucrats in Sacramento.

1 PROJECT MANAGER REEDE: Okay. I will
2 attempt to schedule a workshop, if that's what
3 directing me to do.

4 HEARING OFFICER SHEAN: We're going to
5 get to that.

6 PROJECT MANAGER REEDE: Okay.

7 HEARING OFFICER SHEAN: Yeah.

8 PRESIDING COMMITTEE MEMBER PERNELL: All
9 right, next?

10 HEARING OFFICER SHEAN: Next?

11 See, and you thought Visual would take a
12 long time, didn't you?

13 (Laughter.)

14 HEARING OFFICER SHEAN: Okay.

15 PROJECT MANAGER REEDE: We still have
16 remaining Alternatives, Public Health, and Traffic
17 and Transportation.

18 HEARING OFFICER SHEAN: Right.

19 MS. JESTER: Before we leave Visual,
20 there was one other comment --

21 PROJECT MANAGER REEDE: Who is on the
22 line?

23 MR. LUSTER: Hello?

24 PROJECT MANAGER REEDE: Hello?

25 MR. LUSTER: Hi, this is Tom Luster.

1 (Laughter.)

2 HEARING OFFICER SHEAN: Let me just
3 indicate we have -- we started the Visual
4 Resources discussion, basically found that there
5 is not really a meeting of the minds yet on a
6 couple of things. We were talking about
7 vegetative screening, both for the -- essentially
8 for the entire perimeter of the facility, but
9 mostly in the southern area and for the tank farm.

10 We discovered that there are some things
11 that really have not been worked out. We didn't
12 discuss it, but I'm sure it would be the case that
13 in terms of trying to make the structures a little
14 more attractive that we don't yet have a meeting
15 of the minds on that either.

16 So right now, we have all parties
17 scheduled to present testimony on Visual
18 Resources, but, because we're undoubtedly going to
19 have a staff workshop on Aquatic Biology, to
20 include an opportunity to discuss Visual and see
21 if we can get any closer during that.

22 So that really sums up I think where we
23 got on Visual, and it sort of short-circuited an
24 extensive and probably not really productive and
25 lengthy discussion.

1 MR. LUSTER: Okay, very good. So the
2 workshop coming up would be a combination of those
3 two issues, probably?

4 HEARING OFFICER SHEAN: That's correct.

5 MR. LUSTER: Okay.

6 HEARING OFFICER SHEAN: Okay. And you
7 had something further you wanted to say?

8 MS. JESTER: One more comment that I had
9 made earlier this morning but I think now is the
10 right time to make the comment.

11 We had talked a long time ago about
12 adding a condition to ensure that the soil is
13 tested, so it will actually support plant life and
14 amend it as appropriate. So I hadn't made that in
15 my written comments so I just wanted to have a
16 verbal comment to that effect.

17 HEARING OFFICER SHEAN: All right.
18 Well, not only will we discuss whether things
19 should be evergreen native, but also whether they
20 can survive in inhospitable or contaminated soils,
21 okay.

22 MS. JESTER: Thank you.

23 HEARING OFFICER SHEAN: All right.

24 Moving next to --

25 PROJECT MANAGER REEDE: Alternatives?

1 HEARING OFFICER SHEAN: Let's see, well,
2 we can do that, or Mike Ringer is on the phone,
3 right? We can do Public Health.

4 PROJECT MANAGER REEDE: Mike Ringer, are
5 you still on the phone?

6 MR. RINGER: Yes, I'm still here.

7 HEARING OFFICER SHEAN: Okay.

8 PROJECT MANAGER REEDE: Traffic and
9 Transportation.

10 HEARING OFFICER SHEAN: Is that what
11 he's doing?

12 PROJECT MANAGER REEDE: And he's also
13 Public Health.

14 HEARING OFFICER SHEAN: Public Health,
15 all right. Let's do Traffic and Transportation.

16 And I know we have something from
17 Manhattan Beach and I think also from El Segundo.

18 MR. LUSTER: Excuse me, could I -- I
19 was --

20 PROJECT MANAGER REEDE: Oh, Tom, you can
21 go.

22 MR. LUSTER: Okay. Thanks very much.

23 HEARING OFFICER SHEAN: Thank you.

24 MR. LUSTER: I'll check in later on the
25 scheduling of the workshop.

1 PROJECT MANAGER REEDE: Right, thank
2 you.

3 MR. LUSTER: Thanks very much, bye-bye.

4 PROJECT MANAGER REEDE: Traffic and
5 Transportation, staff attempted to address both
6 City of Manhattan Beach and the City of El
7 Segundo's original comments to the FSA errata. I
8 would ask, with your indulgence, that we start out
9 with -- we go with the City of Manhattan Beach,
10 they actually had the most questions, and many of
11 those questions related to level of service
12 issues.

13 And El Segundo, they also had Traffic
14 issues, most importantly the traffic mitigation
15 fee which we did move from Socioeconomics to
16 Transportation 8 as they had requested.

17 We did also change the references
18 throughout so that they met the new El Segundo
19 Municipal Code of titling, and whichever, who you
20 desire to go first. I am sending my staff on to
21 the airport so they can at least get home.

22 PRESIDING COMMITTEE MEMBER PERNELL: Are
23 they going to hold the plane?

24 (Laughter.)

25 PROJECT MANAGER REEDE: They'd better

1 hold that plane.

2 PRESIDING COMMITTEE MEMBER PERNELL:

3 Thanks, guys.

4 PROJECT MANAGER REEDE: Our flight is
5 supposed to leave at 5:40.

6 HEARING OFFICER SHEAN: Okay. Well,
7 we're cranking away here as best we can.

8 So let me just say --

9 PRESIDING COMMITTEE MEMBER PERNELL: All
10 right, who --

11 HEARING OFFICER SHEAN: -- first of
12 all, on this deal about the payment of traffic
13 impact mitigation fee, again, what I want to do is
14 try to move all these fees to a common condition,
15 okay. So unless you have a problem with that and
16 we can identify what they are, such as, you know,
17 fire and library and police and yada, yada, yada,
18 and also include this traffic impact fee, but --

19 MR. GARRY: What I would like to say on
20 that is that the revised Trans 8 by the staff
21 didn't actually say when the fee would have to be
22 paid, and that's why I substituted language that
23 would try to clarify when that would be paid.

24 HEARING OFFICER SHEAN: Oh, I thought
25 they said prior to commercial operation. So it's

1 at --

2 MR. GARRY: I don't believe -- I think
3 it just said that they would pay a fee, but I
4 don't --

5 MR. BERGER: Mr. Shean, I don't think
6 the City would object to a general statement that
7 all fees must be paid before construction.

8 HEARING OFFICER SHEAN: Okay.

9 PROJECT MANAGER REEDE: I will add, "All
10 fees must be paid prior to" --

11 MR. GARRY: And that's actually the
12 start of commercial operations, which would be the
13 normal --

14 MR. BERGER: Start of commercial
15 operations.

16 HEARING OFFICER SHEAN: Yeah, that's
17 fine.

18 MR. BERGER: However we want to word it.

19 HEARING OFFICER SHEAN: Okay.

20 MR. BERGER: Because it's obviously in
21 compliance with our codes and other regulations.

22 PRESIDING COMMITTEE MEMBER PERNELL: All
23 right. We're good on that.

24 MR. BUNTON: [telephonically] Hello?

25 HEARING OFFICER SHEAN: Hello?

1 MR. BUNTON: Hello, this is Jim Bunton.

2 I'm sorry, I was in my meeting until just now.

3 PROJECT MANAGER REEDE: Okay.

4 HEARING OFFICER SHEAN: Well, that's
5 okay, you can go back to whatever you were doing.

6 (Laughter.)

7 MR. BUNTON: Okay, thank you. So I'll
8 check with James in the morning and see what we're
9 working on?

10 PROJECT MANAGER REEDE: Yes, thank you.

11 HEARING OFFICER SHEAN: That would be
12 fine.

13 MR. BUNTON: Very good. Thank you,
14 gentlemen.

15 PROJECT MANAGER REEDE: Bye, Jim.

16 MR. BUNTON: Bye.

17 HEARING OFFICER SHEAN: All right.
18 Let's go to you guys. What more do you want to
19 see on Traffic and Transportation, if anything?

20 MR. GARRY: We had a comment on Trans 5
21 condition --

22 HEARING OFFICER SHEAN: Okay. What, you
23 want hall routes and safety access to the main
24 entrance, right?

25 MR. GARRY: Right.

1 HEARING OFFICER SHEAN: Do you have
2 something -- What do you have in mind for the
3 safety access to the main entrance?

4 MR. GARRY: When the -- Because all of
5 the construction trucks are going to be coming in
6 and out of that main access that maybe there might
7 be times when you need flag men or someone out
8 there for traffic control purposes.

9 APPLICANT PROJECT DIRECTOR CABE: We
10 will have procedures that will cover that.

11 HEARING OFFICER SHEAN: Okay. So, I
12 mean, this is sort of --

13 PROJECT MANAGER REEDE: In the traffic
14 management plan, right?

15 HEARING OFFICER SHEAN: Essentially,
16 we're done, right? Okay. Now --

17 MS. JESTER: Shuttle routes, can that be
18 added as a bullet point too?

19 APPLICANT PROJECT DIRECTOR CABE: Where
20 is that? Is that one of yours?

21 MS. JESTER: It's not in here. Yeah,
22 that's --

23 APPLICANT PROJECT DIRECTOR CABE: You
24 just want to make sure nobody drives through the
25 hallowed streets of Manhattan Beach --

1 MS. JESTER: Exactly, you got it.

2 APPLICANT PROJECT DIRECTOR CABE: --

3 unless you've got a visa, right?

4 MS. JESTER: You got it.

5 (Laughter.)

6 PROJECT MANAGER REEDE: A platinum Visa.

7 APPLICANT PROJECT DIRECTOR CABE: A

8 platinum Visa.

9 MS. JESTER: And you're driving a
10 Beamer.

11 HEARING OFFICER SHEAN: And a business
12 license.

13 MS. JESTER: Right.

14 APPLICANT PROJECT DIRECTOR CABE: I was
15 talking about the kind that go in your passport.

16 HEARING OFFICER SHEAN: Okay. We got
17 that.

18 Now, do we have a couple, homeland
19 security have problems with project-related hall
20 routes? Okay, so that's not a security issue? So
21 do you have any problem with that? Okay, fine.
22 That's done, then. Trans 5, you got it.

23 MS. JESTER: I don't know if this is the
24 appropriate location, but we had also talked about
25 prohibiting vehicular and pedestrian access off of

1 45th Street or any area other than the main gate.
2 We had talked about that a year or so ago, and I
3 thought that was going into Trans 5, but it
4 didn't.

5 HEARING OFFICER SHEAN: Okay. Well,
6 that's a -- So you want a specific limitation so
7 they're not jumping the fence; is that --

8 MS. JESTER: No, there's a gate.

9 MS. MURPHY: There's a gate, it's never
10 been used.

11 MS. JESTER: There's a gate on 45th.

12 MS. MURPHY: But there is a gate.

13 MS. JESTER: It's never used, but it
14 could potentially be used.

15 MS. MURPHY: Once the berm is up, it
16 won't be used, used now, but --

17 APPLICANT PROJECT DIRECTOR CABE: And
18 when the berm is up, it's going to have even less
19 opportunity --

20 MS. MURPHY: Right.

21 MS. JESTER: Right.

22 APPLICANT PROJECT DIRECTOR CABE: --
23 Bob's berm.

24 MS. MURPHY: She just wants it put down
25 that until the berm is up --

1 HEARING OFFICER SHEAN: And the berm is
2 going up early; is that right?

3 MS. JESTER: Yes.

4 MS. MURPHY: Yeah.

5 PROJECT MANAGER REEDE: Might I say,
6 Hearing Officer Shean, I replied to that
7 particular concern from the City of Manhattan
8 Beach on page 34 of my errata, and basically they
9 were saying this condition needs to require no
10 construction traffic on City of Manhattan
11 Beaches -- I mean, City of Manhattan Beach
12 streets. "Vehicular and pedestrian access off
13 45th Street or any other area than the main gate
14 should be prohibited."

15 And basically, I said the applicant has
16 agreed to several conditions in the traffic
17 management plan, or what did I call that -- the
18 traffic control plan. See, we've given the City
19 of Manhattan Beach and the City of El Segundo the
20 ability to review and comment on the traffic
21 control plan.

22 If they don't see that there is no
23 access, they're supposed to raise the flag.

24 MS. MURPHY: We are.

25 HEARING OFFICER SHEAN: Okay, and that's

1 what they're doing.

2 PROJECT MANAGER REEDE: So for fire
3 equipment, though, that's wrong.

4 MS. MURPHY: Sure.

5 MS. JESTER: Well, sure.

6 APPLICANT ATTORNEY MCKINSEY: That gate
7 is only there for fire access.

8 PROJECT MANAGER REEDE: Right. It's a
9 fire --

10 MS. JESTER: Right, other than emergency
11 access.

12 PROJECT MANAGER REEDE: It's an
13 emergency access gate.

14 APPLICANT ATTORNEY MCKINSEY: And it's
15 going to go away.

16 HEARING OFFICER SHEAN: The gate is
17 going away?

18 APPLICANT ATTORNEY MCKINSEY: Yeah, the
19 berm is going in that full landscaped area.

20 MS. MURPHY: The berm is going there.

21 APPLICANT ATTORNEY MCKINSEY: But that's
22 a ways out. I don't think we have a problem with
23 that concept, but I also agree with Mr. Reede that
24 we've already got a condition that says all
25 traffic, construction-related traffic shall stay

1 off of City of Manhattan Beach streets, and --

2 MS. JESTER: Actually, we don't have a
3 condition that says that.

4 APPLICANT ATTORNEY MCKINSEY: I almost
5 thought we did.

6 HEARING OFFICER SHEAN: Well, let me
7 tell you, I'm thinking back in the days of the
8 Morro case where they had specifically they didn't
9 want the construction and other people to use a
10 particular gate.

11 So why don't you accommodate the City of
12 Manhattan Beach and either specifically require it
13 as a condition or have it included in the traffic
14 control plan. It's not a big deal. With the
15 exception of for emergency access until the berm
16 is in place.

17 PROJECT MANAGER REEDE: Okay.

18 HEARING OFFICER SHEAN: Okay.

19 MS. JESTER: Thank you.

20 HEARING OFFICER SHEAN: That's done.

21 PROJECT MANAGER REEDE: Trans 5 --

22 HEARING OFFICER SHEAN: Anything --

23 Let's just keep, is there anything more on
24 Transportation you want?

25 MR. GARRY: No.

1 HEARING OFFICER SHEAN: Okay. How about
2 City of Manhattan Beach, anything more you want?

3 MS. JESTER: On Transportation 4, I
4 wasn't clear that the parking and staging plan is
5 submitted to the City of Manhattan Beach.

6 PROJECT MANAGER REEDE: Primary reason
7 that there's nothing included in there for the
8 City of Manhattan Beach is that the applicants
9 were restricted to City of El Segundo and the City
10 of Los Angeles, City and County of Los Angeles.
11 They can't park in Manhattan Beach.

12 MS. JESTER: I know they can't, but this
13 condition is for the parking and staging plan,
14 which I assume will also have those shuttle routes
15 and show the circulation which may impact our
16 streets and our circulation and our traffic since
17 we're immediately adjacent to that share of the
18 intersection.

19 HEARING OFFICER SHEAN: Okay. Well, you
20 asked for shuttle routes --

21 PROJECT MANAGER REEDE: Well --

22 HEARING OFFICER SHEAN: -- in the plan
23 so they're going to give it to you --

24 PROJECT MANAGER REEDE: But I changed
25 it, sir.

1 HEARING OFFICER SHEAN: You changed
2 which?

3 PROJECT MANAGER REEDE: I changed
4 Transportation 4.

5 MS. JESTER: Right.

6 PROJECT MANAGER REEDE: And it says, "At
7 least 60 days prior to start of site mobilization,
8 the project owner shall submit the plan to the
9 Cities of El Segundo and Manhattan Beach and any
10 other jurisdiction" --

11 MS. JESTER: You're right, you did.

12 PROJECT MANAGER REEDE: Okay, so
13 Trans --

14 MS. JESTER: I'm sorry, I didn't see
15 that. Thank you.

16 HEARING OFFICER SHEAN: Okay. So you're
17 taken care of?

18 PROJECT MANAGER REEDE: You're forgiven,
19 my child.

20 (Laughter.)

21 HEARING OFFICER SHEAN: So that
22 satisfies you?

23 MS. JESTER: That's fine.

24 HEARING OFFICER SHEAN: All right,
25 you're in that loop, right?

1 MS. JESTER: Yes.

2 HEARING OFFICER SHEAN: Okay. And
3 anything more?

4 MS. JESTER: No.

5 HEARING OFFICER SHEAN: Okay. From the
6 other intervenors?

7 All right.

8 PROJECT MANAGER REEDE: Traffic and
9 Transportation will be by declaration.

10 HEARING OFFICER SHEAN: Any objection?

11 Hearing none, that's the way it will be.

12 PROJECT MANAGER REEDE: Okay.

13 HEARING OFFICER SHEAN: Okay. Why don't
14 we do Public Health since Mr. Ringer is here on
15 the phone.

16 PROJECT MANAGER REEDE: Mr. Ringer, are
17 you still there?

18 MR. RINGER: Yes.

19 HEARING OFFICER SHEAN: All right. Now,
20 let me say, a lot of the discussion that we've had
21 from the public participants I think is a
22 crossover between Public Health and Air Quality,
23 and so why don't we --

24 PROJECT MANAGER REEDE: Might I
25 interject, Hearing Officer Shean, we received no

1 comments from any of the parties on Public Health
2 written, nor did anyone address Public Health in
3 their prehearing conference statements, and --

4 MS. MURPHY: I would like now to address
5 Public Health.

6 HEARING OFFICER SHEAN: Okay. Go ahead.

7 MS. MURPHY: I don't deal with, except
8 early on talking with John about the numbers that
9 alarmed me when I first read them about the air
10 pollution, and I didn't quite -- I sort of thought
11 the experts will take care of that.

12 Now I realize what the experts are
13 doing, and I would like to have some time to
14 respond to what I see as a public health issue for
15 my family and my neighbors. And I don't know what
16 my response will be. I mean, I understand the
17 pollution control system that's here, but I didn't
18 even realize that public health would be a place
19 you'd look for my concerns about pollution.

20 And now that I do realize that, I'd like
21 to have some time to research it and to respond.

22 HEARING OFFICER SHEAN: All right.
23 First of all, I think it's the Energy Commission's
24 duty to the public to bring to you the experts
25 that we have on staff so that you can ask them

1 questions and clearly understand at least the
2 basis upon which they're making their decisions
3 and drawing their conclusions.

4 And that does not foreclose your wanting
5 to make a separate presentation, but let me just
6 indicate on this matter, we will have a
7 staffperson available to talk to. If the
8 applicant wants to have somebody who is equally
9 versed in this sort of crossover area between Air
10 Quality and Public Health, because we're getting
11 down to where the rubber meets the road for the
12 public in terms of attempting to assure as best we
13 can or at least allow you the opportunity to
14 respond, why you think there may be some -- or let
15 me just say to address your concerns with respect
16 to public health.

17 So that will happen in terms of that.
18 Now, if you want to make an affirmative
19 presentation, we'll allow you as a group to come
20 forward and do that, okay?

21 MS. MURPHY: Thank you.

22 SENIOR STAFF COUNSEL ABELSON:
23 Mr. Shean, just for housekeeping purposes, can I
24 suggest that we have this issue addressed as part
25 of the air quality? Normally Public Health is all

1 topics that are not in some sense regulated by Air
2 Quality. They're contaminants that just aren't
3 part of the list.

4 PM 10, the things you folks are talking
5 about, are Air Quality issues, and I'm just
6 suggesting that for housekeeping that we put it in
7 that category for discussion.

8 HEARING OFFICER SHEAN: Okay, and that's
9 what I indicated. It's crossover and so --

10 PROJECT MANAGER REEDE: Public Health
11 could go by days of workshop, two consecutive days
12 of workshop.

13 SENIOR STAFF COUNSEL ABELSON: Well,
14 what I'm trying -- actually --

15 HEARING OFFICER SHEAN: Well, I don't
16 know that you need to address this in the
17 workshop, because I think what we want for them is
18 to have the opportunity to ask questions and
19 things like that. I don't think you're going to
20 satisfy your -- So this will be a witness in the
21 hearing.

22 SENIOR STAFF COUNSEL ABELSON: Right.
23 And what I'm also trying to get at by categorizing
24 it in Air Quality, it is in no sense to foreclose
25 the issue at all, but what I'm trying to get at is

1 Public Health, because it's everything else, it's
2 not the stuff you're talking about, could, it
3 seems to me, go by declaration with this
4 understanding that the Air Quality issue is fully
5 reserved, just so we know, you know, what we're
6 putting by declaration and what we're not.

7 HEARING OFFICER SHEAN: It's just a
8 matter of bringing Mr. Ringer down here. I mean,
9 I don't want to waste time, but I want to make
10 sure that their concerns are satisfied, and Air
11 Quality/Public Health --

12 PROJECT MANAGER REEDE: We'll do
13 everything we can to have the parties, have the
14 witnesses present to respond to their questions.

15 HEARING OFFICER SHEAN: Okay.

16 MR. PERKINS: Mr. Ringer, I gather, is
17 the Air Quality expert?

18 HEARING OFFICER SHEAN: No.

19 PROJECT MANAGER REEDE: Mr. Ringer is
20 the supervisor of the Public Health and Air
21 Quality Unit.

22 MR. PERKINS: The fellow whose testimony
23 is going to be offered and who might most
24 logically be cross-examined appears to be named
25 Obed Odoemelam.

1 HEARING OFFICER SHEAN: Right.

2 PROJECT MANAGER REEDE: And he's the
3 state toxicologist.

4 MR. PERKINS: So will he be available?

5 PROJECT MANAGER REEDE: Yes, he will be
6 available, as will Mr. Loyer, Joe Loyer.

7 MR. PERKINS: And Joe Loyer is the
8 expert on Air?

9 PROJECT MANAGER REEDE: He's the Air
10 Quality engineer.

11 HEARING OFFICER SHEAN: Those two --

12 MR. PERKINS: This is at the hearing,
13 we're talking about?

14 HEARING OFFICER SHEAN: Yes.

15 MR. PERKINS: All right.

16 HEARING OFFICER SHEAN: Okay.

17 MR. NICKELSON: When will they be
18 available?

19 HEARING OFFICER SHEAN: They will be
20 here at the future hearing.

21 MR. NICKELSON: All right. Not at the
22 Air Quality when we -- Okay.

23 HEARING OFFICER SHEAN: Probably not at
24 the Biology and Visual workshop.

25 Okay. Is everybody happy on that?

1 Okay.

2 PROJECT MANAGER REEDE: Alternatives,
3 there is a fundamental disagreement between the
4 applicant and staff on the issue of Alternatives;
5 however, there are no conditions of certification.

6 HEARING OFFICER SHEAN: All right.

7 You're talking about your --

8 PROJECT MANAGER REEDE: The final
9 section, Alternative sections.

10 MR. RINGER: Excuse me, are we off of
11 Public Health now?

12 HEARING OFFICER SHEAN: We are.

13 PROJECT MANAGER REEDE: Yes, have a nice
14 evening.

15 MR. RINGER: Okay, thank you.

16 PROJECT MANAGER REEDE: We have
17 recommended an alternative cooling option on which
18 we have done fairly extensive work in determining
19 the technical feasibility of which, and there are
20 a number of existing plants that use reclaimed
21 water for once-through cooling, and there is a
22 plant at the Hyperion treatment plant that has
23 since been shut down, but used reclaimed water for
24 once-through cooling.

25 We've checked with a number of different

1 agencies as far as economic cost, like --

2 SENIOR STAFF COUNSEL ABELSON: Don't
3 litigate it, James, just -- it's an issue.

4 PROJECT MANAGER REEDE: Okay, I won't
5 litigate the issue.

6 However, staff feels that it is both
7 technically and economically feasible. The
8 applicant disagrees.

9 HEARING OFFICER SHEAN: All right.
10 Well, we want to make sure we're covering all of
11 what CEQA requires us to do, and so you have a
12 section here on -- section 6 is your Alternatives
13 section, and then in addition to that, you have
14 your alternative cooling --

15 PROJECT MANAGER REEDE: Alternative
16 cooling is part of the Biological Resources
17 section.

18 HEARING OFFICER SHEAN: Right, okay.

19 PROJECT MANAGER REEDE: And we have an
20 Alternatives section.

21 HEARING OFFICER SHEAN: Yes.

22 APPLICANT ATTORNEY MCKINSEY: Hearing
23 Officer Shean, our position is, and especially if
24 we look at the Moss Landing litigation, that we
25 are going to want to treat this alternative

1 cooling option as a proposed alternative in the
2 meaning of CEQA, which means we're going to want
3 a -- regardless of what outcome we even have on
4 Biology, I think, to make sure we necessarily have
5 covered CEQA adequately, because the staff's
6 position has been that they think it's feasible,
7 we need to have that to be heard.

8 And I think it ought to be under the
9 topic of Alternatives as to whether or not it's
10 feasible, and I know we're going to want to
11 present testimony as to its infeasibility. I
12 think if we don't do that, we may be in a
13 situation where there was an alternative that was,
14 at least one party said they felt was feasible,
15 and yet it was never adequately addressed, which I
16 think, given the issues around Biology, if we
17 don't do that, we won't have a solid CEQA-
18 equivalent determination.

19 HEARING OFFICER SHEAN: Okay. I don't
20 think it's ever entered my mind that we were not
21 going to hear the issue of Alternatives in its
22 broadest scope. And if I thought that and then
23 had a notion of what went on in Moss Landing, it
24 only confirms that.

25 So I think we can just say, here and

1 now, that with respect to Alternatives, to the
2 extent it's including alternatives, if you will,
3 and I guess as I'm going to use that not as a term
4 of art within CEQA but alternatives, it would
5 include the cooling, it would include your -- I'll
6 just call it the Gunderboom/game warden option.

7 And then I think I guess what I'd also
8 like to include is enough of a discussion of what
9 was brought forth by the Water Board
10 representative about offsets in compensation to
11 round out the record. And that's why I asked him
12 if there was anything further that we should
13 consider.

14 Now I'm going to ask now, in anybody's
15 wildest imagination in terms of what we're going
16 to cover in the way of Alternatives, if there is
17 anything else that ought to be added? I mean, I
18 think CEQA only requires us to do what's within
19 our wildest imagination, so --

20 All right.

21 PRESIDING COMMITTEE MEMBER PERNELL: So
22 that will be going to hearing.

23 HEARING OFFICER SHEAN: Okay, yes.

24 MR. PERKINS: Within wildest
25 imaginations are actually some Visual proposals

1 regarding, mostly regarding such things as
2 hydroseeding and other ways to deal with that
3 parking slab laydown area. It remains a litigated
4 issue.

5 I don't know if you consider those
6 alternatives, but the City of Manhattan Beach has
7 proposed other ways of dealing with it.

8 HEARING OFFICER SHEAN: Okay. In my
9 mind, that's still a Visual.

10 MR. PERKINS: Okay, and similarly, if we
11 have other suggestions about how noise abatement
12 could be done, that would be a Noise issue?

13 HEARING OFFICER SHEAN: Yeah. I would
14 think we'd keep them within the topic.

15 MR. PERKINS: Fair enough.

16 HEARING OFFICER SHEAN: And, to a
17 certain extent, you know, the wastewater option
18 versus the Gunderboom option is within Aquatic
19 Biology, but, you know --

20 MR. PERKINS: I understand.

21 HEARING OFFICER SHEAN: -- so long as
22 it's between the front cover and the back cover,
23 presumably that's what the law requires.

24 APPLICANT ATTORNEY MCKINSEY: Officer
25 Shean, our main thing with the old cooling option

1 is it reaches out to a lot more and it's a
2 fundamental design of the plan issue, and so it's
3 power plant efficiency, power plant reliability.

4 I mean, and that's why I don't think you
5 could call it a Biology issue. It helps
6 eliminate -- If it was feasible, it eliminates a
7 Biology impact issue. But to me it's a true
8 alternative design feature of the plan, which kind
9 of gives it an alternative status that's outside
10 of the particular issue where it puts it in
11 Alternatives on its own.

12 I don't know that Gunderboom totally
13 falls in that category, but it might also because
14 it affects some design components. But the
15 cooling methodology really greatly affects the
16 fundamental character and design of the facility.

17 HEARING OFFICER SHEAN: Mm-hmm. My
18 general view is it just has to be between the
19 covers. We'll try to make it so that it's clear
20 to the reader what we're trying to deal with, and
21 that will just be a challenge for the Committee to
22 try to do that and give you the right places to
23 go, okay?

24 So is there anything else on the list
25 that we haven't covered? Do we need to talk about

1 compliance?

2 SENIOR STAFF COUNSEL ABELSON: Yes.

3 There is actually one other item which applicant
4 raised, and I want to provide some clarification.
5 I'm sorry we lost Donna Stone because she is the
6 background for some of this.

7 The applicant was concerned in some
8 comments that they filed that we have in our
9 general conditions a one-year start-of-
10 construction requirement. And I'd like to take
11 just a moment on the record to clarify a couple of
12 things and to explain a couple of things and then
13 see whether or not this is an issue that we can
14 get to go away. It's possible we may be able to.

15 Number one, that condition was never
16 proposed as part of the executive order or any
17 emergency thing related to the stuff that went on
18 a couple of years ago. That was not the
19 underlying rationale for it at all.

20 The underlying rationale for that one-
21 year construction period was that in this
22 particular project, the applicant intends to use
23 priority reserve credits as part of the way of
24 meeting both its LORS and possibly arguably its
25 CEQA requirements as well.

1 The requirements for priority reserves
2 do not expressly require a one-year construction
3 period. And you are correct and Mr. McKinsey is
4 correct in asserting that in some comments that he
5 filed; however, the requirements of the district
6 for priority reserves, under Rule 1309.1 -- Bear
7 with me, folks -- (a), small (a)(4), large (D)
8 requires that new sources that are taking
9 advantage of the priority reserves be fully and
10 legally operational at the rated capacity within
11 three years following the issuance of the permit
12 to construct.

13 There is nothing that we have heard on
14 the record at any time by this applicant
15 suggesting that they intend to construct their
16 project in less than two years from the time of
17 permit. So simply doing the math is how we got
18 here. So I simply want to explain thinking,
19 whether we agree with it or not is a different
20 issue, but that was the rationale for it.

21 In light of that, I don't know whether
22 Mr. McKinsey thinks the issue goes away or whether
23 he has some thoughts on what I'm saying.

24 HEARING OFFICER SHEAN: Well, there is
25 already one condition required and that would be

1 operational in a certain time frame. Why do we
2 need another?

3 SENIOR STAFF COUNSEL ABELSON: Because
4 ours is not an operational requirement, it was a
5 construction requirement which was backed up from
6 the operational requirement.

7 HEARING OFFICER SHEAN: Okay.

8 SENIOR STAFF COUNSEL ABELSON: Because
9 we haven't heard anything to the contrary that
10 this is going to be a highly expedited, you know,
11 facility that's going to be built in six months
12 because they're going to operate 24 hours a day to
13 construct it. I mean, our understanding is that
14 it's going to take about two years to build it.

15 APPLICANT ATTORNEY MCKINSEY: Here is
16 our first -- If that was the case, then first, to
17 me the condition is an absolute mirror. Actually,
18 it has a couple of slight modifications, but it's
19 an absolute mirror and the condition that was
20 drafted and inserted into general conditions of
21 projects to enforce the executive order.

22 SENIOR STAFF COUNSEL ABELSON: Okay.

23 APPLICANT ATTORNEY MCKINSEY: And it's a
24 coincidence that it is an exact absolute mirror,
25 but it looks like that.

1 SENIOR STAFF COUNSEL ABELSON: Okay.

2 APPLICANT ATTORNEY MCKINSEY: But
3 nevertheless, if there was another rationale that
4 would necessitate that that would be a condition
5 that we would have to take on, then obviously we
6 wouldn't have a choice.

7 But the Energy Commission obviously
8 gives us three years with the ability to extend it
9 to up to five to start construction, the
10 regulations under the Warren-Alquist Act that
11 would apply to us. And we have an Air District
12 decision that has two unique aspects that don't
13 necessitate that we have to start construction
14 within one year: one, it says, "Upon issuance of
15 the permit to construct."

16 Now, it's quite possible that we could
17 have a permit to construct --

18 PROJECT MANAGER REEDE: Or California
19 Energy Commission certification, whichever is
20 later.

21 HEARING OFFICER SHEAN: Okay. Wait a
22 minute [bangs gavel]. This is not a factual issue
23 here, so it doesn't need to go to hearing, okay?
24 Isn't it just purely sort of argument, and can't
25 we just address it either through something that

1 at the end of the hearings we do or submit it in
2 writing?

3 APPLICANT ATTORNEY MCKINSEY: Well, I'd
4 like to give the staff this understanding.

5 HEARING OFFICER SHEAN: Okay.

6 APPLICANT ATTORNEY MCKINSEY: I think
7 our idea here was to try to work through the
8 issues.

9 SENIOR STAFF COUNSEL ABELSON: Yes.

10 HEARING OFFICER SHEAN: Okay, I
11 understand.

12 APPLICANT ATTORNEY MCKINSEY: The Air
13 District gives us the ability to, one, extend
14 that. There is a provision within the Air
15 District's rules and regulations that allow you to
16 apply to the executive director for a one-year
17 extension.

18 In addition, the Air District has
19 indicated as a matter of policy, first, this plan
20 is going to be very difficult to build within two
21 years. The original proposal was two years, but
22 we've taken on a lot of time-of-construction
23 constraints that probably mean that the demolition
24 process alone could take a year. And it's going
25 to be a much slower, methodical process, and that

1 was designed to reduce the impacts that the
2 project would cause to the community.

3 So it might be hard from the time we
4 start to finish the entire thing and have it
5 operational within three years, let alone a two-
6 year idea. So when we looked at that and we chose
7 to go with priority reserve, we wanted to make
8 sure that that would be overcomable.

9 And it's overcomable two ways: one is
10 extensions directly on that deadline by the
11 executive director. Another one is to have the
12 permit to construct reissued. In other words, we
13 paid the fees for the priority reserve and they
14 issued the permit to construct, and then we come
15 along and we're finally ready to start, and we
16 start construction and we're running late, and
17 they reissued the permit to construct within the
18 context of our air permit.

19 So we don't think that we're really
20 going to have a three-year constraint from the Air
21 District; otherwise, we would have had a problem
22 with using priority reserve in the first place.
23 And so that's kind of where we didn't want a
24 constraint.

25 On the other side, this is a very

1 complex construction process, and we're concerned
2 of having a condition in there that says you've
3 got to start construction within one year when it
4 used to be that the last piece of that condition
5 had all the penalties associated with it under the
6 executive order.

7 On its face that's a pretty toothless
8 condition. It just says you'll have a milestone
9 of starting construction within one year, it
10 doesn't say if you don't, you're in trouble. So
11 in one case, we were, well, we should ignore it.
12 But then we said, no, there may be ambiguity about
13 what that really means, and so we were thinking
14 you had it in there under the wrong rationale.

15 SENIOR STAFF COUNSEL ABELSON: Let me
16 offer this as a way of closure for the issue for
17 right now.

18 First of all, I wanted you to understand
19 what it was that we were trying to do and I
20 appreciate the information back. I think,
21 Mr. Shean, we should reserve this issue as one
22 that may have contest to it, simply because a lot
23 of information is going back to us right now
24 that's new probably to both parties.

25 I think that the parties obviously have

1 time before the hearings are going to occur, and
2 it may be that the issue will resolve. But for
3 the moment, the parties have not reached agreement
4 on the issue, and I'd like to have that reserved.

5 HEARING OFFICER SHEAN: Okay. Now,
6 let's talk about what we've got to do in the
7 future; it seems to me a couple of things.

8 Number one, a final revision, cover to
9 cover, that has everything that we've talked about
10 today, plus the errata, plus so on and like that,
11 and since you are the holder of the magic file
12 that has all that, we're going to figure out when
13 you can do that by.

14 If we're going to do that, then we're
15 going to have public workshops by the staff, when
16 that would be. And then I think it's appropriate
17 to set the time that we are targeting for the
18 Committee's evidentiary hearing so that everyone
19 knows that they're -- as the calendar flips over
20 day by day, their feet are getting closer and
21 closer to the fire. There is a salutary effect to
22 that.

23 So let's talk about those things, and
24 then we also have all the holidays in there, which
25 tends to screw everything up.

1 SENIOR STAFF COUNSEL ABELSON: Let me
2 make two comments. Mr. Reede will be in the best
3 position to comment for staff's availability --

4 HEARING OFFICER SHEAN: Okay.

5 SENIOR STAFF COUNSEL ABELSON: -- but
6 let me make two observations, if I could, with
7 regard to pulling everything together under one
8 cover, which I think is a very important thing to
9 do.

10 Number one, it seems to me, Mr. Shean,
11 that until we have our workshop on Biology and on
12 the outstanding issues that, by definition, we
13 can't necessarily pull everything together under
14 one cover, because there will be discussions there
15 on several issues, including some Visual stuff
16 that may resolve and allow for further progress.

17 Number two, it's very hard for me to
18 know how effectively, efficiently any of us have
19 captured today's agreements. I know there is a
20 transcript and I know we can all go back and read
21 it. But what I would like to suggest, subject to
22 your concurrence or order, is that all parties
23 somehow put together not so much a restatement of
24 what their arguments were, what their wish list
25 was, but their understanding of what it was that

1 was agreed to.

2 Now, that doesn't mean that when we get
3 it, if it's staff's responsibility to pull it
4 together, that we will completely agree with
5 everything everybody says was agreed to, but it
6 will certainly help us, if we have the burden on
7 our shoulders, to make sure we didn't
8 inadvertently forget something again, or
9 misunderstand something again.

10 I know that's asking other parties to
11 help us out, but I'm just trying to make sure we
12 get it as right as we can, so that's a suggestion.

13 PROJECT MANAGER REEDE: As far as
14 staff's availability for a workshop, I don't know.

15 HEARING OFFICER SHEAN: Okay. Let's
16 start with item number one, which is the corrected
17 version of the FSA. And I don't mean corrected in
18 a pejorative way, but the updated version of it.

19 And assuming that you were to get, at
20 least from the parties, perhaps what their input
21 was, not what they saw as the input of others, so,
22 you know, we're not trying to --

23 SENIOR STAFF COUNSEL ABELSON: Yeah.

24 HEARING OFFICER SHEAN: Okay. What, do
25 you think, by the 1st of December you could do

1 that?

2 SENIOR STAFF COUNSEL ABELSON: That we
3 could regenerate the new document?

4 HEARING OFFICER SHEAN: Regenerate the
5 document?

6 SENIOR STAFF COUNSEL ABELSON: What's
7 today, the 7th?

8 APPLICANT ATTORNEY MCKINSEY: Well, the
9 2nd of December is a Monday, or is it the 1st?

10 APPLICANT ATTORNEY MCKINSEY: Whatever
11 the date is.

12 PROJECT MANAGER REEDE: The Monday after
13 Thanksgiving is basically what you're talking
14 about.

15 HEARING OFFICER SHEAN: Well, I'm just
16 asking. I'm not --

17 PROJECT MANAGER REEDE: I don't see a
18 problem with that; however, I would think that the
19 workshop would need to come first so that we could
20 at least have all the parties in agreement that
21 hey, this is the document that we need to get from
22 cover to cover coverage, rather than do it two or
23 three times.

24 APPLICANT ATTORNEY MCKINSEY: We had
25 originally talked about a workshop to cover

1 Biology, and then we said --

2 SENIOR STAFF COUNSEL ABELSON: And one
3 other subject got in there.

4 APPLICANT ATTORNEY MCKINSEY: -- well,
5 we'd started with Biology, and we said we're going
6 to need a whole, we could spend a whole day on
7 Biology. And then we inserted Visual and perhaps
8 Air if it didn't get resolved, but it may be
9 resolved.

10 And now we're talking about trying to
11 resummairize all the things we thought we changed,
12 and I think if we have a workshop, it should be on
13 these new ideas or proposals that are out there,
14 and we originally, we had the idea of doing
15 Biology.

16 One suggestion I might make would be
17 that we have a Biology workshop in Sacramento
18 that's exclusively Biology. We don't need to come
19 all the way down here for Biology. I don't think
20 there are any local parties that are -- it's
21 primarily the Energy Commission and the other
22 state agencies that are participating.

23 And so we might just have a specific
24 workshop on Biology in Sacramento --

25 MS. MURPHY: I would appreciate phone

1 access to it.

2 APPLICANT ATTORNEY MCKINSEY: Oh, yes,
3 we'll do that.

4 HEARING OFFICER SHEAN: We'll do that.

5 APPLICANT ATTORNEY MCKINSEY: I don't
6 think there would be a need to have it -- Maybe
7 also we're talking about a workshop down here to
8 address Visual; however, I'd like to say that if
9 we'd just say we're going to wait for a workshop
10 and then figure out what we all agreed to here, we
11 may not really get there until after we've had a
12 workshop and we'd be unnecessarily stretching it
13 out.

14 I think pretty clearly we agreed on a
15 lot of issue areas, and to me there is a chunk of
16 this case that is ready to go to a hearing to open
17 and close it, that portion of it, to get it off
18 the table. And I'm afraid if we try to lump it
19 back into another series of workshops we're going
20 to tangle ourselves up in that, rather than trying
21 to work together very furiously to all have an
22 agreed-upon set of conditions.

23 SENIOR STAFF COUNSEL ABELSON: So the
24 way you're suggesting that we approach this is
25 that we try to get this cover-to-cover document as

1 best as we can as sort of milestone number one; we
2 hold our workshop slightly before or slightly
3 after, and whatever comes out of that workshop
4 comes out of it and is dealt with through errata
5 or dealt with through a subsequent hearing or
6 whatever because it's very topic-specific.

7 Is that what I'm hearing?

8 APPLICANT ATTORNEY MCKINSEY: I guess
9 what I'm thinking is if we work together by simply
10 drafting and saying we thought Noise said this, we
11 might be able to have a comprehensive document and
12 we don't need a workshop on it. As to the
13 following areas, these are the changes that we
14 made --

15 SENIOR STAFF COUNSEL ABELSON: You know,
16 I was actually never suggesting a workshop on
17 these issues, I was just trying to get people to
18 give us input, but before we had our Biology
19 workshop.

20 HEARING OFFICER SHEAN: Well, since you
21 want input, Mr. Perkins wanted --

22 MR. PERKINS: Some input?

23 HEARING OFFICER SHEAN: Yes.

24 MR. PERKINS: There are lots of ways to
25 skin this cat, but I would suggest that it ought

1 to be possible to put together the comprehensive
2 document with the exception of the areas of
3 Biology and Visual and that the workshop actually
4 could be confined to those two areas and follow
5 it, all as quickly as staff can get together.

6 Then it seems to me a short period of
7 time for the parties to say yes, that's right or
8 wordsmith among themselves to get any minor
9 discrepancies cleaned up. And then I kind of come
10 to our pending request for remedial action and
11 objection.

12 I don't think any of the parties were in
13 a position to properly present their prehearing
14 conference statements on December 4th, and I don't
15 think very many of them actually did. I think I
16 might have the only timely and satisfactory one
17 out there, with the possible exception of staff.
18 And mine is acceptable only in a formal sense.
19 It's certainly not what I think ought to be my
20 last word before we go to hearing.

21 So I would ask for the relief we asked
22 for before, which is you ought to have another
23 prehearing conference and you ought to have a
24 briefing date for that before you actually start
25 your hearings to clean up whatever is left and

1 make life easier for yourselves and for the
2 parties.

3 SENIOR STAFF COUNSEL ABELSON: And that
4 would be just a traditional prehearing conference
5 at that point.

6 HEARING OFFICER SHEAN: All right.

7 APPLICANT ATTORNEY MCKINSEY: I would
8 say that I kind of disagree with that in the sense
9 that I think we shouldn't say we're having a
10 prehearing conference. I think there is merit to
11 the idea that perhaps what we're also saying is
12 that we may need to have a particular much later
13 deadline to update what we really think we're
14 going to have to, and we've already reserved some
15 areas that we may not need to reserve.

16 So we could still have a deadline for
17 submittal of any additional modifications to
18 prehearing conference statement or changes before
19 the Committee tries to issue an order ordering
20 dates for the hearings.

21 HEARING OFFICER SHEAN: Okay. Now, how
22 much time do you think you're going to need to
23 begin to analyze their Gunderboom alternatives?

24 SENIOR STAFF COUNSEL ABELSON: Well, I
25 would think that four weeks would be sort of a

1 real functional start point to get us a handle on
2 some numbers and some assumptions and give us some
3 time to work with those numbers, so I'm thinking
4 at least a month.

5 HEARING OFFICER SHEAN: Okay. So you
6 could have your workshop prior to Christmas?

7 SENIOR STAFF COUNSEL ABELSON: I would
8 think -- Mr. Reede, unless you tell me I'm out of
9 line here, I would think that's reasonable.

10 PROJECT MANAGER REEDE: Yeah, that's
11 okay.

12 SENIOR STAFF COUNSEL ABELSON: Before
13 Christmas.

14 HEARING OFFICER SHEAN: Before
15 Christmas. That sounds like a good idea.

16 SENIOR STAFF COUNSEL ABELSON: Yeah.

17 HEARING OFFICER SHEAN: All right. It's
18 shaping up. I think what we'll do is, and that,
19 Visual -- or the Biology and the Visual don't
20 necessarily need to run on the same rail as the
21 cleanup of the document. And then we could come
22 back, say, after Christmas or just after the New
23 Year with a Committee event to be, with the notion
24 that evidentiary hearings will start in the Ides
25 of January.

1 All right, I think that --

2 PROJECT MANAGER REEDE: What are the
3 Ides of January?

4 HEARING OFFICER SHEAN: The middle of
5 the month, the 15th.

6 PROJECT MANAGER REEDE: The 15th.

7 HEARING OFFICER SHEAN: That generally
8 is the shape of things. We'll try to get an order
9 out after we've thought about this some more, but
10 it looks like that.

11 SENIOR STAFF COUNSEL ABELSON: So let me
12 just say one more time, what I'm hearing is that
13 the sequence is that we're going to try to pull
14 the cover-to-cover together first in some
15 reasonable period of time, I don't know what's
16 going to be but the next few weeks at the most,
17 we're going to move on to a workshop related to
18 the couple of issues that we're having a staff
19 workshop on, which is Biology and Visual.

20 We're then going to somehow inform the
21 Committee, pursuant to your order, as to where we
22 stand. And you're probably going to have one more
23 Committee event, perhaps a prehearing conference
24 sometime in January and we'll probably be in
25 hearings by middle of January; is that what I'm

1 hearing?

2 HEARING OFFICER SHEAN: Yeah, I think
3 that's generally it.

4 APPLICANT ATTORNEY MCKINSEY: I wasn't
5 totally clear on whether we were planning on
6 having a Biology workshop in Sacramento and a
7 Visual workshop down here.

8 HEARING OFFICER SHEAN: That struck me.
9 You know, I think there's merit to the idea of
10 separating, because there is no point in getting
11 you people all involved in sitting around on stuff
12 that you really don't want to hear. So it may be
13 interesting, maybe you can monitor it, that's up
14 to you, but probably bifurcate those two, or at
15 least allow the option to bifurcate.

16 MS. JESTER: And the complete, the
17 evidentiary hearings are going to be here or in
18 Sacramento?

19 HEARING OFFICER SHEAN: They would be
20 here.

21 PROJECT MANAGER REEDE: Excuse me,
22 Hearing Officer Shean, I have to leave.

23 HEARING OFFICER SHEAN: Sure. Okay,
24 ta-ta. I think we are basically done.

25 Everybody else, thank you very much.

1 Thank you, James.

2 THE REPORTER: You're welcome.

3 PRESIDING COMMITTEE MEMBER PERNELL:

4 Thank you.

5 (Thereupon, the prehearing conference
6 was adjourned at 5:10 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES A. RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission public 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 prehearing conference, nor in any way interested in outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of December, 2002.