

BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                    )  
  )  
Application for                        )  
Certification for                      )     Docket No.  
Mariposa Energy                       )     09-AFC-3  
Project                                 )  
\_\_\_\_\_ )

BYRON-BETHANY IRRIGATION DISTRICT

7995 BRUNS ROAD

BYRON, CALIFORNIA

MONDAY, FEBRUARY 24, 2011

10:02 A.M.

TIFFANY C. KRAFT, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 12277

EHLERT BUSINESS GROUP (916) 851-5976

APPEARANCES

COMMITTEE MEMBERS PRESENT

Karen Douglas, Associate Member

HEARING OFFICER AND ADVISERS

Kenneth Celli, Hearing Officer

Eileen Allen, Advisor

Galen Lamei, Advisor

Paul Feist, Advisor

STAFF AND CONSULTANTS PRESENT

Kerry Willis, Counsel

Craig Hoffman, Project Manager

Jennifer Jennings, Public Affairs

Lynn Sadler, Public Affairs

Matthew Dowell

WITNESSES

Brenda Cabral

Matthew Layton

Jacquelyn Leyva

Obed Odoemelam

Wenjun Qian

Amanda Stennick

Lisa Worrall

APPEARANCES CONTINUED

APPLICANT

Gregg Wheatland  
Samantha Pottenger  
Ellison, Schneider & Harris

Chris Curry, Mariposa Energy, LLC

WITNESSES:

David Blackwell  
Jim Gwerder  
Joshua Hohn  
Adolph Martinelli

LOCAL GOVERNMENT

Brenda Cabral, Bay Area Air Quality Management District  
Albert Lopez, Alameda County Community Development Agency  
Celeste Farron, Mountain House Community Services District  
Bruce Jensen, Alameda County Community Development Agency  
Randi Wallach, Bay Area Air Quality Management District  
Brian Washington, Alameda County Community Development Agency

INTERVENORS

Alan Carlton, Sierra Club California  
Rajesh Dighe  
Morgan K. Groover, Mountain House Community Services District  
Jim Lamb, Mountain House Community Services District  
Edward Mainland, Sierra Club California

APPEARANCES CONTINUED

INTERVENORS

Robert Sarvey

Rob Simpson

Jass Singh

Andrew Wilson, CalPilots

PUBLIC COMMENT

Robert Anderson

Kishor Bhatt

Jeremiah Bodnar

Hui Chen

Richard Clark

Patrick Collins

Dan Costin

Hari Dara

Receliza Del Rosario

Ron Gawer

Jason Gonce

Chris Gray

Weikun Guo

Katherine Havener

Leo Huang

## APPEARANCES CONTINUED

## PUBLIC COMMENT

Ravikiam Ketsidi

Mike Klinkner

Anil Kumar

Wentoa Li

Peter Lieu

Teresa Nava-Anderson

Melissa Machado

Matt Mullen

Venkata Mylavarapu

Steve Ormonde

Irene Owens

Chandra Paladugula

Aaron Pennington

Mary Piepho

Jonathan Ridpath

Judy Ridpath

Jon Rubin

Susan Sarvey

Pramit Shah

Naresh Singh

Satya Sinha

Bryan Stoltz

Irene Sundberg

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Jason Yao

Shirley Yao

Frank Ye

Bing Zhang

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1 PROCEEDINGS

2 COMMISSIONER DOUGLAS: My name is Commissioner  
3 Karen Douglas. I'm Presiding Member of this case.

4 To my left is our Hearing Officer, Ken Celli.

5 To my far right is my advisor, Paul Feist.

6 Sitting next to him is Eileen Allen, advisor to  
7 Chairman Weisenmiller, but he has asked her to work and  
8 advise me on this case. So she will be working with my  
9 office on this case and not with him.

10 To my immediate right is my advisor, Galen Lemei.

11 At this point, we'll take introductions from the  
12 parties, beginning with the applicant.

13 MR. WHEATLAND: Good morning. I'm Greg  
14 Wheatland. I'm counsel for the applicant.

15 And -- good morning. I'm Greg Wheatland. Is  
16 that coming through now? And I am the attorney for the  
17 applicant.

18 With me is Samantha Pottenger, associate with our  
19 office that will be assisting me at today's hearings. And  
20 to my right is Chris Curry, who is the project manager for  
21 this project for Diamond Generating.

22 COMMISSIONER DOUGLAS: Thank you, Mr. Wheatland.

23 And staff?

24 STAFF COUNSEL WILLIS: Good morning. My name is  
25 Kerry Willis, senior staff counsel with the Energy

1 Commission. And I'm representing staff.

2 And with me is Craig Hoffman, project manager, as  
3 well as many witnesses today.

4 COMMISSIONER DOUGLAS: Thank you.

5 And now let's take the intervenors, beginning  
6 with Robert Sarvey who is not here at the moment, but  
7 let's go then from left to right and have you introduce  
8 yourselves.

9 MR. GROOVER: My name is Morgan Groover. I  
10 represent Mountain House Community Services. And we have  
11 a member of our Board here as well.

12 COMMISSIONER DOUGLAS: Thank you. Let's keep  
13 moving down then.

14 Mr. Lamb, you're here with Mountain House as  
15 well?

16 MR. LAMB: Yes. I'm with Mountain House  
17 Community Services District Board of Directors. I'm here  
18 to support our intervenor.

19 MR. DIGHE: Rajesh Dighe from Mountain House  
20 community.

21 COMMISSIONER DOUGLAS: Let me ask before Mr.  
22 Wilson starts, can everybody hear in the back of the room?  
23 No. All right. Let me ask that you have your mikes on  
24 and be careful to speak into your mike.

25 We just had Mr. Lamb from Mountain House; Mr.

1 Dighe here as an intervenor.

2           And now, Mr. Wilson, let's see if they can hear  
3 you.

4           MR. WILSON: Good morning. Andy Wilson,  
5 California Pilots Association, also known as CalPilots.

6           COMMISSIONER DOUGLAS: Could everybody hear that  
7 in the back? Yes.

8           MR. SINGH: Jass Singh as an intervenor from  
9 Mountain House and as a resident.

10          COMMISSIONER DOUGLAS: Can you speak into your  
11 microphone?

12          MR. SINGH: Mountain House.

13          COMMISSIONER DOUGLAS: Can you try to turn the  
14 mike on?

15          HEARING OFFICER CELLI: Actually, let me ask you  
16 this. In the back, we have Jennifer Jennings. Could you  
17 hear, Ms. Jennings?

18          MS. JENNINGS: No.

19          HEARING OFFICER CELLI: Mr. Singh, you need to  
20 make the sound go right down the barrel of your  
21 microphone.

22          COMMISSIONER DOUGLAS: Ms. Jennings was shaking  
23 her head at me.

24          MR. SINGH: Can you hear me?

25          HEARING OFFICER CELLI: No. Keep trying.

1 MR. SINGH: Hello.

2 MR. WHEATLAND: Maybe we can go off the record  
3 for a moment.

4 COMMISSIONER DOUGLAS: Mr. Sarvey is calling you  
5 again, but now that we're on the record, can you introduce  
6 yourself?

7 MR. SARVEY: Bob Sarvey, intervenor.

8 COMMISSIONER DOUGLAS: All right. And we had  
9 gotten to Mr. Singh.

10 MR. SINGH: Jass Singh as an intervenor from  
11 Mountain House community as a resident.

12 MR. MAINLAND: Ed Mainland, Sierra Club  
13 California.

14 MR. CARLTON: Alan Carlton, Sierra Club,  
15 California.

16 MR. SIMPSON: Rob Simpson, intervenor. And it's  
17 hard for me to hear you when you speak to the last  
18 intervenor.

19 HEARING OFFICER CELLI: We could hear you fine.  
20 You know why? Because you spoke right into the  
21 microphone. And that's the way we're going to have to do  
22 it today is actually speak right into the microphone so  
23 everyone can hear you in the room. So thank you very much  
24 for your patience. We have people working on the  
25 microphones right now. And we'll hopefully get the

1 problem fixed within the next half hour or so.

2 We're on the record.

3 COMMISSIONER DOUGLAS: Are there any elected  
4 officials with us? Are there any elected officials in the  
5 room today?

6 MS. FARRON: I'm not making a proclamation, but  
7 my name is Celeste Farron. I'm with the Mountain House  
8 Community Services District Board of Directors.

9 COMMISSIONER DOUGLAS: Thank you.

10 Other elected officials in the room?

11 Mr. Lamb, I know.

12 All right. Is there anybody from the Bay Area  
13 Air Quality Management District in the room? Or the  
14 Alameda, Contra Costa, San Joaquin County Department or  
15 Agencies? Is the city of Byron -- I am sorry.

16 MS. CABRAL: Brenda Cabral with the Bay Area Air  
17 Quality Management District.

18 COMMISSIONER DOUGLAS: Thank you. Was that  
19 microphone on? Was that picked up?

20 Thank you, Ms. Cabral.

21 HEARING OFFICER CELLI: I'm sorry, folks. You're  
22 just going to have to get right on top, like touch the  
23 microphone in order to be heard.

24 Go ahead.

25 MS. WALLACH: Randi Wallach with the Bay Area Air

1 Quality Management District.

2 MR. LOPEZ: Good morning. Albert Lopez, County  
3 of Alameda, Planning Department.

4 COMMISSIONER DOUGLAS: All right.

5 HEARING OFFICER CELLI: Good morning.

6 COMMISSIONER DOUGLAS: Is anybody here from the  
7 city of Byron or Water Boards? Any State or local Water  
8 Boards?

9 All right. Is there anybody on the phone line  
10 who fell into those categories who were muted?

11 All right. At this point, I'll turn this over to  
12 Hearing Officer Celli.

13 HEARING OFFICER CELLI: Good morning, everyone.  
14 How does this sound to you, notwithstanding -- I'm getting  
15 lots of thumbs up. I'm getting a little echo. It's kind  
16 of like watching a foreign film or a film with Irish or  
17 English speaking accents. After a while, your ear will  
18 attune to what's going on. So I appreciate your  
19 indulgence.

20 My name is Ken Celli, not "Chelli." C-e-l-l-i.  
21 It's pronounced "Celli," not "Chelli." It's Italian.  
22 They didn't put an "h" in there.

23 The evidentiary hearing is a formal adjudicatory  
24 proceeding to receive evidence into the formal evidentiary  
25 record from the parties. Only the parties who are the

1 applicant, intervenors, and Energy Commission staff may  
2 present evidence for introduction into the formal  
3 evidentiary record which is the only evidence upon which  
4 the Commission may base its decision under law.

5           Technical rules of evidence are generally  
6 followed. However, any relevant, non-cumulative evidence  
7 may be admitted if it is the sort of evidence upon which  
8 responsible persons are accustomed to rely in the conduct  
9 of serious affairs.

10           Testimony offered by the parties shall be under  
11 oath. Each party has the right to present and  
12 cross-examine witnesses, introduce exhibits, and to rebut  
13 evidence of another party.

14           Questions of relevance will be decided by the  
15 Committee. Hearsay evidence may be used to supplement or  
16 explain other evidence but shall not be sufficient in its  
17 (inaudible) or to finding.

18           The Committee will rule on motions and  
19 objections. The Committee may take official notice of  
20 matters within the Energy Commission's field of competence  
21 and of any fact that may be judicially noticed by the  
22 California courts. The official record of this proceeding  
23 includes sworn testimony of the parties' witnesses, the  
24 reporter's transcript of the evidentiary hearing, the  
25 exhibits received into evidence, briefs, pleading, orders,

1 notices, and comments submitted by members of the public.  
2 The Committee's decision will be based solely on the  
3 record of competent evidence in order to determine whether  
4 the project complies with applicable law.

5           Members of the public who are not parties are  
6 welcome and invited to observe the proceedings. There  
7 will also be an opportunity for the public to provide  
8 comment today at 5:00 this afternoon here in the room.  
9 Depending on the number of persons who wish to speak, the  
10 Committee may limit the time allowed for each speaker.  
11 This public comment period is intended to provide an  
12 opportunity for persons who attend to hearing (inaudible)  
13 and also people will be able to address the Committee by  
14 telephone using the WebEx system. It is not an  
15 opportunity, however, to present written, recorded, or  
16 documentary materials. Such materials may be docketed and  
17 submitted to the Energy Commission for inclusion in the  
18 administrative record.

19           Members of the public who wish to speak should  
20 fill out a blue card provided by the public advisor  
21 Jennifer Jennings who's in the back of the room. Has a  
22 red shirt and gray coat. She's holding up a blue card.  
23 If you'd like to make a comment or if you just want to  
24 submit a written comment, you can use that blue card and  
25 that's how we know that you're here, that you want to make

1 a comment and we call you in the order that we receive  
2 them.

3           Now, with regard to exhibits and witnesses, the  
4 witness lists and exhibit list have been distributed to  
5 the parties this morning. They were sent to the parties  
6 electronically and the parties were asked to bring copies  
7 for their use today. We'll use these lists to organize  
8 the receipt of evidence into the record. Therefore,  
9 several uncontested topics identified in the topic and  
10 witness list. None of the parties has filed any objection  
11 to submittal of these topics by declaration.

12           The way we'll proceed is first we will allow the  
13 applicant to offer into evidence the relevant sections of  
14 the AFC, relevant supplemental testimony in support of  
15 uncontested topics. After that, we'll ask staff to offer  
16 those sections of the FSA and supplemental testimony which  
17 constitute staff's testimony in support of the uncontested  
18 topics.

19           Finally, intervenor will offer their evidence of  
20 the uncontested topics into the record in the following  
21 order which is how I have you seated. And this is in  
22 order of intervention: Mr. Sarvey, Mountain House  
23 Community Service Districts, Mr. Dighe, the California  
24 Pilots Association, Mr. Singh, Sierra Club of California,  
25 and Rob Simpson.

1           After taking in uncontested evidence, the parties  
2 may offer their listed exhibits as to contested topics  
3 into the evidence. We will proceed through the  
4 uncontested topics at this time.

5           I'm going to ask applicant and staff's project  
6 managers to stand and be sworn, Mr. Hoffman and Mr. Curry,  
7 please.

8           (Whereupon Mr. Hoffman and Mr. Curry were sworn.)

9           MR. HOFFMAN: Yes, I do.

10          HEARING OFFICER CELLI: Mr. Curry?

11          MR. CURRY: I do.

12          HEARING OFFICER CELLI: Thank you. You may be  
13 seated.

14          The parties agree that the following topics set  
15 forth in the application for certification and the final  
16 staff analysis are undisputed and that evidence and  
17 testimony on these topics shall be solely entered by  
18 declaration: Executive summary, project description,  
19 cultural resources, transmission line safety and nuisance,  
20 waste management, facility design, geology, and  
21 paleontology, power plant efficiency, power plant  
22 reliability, noise and vibration, and transmission systems  
23 engineering.

24          Now before I allow applicant to move their  
25 documents at this time, I'm going to have to go off the

1 record for one moment. Excuse me.

2 (Off record.)

3 HEARING OFFICER CELLI: Now I have the same copy  
4 of the evidence list and witness list everyone else has  
5 hopefully.

6 At this time, applicant, do you wish to move your  
7 evidence into the record?

8 MR. WHEATLAND: Yes, I do with respect to the  
9 undisputed topics that you have read. We have provided  
10 you with a list of the exhibits that correspond to those  
11 topics and we would move those exhibits into evidence at  
12 this time.

13 HEARING OFFICER CELLI: Can you tell me what the  
14 exhibits are? What exhibit numbers are being moved?

15 MR. WHEATLAND: There are quite a few. Do you  
16 want me to -- this is in the list that we provided to  
17 applicant's exhibit list by topic. Do you want me to read  
18 those to you at this time?

19 HEARING OFFICER CELLI: Yes. I think it's  
20 helpful for the record and for the people who are here to  
21 understand what's being moved into evidence.

22 MR. WHEATLAND: All right. Under the topic of  
23 project Description, Exhibit 1, Exhibit 4, Exhibit 5,  
24 Exhibit 6, Exhibit 11, Exhibit 64, and Exhibit 66. And  
25 again this is on a list that we have provided to you and

1 to the parties in this proceeding.

2 HEARING OFFICER CELLI: Please, cultural.

3 MR. WHEATLAND: For cultural, again, the cultural  
4 resources section of Exhibit 1 and Exhibit 4, Exhibit 5,  
5 Exhibit 6, -- well, you know if I could back up for a  
6 second. Under each topic, we have identified -- these are  
7 the general exhibits that we've identified specific  
8 portions of each of those exhibits. So I'm not at this  
9 moment moving the entire exhibit into evidence, but I'm  
10 only moving portions of it. It's going to be quite  
11 burdensome to read the detailed sections of each part.  
12 Could it be possible to have this list incorporated into  
13 the transcript as if read? This has been previously  
14 served on yourself and on the parties.

15 HEARING OFFICER CELLI: We incorporated your list  
16 into the general exhibit list for all of the parties.  
17 That's what I'm working off now. So if you can just say  
18 Exhibit 1, 4, 5, 10, 20, 30, et cetera, then that might  
19 speed things up.

20 MR. WHEATLAND: I'll do it that way. I read for  
21 project description. And then going back for cultural,  
22 Exhibits 1, 4, 5, 6, 7, 8, 11, 26, and 30.

23 Under electric transmission, Exhibits 1, 4, 5, 6,  
24 7, 8, 11, 23, 25, 26, 51, and 61.

25 Under geology, Exhibits 1, 4, 5, 6, 7, and 11.

1 HEARING OFFICER CELLI: I need you to speak  
2 clearly into your microphone, please.

3 MR. WHEATLAND: All right.

4 HEARING OFFICER CELLI: We're at power plant  
5 efficiency.

6 MR. WHEATLAND: And we don't -- I don't believe  
7 we have any section on that. So I think the next one  
8 would be noise and vibration on my list. And those  
9 exhibits are 1, 4, 6, 11, 50, and 61.

10 HEARING OFFICER CELLI: 1, 4, 6, 11, 50, and 61.

11 MR. WHEATLAND: Correct.

12 HEARING OFFICER CELLI: Thank you.

13 MR. WHEATLAND: The next on my list is paleo.  
14 And those exhibits are 1, 4, 6, 11.

15 HEARING OFFICER CELLI: I still need you to speak  
16 directly into the microphone, Mr. Wheatland.

17 MR. WHEATLAND: So I have project description,  
18 cultural, transmission systems engineering, geo, paleo --

19 MR. WHEATLAND: Right. I read to you  
20 transmission. That includes transmission line safety and  
21 nuisance and transmission line system engineering. And  
22 the next one on my list is waste management, Exhibits 1,  
23 4, 6, 7, and 11.

24 HEARING OFFICER CELLI: I think have we hit all  
25 of the undisputed topics?

1 MR. WHEATLAND: For which I have exhibits to move  
2 at this time, yes.

3 HEARING OFFICER CELLI: Thank you.

4 Any objection, staff?

5 STAFF COUNSEL WILLIS: None.

6 HEARING OFFICER CELLI: Any objection, Mr.  
7 Sarvey?

8 MR. SARVEY: I have no objection.

9 I just want to clarify no topics are undisputed.  
10 But I have no objection to entering these into the record  
11 without any type of witnesses.

12 HEARING OFFICER CELLI: Mr. Groover?

13 MR. GROOVER: No objection.

14 HEARING OFFICER CELLI: Mr. Dighe?

15 MR. DIGHE: No objection.

16 HEARING OFFICER CELLI: Mr. Wilson?

17 MR. WILSON: No objection.

18 HEARING OFFICER CELLI: Mr. Singh?

19 MR. SINGH: No objection.

20 HEARING OFFICER CELLI: Mr. Mainland?

21 MR. MAINLAND: No objection.

22 HEARING OFFICER CELLI: I guess I'll be  
23 addressing you, Mr. Carlton, as Sierra Club today. Okay.

24 And where is Mr. Simpson? Mr. Simpson, any  
25 objection? You're shaking your head no.

1 MR. SIMPSON: I have no objection.

2 HEARING OFFICER CELLI: Thank you. Then let the  
3 record reflect that Exhibits 1, 4, 5, 6, 11, 64, 66, 7, 8,  
4 26, 30, 23, 25, 26, 51, 61, 50 are received into evidence.  
5 Thank you.

6 (Whereupon the above-referenced documents  
7 were admitted into evidence by the  
8 Hearing Officer.)

9 HEARING OFFICER CELLI: Next we turn to staff at  
10 this time. Staff, do you wish to move your evidence into  
11 the record?

12 STAFF COUNSEL WILLIS: Yes, we do. We would move  
13 Exhibit 300 with the following sections: Executive  
14 summary, introduction, cultural resources, waste  
15 management, facility design, geology and paleontology,  
16 power plant efficiency, power plant reliability, and  
17 general conditions. And the portions of Exhibit 301,  
18 executive summary project description, noise and  
19 vibration, transmission line safety and nuisance, and  
20 transmission system engineering.

21 HEARING OFFICER CELLI: Okay. And those are all  
22 of your exhibits at this time?

23 STAFF COUNSEL WILLIS: That we would be moving  
24 that are undisputed.

25 HEARING OFFICER CELLI: Thank you, Ms. Willis.

1 Any objection, Mr. Sarvey?  
2 MR. SARVEY: No objection.  
3 HEARING OFFICER CELLI: Any objection from  
4 Mountain House?  
5 MR. GROOVER: No objection.  
6 HEARING OFFICER CELLI: Thank you.  
7 Any objection, Mr. Dighe?  
8 MR. DIGHE: No objection.  
9 HEARING OFFICER CELLI: Any objection, Mr.  
10 Wilson?  
11 MR. WILSON: No objection.  
12 HEARING OFFICER CELLI: Any objection, Mr. Singh?  
13 MR. SINGH: No objection.  
14 HEARING OFFICER CELLI: Any objection, Mr.  
15 Carlton?  
16 MR. CARLTON: No objection.  
17 HEARING OFFICER CELLI: Any objection, Mr.  
18 Simpson?  
19 MR. SIMPSON: No objection.  
20 HEARING OFFICER CELLI: Thank you. At this time  
21 Exhibits 300 and 301 will be received.  
22 (Whereupon the above-referenced documents  
23 were admitted into evidence by the  
24 Hearing Officer.)  
25 HEARING OFFICER CELLI: Mr. Sarvey, do you wish

1 to move your evidence into the record at this time on any  
2 of these subjects?

3 MR. SARVEY: I don't believe I have anything  
4 that's uncontested at this point.

5 HEARING OFFICER CELLI: Thank you.

6 And I heard Mr. Sarvey just fine just now. How  
7 does he sound over there to you? Okay.

8 Thank you. Thank you, Mr. Sarvey.

9 Any motion on behalf of Mountain House to move  
10 evidence into the record at this time?

11 MR. GROOVER: Not at this time.

12 HEARING OFFICER CELLI: Mr. Dighe, at this time,  
13 do you wish to move in any evidence -- and we're talking  
14 about the non-contested areas that I just listed off. Do  
15 you have any evidence on those topics?

16 MR. DIGHE: No.

17 HEARING OFFICER CELLI: Thank you.

18 Mr. Wilson, do you wish to move any evidence into  
19 the record at this time?

20 MR. WILSON: Not at this time, thank you.

21 HEARING OFFICER CELLI: Mr. Singh, do you have  
22 any evidence on the undisputed topics at this time that  
23 you wish to move in?

24 MR. SINGH: Not at this time.

25 HEARING OFFICER CELLI: Thank you.

1 Mr. Carlton, on behalf of Sierra Club California?

2 MR. CARLTON: Not at this time.

3 HEARING OFFICER CELLI: And Mr. Simpson?

4 MR. SIMPSON: Well, I have a question about the  
5 noise in relationship to land use. Will we still be able  
6 to discuss noise in the land use?

7 HEARING OFFICER CELLI: The way we described it  
8 in the prehearing conference statement is noise came up in  
9 the context of biology. The topic of noise and vibration  
10 was determined not to be in dispute. So essentially we're  
11 accepting staff's assessment on noise into the record and  
12 anything the applicant put in on noise into the record at  
13 this time. This doesn't mean that you are precluded from  
14 briefing or arguing the issue later. It just means there  
15 is no evidence coming in that you have at this time on  
16 noise and vibration.

17 MR. SIMPSON: Okay. Thank you. I have no  
18 objection.

19 HEARING OFFICER CELLI: So the question is do you  
20 have any objection.

21 MR. SIMPSON: No, sir.

22 HEARING OFFICER CELLI: Do you have any evidence  
23 yourself to put in on any of these undisputed topics?

24 MR. SIMPSON: No, sir.

25 HEARING OFFICER CELLI: Thank you.

1           Then with that, we will move on to disputed  
2 topics. The following topics were considered disputed at  
3 the prehearing conference. And the Committee will receive  
4 evidence in the form of written and live testimony,  
5 cross-examination, and documentary evidence now, unless  
6 the parties are prepared to stipulate to testimony by  
7 declaration. I note that there was a workshop in the  
8 interim since we met for the prehearing conference and I  
9 would like to -- I guess I'll ask the applicant whether  
10 there were any topic areas that we were able to -- shall  
11 we say eliminate the need for live testimony on?

12           MR. WHEATLAND: I believe we are close to an  
13 agreement with Mr. Sarvey with respect to visual  
14 resources. We're still working out the details of  
15 language that he's requested to take this issue off the  
16 table. We'll be able to provide that to him later today  
17 and hopefully that issue will be able to be removed. But  
18 regrettably I believe that's the only issue that from the  
19 applicant's perspective we've been able to take off the  
20 table.

21           HEARING OFFICER CELLI: One is better than none.

22           Mr. Sarvey, did you have a question?

23           MR. SARVEY: I just wanted to update the  
24 Committee on the workshop and the current negotiations  
25 that are going on between applicant, staff, and myself.

1 We are discussing a condition of certification for visual,  
2 which will probably take care of all these issues. I have  
3 proposed a condition of certification for hazardous  
4 materials, which the applicant has regrettably informed me  
5 they do not wish to adopt. And also have made an  
6 agreement with staff and applicant that if the applicant  
7 can come to an agreement with the Tracy Fire, we can pull  
8 worker safety and fire protection off the list as well.  
9 But at this time, I spoke to Tracy Fire this morning,  
10 there doesn't seem to be any movement at this point. And  
11 I was hoping we could wrap it up by the end of that day.  
12 But that seems entirely up to applicant and Tracy Fire.  
13 Tracy Fire is willing to accept the applicant's proposal.  
14 I'm willing to take worker safety and fire protection off  
15 the table.

16 HEARING OFFICER CELLI: Thank you, Mr. Sarvey.  
17 Applicant, did you care to respond to that?

18 MR. WHEATLAND: Yes. I'm glad Mr. Sarvey raised  
19 the issue of fire safety, and I think he's given you a  
20 very fair summary of the discussions the applicant has  
21 made a proposal to Tracy Fire to resolve this issue. And  
22 we are awaiting their response.

23 HEARING OFFICER CELLI: And when do you think  
24 we'll hear from them?

25 MR. WHEATLAND: I'm sorry. I don't know.

1 They're aware of the hearings progressing now and our  
2 anxiousness to receive their response. But I can't say  
3 when they'll answer.

4 HEARING OFFICER CELLI: I was hoping that we'd  
5 have some miraculous someone running in with a piece of  
6 paper and saying we've reached agreement. But I guess  
7 that remains to be seen.

8 Mr. -- go ahead, Mr. Groover.

9 MR. GROOVER: Mountain House has communicated  
10 with the new fire chief for Tracy Fire. There's supposed  
11 to be a representative, one of the deputy chiefs here  
12 today. So perhaps someone will run in with a piece of  
13 paper. But so I expect to see someone from them today.

14 HEARING OFFICER CELLI: Thank you.

15 Is there anyone now from Tracy Fire? Hearing and  
16 seeing none, we'll move on.

17 At the prehearing conference, we talked about how  
18 we would receive and we came up with the agenda  
19 essentially that -- let me actually talk about the topics  
20 that are in dispute so that you know what to expect.  
21 We're talking about disputed areas are: Air quality,  
22 alternatives, biological resources, land use,  
23 socioeconomics, soil and water resources, visual  
24 resources, worker safety, traffic and transportation,  
25 which is aviation, public health, and hazardous materials.

1           The way that we decided that we would proceed is  
2 that we will start with the land use this morning.  
3 Hopefully we'll be done with land use early in the  
4 afternoon, but not beyond 3:00. After that, we'll take  
5 air quality and public health. And when we do that, we're  
6 going to be taking panels, which means that rather than  
7 calling one witness at a time, we'll have several  
8 witnesses sitting up here at this table on my left. After  
9 that, we will take public comment this afternoon around  
10 5:00. When we're finished with public comment, we will  
11 get right into traffic and transportation and aviation. I  
12 want to be clear that there's nothing that prevents us  
13 from getting to traffic and transportation earlier if we  
14 can take air quality and land use faster than I've  
15 estimated here.

16           After that, we'll go into socioeconomics. And  
17 that's as much as I was able to project that we would be  
18 able to get done in one day. Hopefully, if we work  
19 together and are efficient, maybe we can get done today  
20 and maybe we can finish the whole kit and caboodle by  
21 tomorrow. Hope springs eternal in the human heart.

22           STAFF COUNSEL WILLIS: Excuse me, Mr. Celli.  
23 Just to be clear, we only have the witnesses coming  
24 scheduled for today.

25           HEARING OFFICER CELLI: Right. We'll see what we

1 can do. Because if it looks like we're really running  
2 through this, maybe we can have some people appear on the  
3 telephone and get into some things and speed things up.  
4 I'm sure we can make that happen.

5 I did want to say that we -- is there somebody --  
6 is there somebody on the phone who's trying to -- it was  
7 an intervenor. Thanks.

8 Since we're running parallel folks, not only are  
9 we speaking to you who are here in the room today, but  
10 we're also talking to anybody who's on the telephone. And  
11 I believe we're going to be taking some testimony on the  
12 telephone. We have to be mindful of both channels.

13 I wanted to make clear though that hazardous  
14 materials will probably have to go into the third day of  
15 hearing which was noticed for the 7th of March. And the  
16 hearing will be at the California Energy Commission. So  
17 that is the expectation of the Committee. So we don't  
18 expect to get to hazardous materials until then.

19 STAFF COUNSEL WILLIS: So just to be clear, our  
20 witness will not be present tomorrow for hazardous  
21 materials.

22 HEARING OFFICER CELLI: Right.

23 STAFF COUNSEL WILLIS: Okay.

24 HEARING OFFICER CELLI: I did send you an e-mail  
25 to that effect. Other people weren't clear. I guess it

1 didn't go to everybody who had the question.

2 Mr. Wheatland, you had a question?

3 MR. WHEATLAND: Yes, our witness made plans to be  
4 here for today and tomorrow. He's from out of town from  
5 Houston. And he canceled an international vacation to be  
6 in attendance for today and tomorrow. He's already in the  
7 air. So we're not able to turn him back. So we would ask  
8 that you take his testimony tomorrow, please.

9 HEARING OFFICER CELLI: Certainly. Boy, I hope  
10 we can get to it. But because hazardous materials was  
11 added to the last of the agenda. We can see how we can  
12 jimmy the agenda tomorrow and take just his testimony to  
13 preserve it in the record and then we'll take everyone  
14 else's witnesses on the 7th. Okay?

15 Great. With that, applicant, on the subject now  
16 of land use, let me ask, are there any Alameda County  
17 representatives here today? Can I ask you to stand up?  
18 One of you is Mr. Washington?

19 MR. WASHINGTON: I'm Mr. Washington.

20 HEARING OFFICER CELLI: And Mr. Lopez? Okay.  
21 And why don't you all step forward. I'm going to take  
22 your testimony first this morning. So come on up. I'm  
23 going to ask you to sit at this table on my left. I'm  
24 hoping those microphones are working. But please be  
25 mindful that everybody needs to hear you and we need to

1 speak directly into these microphones.

2           So please, I'll have the witnesses sworn. I'll  
3 swear them.

4           (Whereupon the witnesses were sworn.)

5           MR. WASHINGTON: I do.

6           MR. LOPEZ: I do.

7           HEARING OFFICER CELLI: Have a seat. The  
8 attorney doesn't have to take the oath. Please state and  
9 spell your name in the record, if you wouldn't mind.

10           MR. LOPEZ: My name is Albert Lopez, Planning  
11 Director for Alameda County. Spelling my name is  
12 A-l-b-e-r-t, L-o-p-e-z.

13           MR. JENSEN: My name is Bruce Jensen. I'm a  
14 Senior Planner for Alameda County Planning Department.  
15 The spelling of my name is B-r-u-c-e, J-e-n-s-e-n.  
16 Sorry.

17           My name is Bruce Jensen, Alameda County Planning  
18 Department. Spelling of my name is B-r-u-c-e J-e-n-s-e-n.

19           MR. WASHINGTON: And I'm Brian Washington,  
20 Assistant County Counsel for Alameda County. My name is  
21 spelled B-r-i-a-n. And everyone knows how to spell  
22 Washington.

23           HEARING OFFICER CELLI: Thank you. We're going  
24 to proceed in an unusual way this morning, ladies and  
25 gentlemen. The people who are before you to testify today

1 are nobody's witness in particular. They've come down at  
2 the request of the Committee to answer some questions.  
3 Since they aren't really affiliated or associated with any  
4 party in this case, we, the Committee, asked the parties  
5 to submit questions that the Committee will ask of the  
6 parties. And then afterwards, we will give some limited  
7 cross-examination to the parties so you can ask follow up  
8 questions as needed.

9           First, I have a question of Mr. Dighe's  
10 questions. Can you briefly explain your position in  
11 Alameda County and what kind of work you do for Alameda  
12 County?

13           MR. LOPEZ: As the planning director for the  
14 county, I run the planning department, staff of about 30  
15 folks. We regulate current planning as well as policy  
16 planning. Current planning involves permit processing,  
17 entitlement processing. In the policy side, it's  
18 implementing and updating the general plan for the county,  
19 including the western portions of unincorporated Alameda  
20 County, San Lorenzo, San Leandro, Castro Valley, Tri Land,  
21 Ashlands and Fair View. In the East County, we are -- the  
22 guiding document is our East County Area Plan, which I  
23 will be quoting from today.

24           HEARING OFFICER CELLI: Thank you.

25           And Mr. Jensen?

1           MR. JENSEN: I am a senior planner for Alameda  
2 County. I perform a number of tasks related to both  
3 development planning and policy planning. In the past, I  
4 have been one of the point people on working through some  
5 of the policy issues for a lot of the big projects in the  
6 East County, including some of the power plant projects  
7 that have come up.

8           HEARING OFFICER CELLI: Thank you.

9           I'm going to ask the questions that were prepared  
10 by the intervenors -- or some of the intervenors. I  
11 should state for the record, I only received questions for  
12 Alameda County from Rajesh Dighe, CalPilots, Rob Simpson,  
13 and Sierra Club. So I will be asking these questions they  
14 submitted.

15           And the way I'm going to proceed is I'm going to  
16 ask the question and I'm going to allow you to figure out  
17 who's the right person to answer the question, please.

18           Can you briefly explain what is Alameda County's  
19 voter approved Measure D?

20           MR. LOPEZ: Sure. Measure D is a voter-approved  
21 initiative. It was approved in the fall of the year 2000.  
22 Essentially is a growth control measure to define the  
23 urban growth boundary around cities. I understand it was  
24 initially brought forward to the voters in response to the  
25 development potential or the desire for development to

1 occur in the north Livermore area, which at that time  
2 there was a strong desire to keep that as open space.  
3 Measure D was passed ostensibly to curb that kind of  
4 growth and to limit the ability for new residential, new  
5 commercial and new industrial development to occur in the  
6 unincorporated non-urban growth boundary areas of Alameda  
7 County.

8 HEARING OFFICER CELLI: Does the Mariposa Energy  
9 Project, which we will be referring to throughout these  
10 proceedings as the MEP, or Mariposa, does the MEP come  
11 under Measure D?

12 MR. LOPEZ: Yes, it does. And I think it is  
13 important to clarify that the general plan which governs  
14 this area of unincorporated Alameda County is this plan  
15 that I have in front of me. It's what we call the ECAP,  
16 the East County Area Plan. This was amended by Measure D.  
17 The copy that I have here includes those amendments. And  
18 the MEP would fall under jurisdiction of this plan, the  
19 ECAP, the East County Area Plan.

20 HEARING OFFICER CELLI: Now, does the MEP violate  
21 Measure D or the ECAP?

22 MR. LOPEZ: We don't believe it does. I should  
23 probably -- what I wanted to do is actually ask too we did  
24 have a prepared statement that addresses some of these  
25 issues. And I don't know if I could just read that into

1 the record. It does address that issue as well as a  
2 variety of other issues.

3 HEARING OFFICER CELLI: Please do.

4 MR. LOPEZ: Thank you very much.

5 Alameda County has been working with the  
6 developers of the MEP since July of 2008 to ensure that  
7 the project is compatible with applicable laws,  
8 ordinances, regulations and standards, what we refer to as  
9 LORS, as no unmitigated impacts and provides benefits to  
10 our county. We've also reviewed applicable county adopted  
11 plans and find that MEP is consistent with all LORS that  
12 have bearing on the project site, including the East  
13 County Area Plan, the ECAP, the specific provision of ECAP  
14 regarding Byron Airport and the Williamson Act. County  
15 staff finds that the project is consistent with the  
16 county's general plan and in particular ECAP as amended by  
17 Measure D. Although the passage of Measure D in 2000 did  
18 place more restrictions on land use and development  
19 intensity, it does explicitly allow public infrastructure  
20 such as the current project so long as the .01 floor to  
21 area ratio, FAR, is not exceeded, which in this case it is  
22 not.

23 The county considers a project a public facility  
24 because it would serve a key need of the public at large  
25 in order to provide adequate electrical services.

1           MR. SIMPSON: I'm sorry. There's so much  
2 feedback, it's hard to understand the words.

3           MR. LOPEZ: Am I talking too close? Too far?  
4 Slower. Okay.

5           MR. SINGH: I want to make a request. English is  
6 not --

7           HEARING OFFICER CELLI: Mr. Singh, we have to  
8 have you speak into a microphone.

9           MR. SINGH: Sorry about that. You know, our  
10 first language is not English. So we have difficulty in  
11 understanding all these terminologies. If you can please  
12 slow down and speak slowly, it would really help us.

13          MR. LOPEZ: I will do that.

14          HEARING OFFICER CELLI: Thank you.

15           I just want to remind all of the parties that  
16 this is a formal hearing and so all of your comments must  
17 be addressed to the Committee. So we don't have cross  
18 talk amongst the parties. Go ahead, if you wouldn't mind  
19 resuming.

20          MR. LOPEZ: I'll slow it down. The county  
21 considers the project a public facility, because it would  
22 serve a key need of the public at large in order to  
23 provide adequate electrical services.

24           It is also considered infrastructure under the  
25 definition provided in Policy 13 of the East County Area

1 Plan and will not have an excessive growth inducing effect  
2 on the East County area as it is not designed to support  
3 empty quantity of new development in excess of what is  
4 permissible in the plan. As a peaker plant, this project  
5 does not seek to promote new development but is designed  
6 to serve existing power users within the regional network.

7           Two other projects in the past ten years have  
8 come before this Commission under nearly identical  
9 conditions and in both cases the county has landed in the  
10 same place and your Commission has agreed. As such, the  
11 county's application of its LORS to the project is  
12 consistent with the county's prior practice.

13           County staff also finds that the project is  
14 consistent with those provisions of the East County Area  
15 Plan that have a bearing on Byron Airport. These include  
16 issues such as height limitations, glare, potential bird  
17 strikes, and electronic interference. Our letter to the  
18 Commission on September 17th, 2010, provides further  
19 detail and analysis on these issues. We also recognize  
20 that the FAA, which has sole jurisdiction over aircraft  
21 and pilot safety issues, has already issued determinations  
22 of no hazard to air navigation for the project stocks and  
23 power lines which also included an analysis of the  
24 project's plumes.

25           Furthermore, we understand that in performing its

1 air nautical study on the project the FAA was required to  
2 consider the plan of runway extractions which are  
3 specified in the Byron Airport master plan as though they  
4 already exist at their planned future lengths.

5           We find that these FAA determinations are  
6 sufficient for a finding of compatibility for the project  
7 with the Byron Airport with respect to air safety.

8           Is that better, folks?

9           The parcel on which the project will be located  
10 is under a Williamson Act contract. The property subject  
11 to the Williamson Act contract is considered non-prime,  
12 non-irrigated grazing land. By letter dated July 6th,  
13 2009, the State Department of Conservation agreed that the  
14 project would be a compatible use under the Williamson Act  
15 and would be defined so that the parcel remains in  
16 agricultural use. Given that Mariposa has committed to  
17 reseeding the lay down areas and to the placement of  
18 permanent agricultural water sources on the parcel, the  
19 parcel will be able to support as many cattle on the  
20 remaining 146 acres after the project is built as are  
21 currently supported and is thus consistent with the  
22 Williamson Act.

23           Finally, we note that the applicant has been in  
24 contact with the Alameda County fire chief and fire  
25 marshal. We believe the county's fire and first responder

1 services are adequate to serve the project. The fire  
2 chief and fire marshal both reviewed the project's  
3 hazardous materials lay out and fire protection and  
4 believe that both plans are adequate. It is unlikely that  
5 the power plant will require significant fire protection  
6 or other first responder services from the county. We  
7 further note that the project will have a dedicated fire  
8 water tank that will be available for Alameda County to  
9 use in case of a grass fire or other emergency in the  
10 area.

11           For all the reasons just discussed, we believe  
12 that the Mariposa Energy Project is compatible with  
13 applicable LORS and should be approved by the Commission.  
14 I would also note that a representative from our county  
15 counsel's office is present today, as is Mr. Jensen,  
16 should you have any questions that are legal in nature or  
17 technical in nature or relate to county protocols. County  
18 counsel has reviewed all actions taken and documents  
19 prepared by county staff in relation to this project and  
20 has provided legal analysis where needed.

21           And that concludes our statement. Thank you.

22           HEARING OFFICER CELLI: Thank you.

23           Now I have to go through the questions that  
24 everybody asked and sort of strike certain things that  
25 you've answered. And forgive me if I end up asking the

1 same questions over again and cover ground because I  
2 haven't prepared for that.

3           Let me ask you, how does the MEP qualify as  
4 "infrastructure" in excess of that needed for permissible  
5 development consistent with the initiative?

6           MR. LOPEZ: Well, I believe I touched on that in  
7 terms of Policy 13 of the East County Area Plan does  
8 provide an infrastructure. It does allow infrastructure  
9 as a use. As a peaker plant -- and I'm not a power  
10 person. I don't necessarily understand all of the nuances  
11 of power distribution and such. But I do understand that  
12 as a peaker plant, this will provide power when there is  
13 excess demand. And it does not in and by itself create  
14 more demand for development that is permissible by the  
15 land.

16           HEARING OFFICER CELLI: Do you have a definition  
17 for infrastructure in the ECAP?

18           MR. LOPEZ: Yes, there is. If you give me a  
19 second to locate that, I could find that for you.

20           HEARING OFFICER CELLI: And really, the question  
21 is how does the MEP qualify as infrastructure under the  
22 definition?

23           MR. LOPEZ: Sure. That definition is here.  
24 Infrastructure shall include public facilities, community  
25 facilities and all structures and development necessary to

1 the provision of public services and utilities as a  
2 provider of energy power. I think it's very clear this is  
3 a public service.

4 HEARING OFFICER CELLI: Mr. Groover, you have a  
5 question?

6 MR. GROOVER: Yes, Mr. Chair. May I get a copy  
7 of that prepared statement, please?

8 HEARING OFFICER CELLI: Would you be willing to  
9 provide us an electronic copy?

10 MR. LOPEZ: Sure. That is not a problem. I  
11 didn't bring extra copies, but I think we might be able to  
12 dig one up here or get a copy made here today.

13 HEARING OFFICER CELLI: Thank you.

14 MR. SIMPSON: I'm sorry. I didn't hear the  
15 question.

16 HEARING OFFICER CELLI: The question is will they  
17 provide a copy of the statement, the prepared statement  
18 that Mr. Lopez wrote. And I asked if he would send it to  
19 me. And I will make that Committee's Exhibit A. So  
20 Exhibit A is a prepared statement by Mr. Lopez, which when  
21 we receive a copy I will disseminate to all the parties.

22 So the question was -- Mr. Sarvey, did you have a  
23 question?

24 MR. SARVEY: Shouldn't that have been pre-filed  
25 testimony, Mr. Celli?

1           HEARING OFFICER CELLI:  Actually, since he's no  
2 party's witness, there's sort of an afterthought.  The  
3 contact was made after the prehearing conference  
4 statement.  And the Committee felt that it was important  
5 for everyone to hear from Alameda County directly, because  
6 initially we hadn't planned on having Alameda County here  
7 at all.

8           MR. SARVEY:  I understand.  But I would object it  
9 wasn't pre-filed.

10          HEARING OFFICER CELLI:  Objection noted.  Thank  
11 you.  Your objection is preserved.

12          Now, the next question is whether there is a  
13 violation of policy 52 of the ECAP, because when the MEP  
14 site has windmills around it and land is supposed to be  
15 kept open for agricultural open space, I guess the  
16 question is does the project violate policy 52.  We have  
17 an excerpt here that says the county shall preserve open  
18 space that's for the protection of public health and  
19 safety, provision of recreational opportunity, production  
20 of natural resources such as agriculture, windmill, and  
21 mineral extraction and protection of sensitive  
22 (inaudible).

23          MR. LOPEZ:  Well, I don't think that violates  
24 policy 52.  You have to look at the East County Area Plan  
25 as a whole.  I mean, the ECAP as admitted by Measure D is

1 I think at its core an open space initiative. It is  
2 designed to preserve open space. It does however allow  
3 some development to still occur to infrastructure being  
4 one of those types of development or types of facilities I  
5 guess you should say. So I don't believe that the MEP  
6 violates policy 52. There's a lot of other policies in  
7 the plan and programs of the county that you preserve open  
8 space explicitly. So I don't think there's any concern in  
9 regards to that particular policy.

10 HEARING OFFICER CELLI: The same question with  
11 regard to policy 54. And just as you're looking, there's  
12 the same question with regard to 54, 72, 85, 93 and 218.  
13 52, the excerpt I have is the county shall approve only  
14 open space, park recreational, agricultural, limited  
15 infrastructure public facilities such as limited  
16 infrastructure, hospitals, research facilities, landfill  
17 sites, jails, et cetera, and other similar and compatible  
18 uses outside the urban growth boundary.

19 MR. LOPEZ: Well, as a public facility and  
20 infrastructure, this would clearly fall within the  
21 categories of those uses that could be approved outside  
22 the urban growth boundary. So I don't think there is a  
23 problem with policy 54 either.

24 HEARING OFFICER CELLI: Also policy 72? While  
25 you're looking for that, I just want to mention, Mr.

1 Dighe, that the question with regard to Williamson Act was  
2 measured in his prepared statement. So I won't be asking  
3 that question.

4 MR. DIGHE: In question 4, 5, 6; correct?

5 HEARING OFFICER CELLI: Right. The same reason  
6 he covered that in his prepared statement.

7 MR. DIGHE: I just want to make sure I guess the  
8 information for 4, 5, 6 specifically actually.

9 HEARING OFFICER CELLI: I did ask four.

10 MR. DIGHE: How about the fifth? Because it's a  
11 quote and that's why I want to make sure he believes in  
12 that. Thank you.

13 HEARING OFFICER CELLI: Let me let him answer the  
14 last question, which was was it consistent with the policy  
15 72.

16 Go ahead, Mr. Jensen.

17 MR. JENSEN: Thank you.

18 Policy 72 states that the county shall preserve  
19 the Mountain House area for intensive agricultural use.  
20 It asks us to look at the definition of Table 1. Our  
21 sense is that because this parcel is located in an area  
22 where the agriculture has been and probably will continue  
23 to be marginal in its natural state and because it's only  
24 been used as marginal grazing land for many years, it's  
25 not considered to be prime soils. It's not an area that

1 has ever been used as intensive agriculture. This  
2 particular project would not -- would not be found out of  
3 compliance with that policy. The area where intensive  
4 agriculture actually occurs in the Mountain House area is  
5 not really affected by this project at all.

6 HEARING OFFICER CELLI: Thank you.

7 Let me ask you -- I'm going to go back to  
8 question five, which says with reference to the May 20th,  
9 2010 letter submitted by Chris Bazar, it is somewhat clear  
10 that MEP is not easily consistent with the ECAP, but he  
11 says he believes it is possible to make it consistent with  
12 ECAP with judicious use of planning and mitigation. Do  
13 you agree with that?

14 MR. LOPEZ: Which letter were you referring to?

15 HEARING OFFICER CELLI: The May 20, 2010, which  
16 has been marked as Exhibit 41 as a letter to Craig Hoffman  
17 from Chris Bazar.

18 MR. LOPEZ: Which page are you referring to?  
19 First page.

20 HEARING OFFICER CELLI: What page, Mr. Dighe, on  
21 that?

22 MR. DIGHE: It was the first page actually.

23 HEARING OFFICER CELLI: Under general.

24 MR. LOPEZ: Yes, the statement in the letter  
25 dated May 20th from our Agency Director Chris Bazar states

1 that the county staff believes that the proposed project  
2 is or can be made consistent with all applicable policies  
3 of the Alameda County general plan, in particular the ECAP  
4 with judicious use of planning and mitigation measures and  
5 that the ECAP does not preclude construction of a power  
6 plant outside the urban growth boundary on lands  
7 designated for large parcel agriculture use. So the  
8 question is -- sorry. What was the question?

9 HEARING OFFICER CELLI: The question was do you  
10 agree with that?

11 MR. LOPEZ: I do agree with this statement.

12 HEARING OFFICER CELLI: The next question is on  
13 what basis is construction of power plant on lands  
14 designed for large parcel agricultural use -- agricultural  
15 use consistent with the ECAP? I know you've already  
16 covered some of that. But if you would.

17 MR. LOPEZ: Sure. Well, again, public and quasi  
18 public uses/infrastructure are allowed outside the urban  
19 growth boundary. And as such, and referring back to  
20 Policy 13 of course, and this project squarely falls with  
21 this that definition of a public or quasi public use.

22 HEARING OFFICER CELLI: And I don't know if it's  
23 you or Mr. Jensen who speaks to whether the MEP is  
24 consistent with the policy 76, 85, 93, and 218. And it  
25 has to do with the Williamson Act and supporting

1 agricultural uses.

2 MR. LOPEZ: I believe Mr. Jensen stated in  
3 regards to policy 72, this is not a high yield  
4 agricultural area. In fact, the definition in policy 72  
5 of intensive agricultural use is just that, that it be  
6 high yield crop of land. We don't believe that policy 76  
7 necessarily applies to this just because the land where  
8 the MEP is located is not high yield agricultural land. I  
9 don't believe it would have any impacts on agricultural  
10 production in adjacent counties of either San Joaquin,  
11 Contra Costa or Santa Clara.

12 HEARING OFFICER CELLI: And wouldn't that be the  
13 same answer with regard to Policy 93 which seeks to  
14 stimulate agricultural investment?

15 MR. LOPEZ: I believe that is the same answer.  
16 One thing is that we do other parts of unincorporated  
17 Alameda County, specifically the Livermore Valley, for  
18 example, where we do stimulate agricultural investment.  
19 In this particular case, viticulture, but that would not  
20 necessarily apply to the MEP site.

21 HEARING OFFICER CELLI: And lastly, policy 218  
22 seeks to develop an expansion of public facilities that  
23 the county shall allow development and expansion of public  
24 facilities in appropriate locations outside the urban  
25 growth boundary consistent with the policies and land use

1 diagram of east end county area plan. Is the question --  
2 the question is is the MEP consistent with policy 218 or  
3 does it violate the policy 218?

4 MR. SIMPSON: I'm sorry. It was hard to hear a  
5 lot of what you said there.

6 HEARING OFFICER CELLI: The question was whether  
7 the MEP will be consistent or violate policy 218 of the  
8 ECAP.

9 MR. LOPEZ: I don't believe there is the  
10 violation of policy 218. Either this very explicitly  
11 allows utilities and infrastructure outside the urban  
12 growth boundaries. So I don't think we have a problem  
13 there.

14 HEARING OFFICER CELLI: One other point that's  
15 made in the question here regarding policy 76 mentions  
16 that the county shall work with the San Joaquin County  
17 among others, Contra Costa, Santa Clara. Did Alameda  
18 County work with San Joaquin with regard to this  
19 particular development?

20 MR. LOPEZ: No. As the host community, we are  
21 obligated and you could say mandated to review this  
22 project and any other sort of outcome of the review of  
23 that project and any other agreement that we enter into  
24 with the MEP to the benefit of Alameda County. Not to say  
25 that we would intentionally do something to harm any other

1 county. But that is really our function. That's our job  
2 is to negotiate on behalf of Alameda County.

3           There's likely similar counterparts of planning  
4 director and AC Director in San Joaquin County that I  
5 imagine would do the same for their county. So to answer  
6 your question, we did not explicitly -- at least I don't  
7 think we did -- work with our adjacent counties in regards  
8 to this project. But nor do I think that we are  
9 necessarily required to do so.

10           HEARING OFFICER CELLI: Okay.

11           MR. SIMPSON: I am sorry. We're all having  
12 trouble at this end of the table with understanding the  
13 words come out of his mouth because it's so much echo.

14           HEARING OFFICER CELLI: Okay. So the best we can  
15 do right now is try to find a place -- if I talk really  
16 close, you know, this actually sounds pretty good to me  
17 right now.

18           MR. LOPEZ: You can probably hear me better if I  
19 don't use a microphone at all I imagine. But these guys  
20 back here, the techy folks, don't like it.

21           HEARING OFFICER CELLI: The question is can you,  
22 Mr. Petty, hear him without the microphone?

23           MR. PETTY: I can hear him better without the  
24 microphone.

25           HEARING OFFICER CELLI: But I also have a WebEx

1 broadcast going and I want to know what the word is from  
2 them. So here's the plan. What if he projected but  
3 projects from this distance like so, so it is going  
4 feeding through the microphone but he's speaking loudly  
5 enough for everyone to hear in the room. I'm going to  
6 strain your vocal cords, folks. Sorry. But give it a  
7 whirl and see how we do.

8 MR. SIMPSON: We can hear you.

9 HEARING OFFICER CELLI: I'll shout it out today  
10 folks. Thank you.

11 To Mr. Mainland, you're raising your finger for a  
12 question or that you can hear?

13 MR. MAINLAND: Just a request. If Mr. Lopez  
14 would please repeat his last statement which was not heard  
15 down here on this end.

16 MR. LOPEZ: Sure. The question was whether or  
17 not we had in regards to policy 76 of the East County Area  
18 Plan business we had worked with San Joaquin, Contra Costa  
19 or Santa Clara County.

20 HEARING OFFICER CELLI: Louder.

21 MR. LOPEZ: The question was whether we had  
22 worked -- Alameda County had worked with either San  
23 Joaquin, Contra Costa, or Santa Clara County to review  
24 this project.

25 And my response was that because we are the host

1 community, my agreement any review of the project we take  
2 is to the benefits of Alameda County. We don't believe  
3 that we were remiss to not work with the adjacent counties  
4 simply because I don't believe that we're required to do  
5 so. This specific policy is in regard to impacts on  
6 agricultural land. As we've already stated, the MEP is  
7 located on a parcel that has very marginal agricultural  
8 lands. We do not believe that the approval of the MEP by  
9 this Commission would underline the agricultural  
10 production or the ability for those adjacent counties to  
11 engage in agricultural uses in their county lands. And  
12 that is more or less how I answered that previously.

13 HEARING OFFICER CELLI: Thank you. I have to  
14 make this point of clarification. Because we first of  
15 all -- I am looking over there. Matt? So what I'm doing  
16 is speaking about five inches away from my microphone.  
17 I'm speaking loudly so everyone can hear me in the room,  
18 yes? Do I have nodding heads? People are saying they can  
19 hear me fine.

20 The problem was luckily the lands answer was a  
21 repeat of the previous answer. But the panel will need to  
22 speak into the microphones because the WebEx people, the  
23 people on the telephone can't hear. So I'm sorry, folks,  
24 but we're going to have a suffer a little echo. And I  
25 need you to speak into the microphones enough to get a

1 boosted signal to the telephone. So thank you.

2 With that, I'm going to strike question 14  
3 because it is outside of their jurisdiction. We can talk  
4 about that later.

5 MR. SINGH: As I made a request, English not  
6 accurately my primary language, please speak slow. I  
7 again request, sir.

8 HEARING OFFICER CELLI: Okay. Everyone will do  
9 our best to accommodate that. But we need to --

10 MR. SINGH: This is a minority town and we want  
11 people to hear it, sir.

12 HEARING OFFICER CELLI: I understand. And I'm  
13 doing my best, but English is the language unfortunately  
14 we all have in common. It's the one we're speaking. I'm  
15 going to try to speak slowly but we have to get -- we have  
16 a lot of business to cover. So we need to move at pace.

17 So with that, I'm going to tell Mr. Dighe I'm not  
18 going to be asking question 14. They don't approve. We  
19 approve. The Energy Commission approves. So it's not  
20 theirs to answer that.

21 The environmental impacts to Alameda County,  
22 because of the MEP with regard to the GHG emissions, I'm  
23 going to ask a question. The question is does it bother  
24 Alameda County that this project will have GHG emissions?  
25 That's the question.

1           MR. LOPEZ: Well, we have a number of climate  
2 related programs and plans that we work on in Alameda  
3 County. As a matter of fact, right now, we are working on  
4 the county's climate action plan. That is a series of  
5 programs and policies to reduce greenhouse gas emissions  
6 throughout the unincorporated areas of Alameda County.  
7 So, yes, greenhouse gas emissions are always of concern to  
8 Alameda County, specifically the planning department. And  
9 to me personally as I think I would speak for Bruce Jensen  
10 as well as our senior planner who is in charge of our  
11 climate action planning.

12           But that said, as you stated, I think just a  
13 second ago is that Alameda County is -- we are a concerned  
14 party but we are not the approving body for this project.  
15 We did through our cooperation agreement try to address  
16 some of the mitigation -- some of the impacts of GHGs  
17 through mitigation that can have a positive impact on GHG  
18 here in Alameda County. And so I could go into that if a  
19 question arises around that issue. But it is a little bit  
20 of a leading question it's whether or not Alameda County  
21 is bothered by GHG. You're getting just the opinion of  
22 the planning director and the gentleman that runs our  
23 climate action plan. So you're probably getting an  
24 opinion that may not be reflected of the Board of  
25 Supervisors who ultimately determine what the county's

1 bothered by.

2 HEARING OFFICER CELLI: Thank you.

3 And Mr. Dighe, question 16 and 17 both go to  
4 demand and supply of PG&E energy which is outside of  
5 Alameda County's jurisdiction. In other words, that's  
6 within ours. So what I will ask is what are the different  
7 mitigation and community benefits proposed by Mariposa,  
8 LLC, to Alameda County?

9 MR. SIMPSON: I am sorry. Can you repeat that?

10 HEARING OFFICER CELLI: Yes. The question is:  
11 What are the different mitigation and community benefits  
12 proposed by Mariposa Energy, LLC, to Alameda County?

13 MR. LOPEZ: The answer to that question is on  
14 June 2nd of 2010, the Community Development Agency went to  
15 our Board of Supervisors. They meet in Oakland. And the  
16 subject of this item was a cooperation agreement between  
17 the Mariposa Energy Project and the county of Alameda. As  
18 I mentioned before, as the host community, we are  
19 obligated to review the project and to strike any  
20 agreement that we make with Mariposa to the benefit of  
21 Alameda County. Specifically, we were concerned about  
22 some of the health and safety issues, GHG air quality, and  
23 items of that nature.

24 We do have a cooperation agreement that was  
25 approved by the Board of Supervisors. It was a very

1 standard operating procedure. It was done very  
2 transparently. This is all public record available on our  
3 website. The cooperation agreement covers a couple of  
4 different things. Probably just getting directly to your  
5 question, it does provide payment to Alameda County in the  
6 amount of \$1.2 million to cover three specific items:  
7 \$600,000 for a health care facility or youth center in the  
8 Tri Valley area; \$150,000 for the county's climate action  
9 plan and other environmental review, CEQA review, and  
10 other efforts related to alternative energy, energy  
11 efficiency, or greenhouse gas reduction; 450,000 for the  
12 unincorporated East County Pace program. The Pace program  
13 is a program promoted by the State of California to allow  
14 installations of solar panels on residential property.  
15 That installation -- the cost of that installation is  
16 spread out over a 20-year plan and recouped through  
17 property tax. That funding from Mariposa would help us to  
18 administer and to create that program in an eastern  
19 Alameda County.

20           The other part to the cooperation agreement  
21 relates to mostly permitting and expediting and obligates  
22 the county to respond in a timely fashion to request for  
23 easements for encroachment permits and as well as for the  
24 delivery of county services and the approval of permits.

25           So in sum, the cooperation agreement approved by

1 the Board of Supervisors of Alameda County covers not just  
2 sort of who's going to do what, but also stipulates the  
3 mitigation payments to the county of Alameda and what  
4 those payments are to be used for.

5 HEARING OFFICER CELLI: Thank you.

6 MR. SIMPSON: Pardon me. I'd like to object to  
7 not asking the prior question regarding need for the  
8 facility. It sounds like the county faced its contention  
9 on this project by beneficial use of this electricity it  
10 sounds like. But the question that wasn't asked sounds  
11 like it's germane.

12 HEARING OFFICER CELLI: I'm going to let you ask  
13 that question when we're finished with the questions that  
14 were submitted. I'm going to let each of the parties go  
15 around and ask one or two questions. I would like you to  
16 hold that question and ask it later if you would. Thank  
17 you.

18 So the next question -- just Mr. Dighe, I just  
19 want you to know that in the socio -- in the  
20 socioeconomics section, there is a complete analysis of  
21 how much tax revenue will be generated by the MEP and how  
22 many jobs will be created. And that would be in the FSA  
23 in the socioeconomics question. But I'm going to go ahead  
24 and ask if you know. And if you don't know, that's fine.  
25 The question was: Do you know the annual projected yearly

1 tax revenues from the MEP?

2 MR. LOPEZ: I do not know the answer to that  
3 question.

4 HEARING OFFICER CELLI: How about how many jobs  
5 will be created in Alameda County?

6 MR. LOPEZ: I've heard that during construction  
7 there will be somewhere between 150 and 200 jobs during  
8 construction with a much smaller I think about a dozen or  
9 so jobs once it's under operation.

10 HEARING OFFICER CELLI: And just to be clear,  
11 that information will be in the socioeconomics section.

12 This next set of questions comes from the  
13 California Pilots Association. It references applicant's  
14 Exhibit Number 41, which was the letter of additional  
15 analysis dated May 20th, 2010, to Mr. Hoffman from Mr.  
16 Bazar. Is that how you pronounce it?

17 And Exhibit 49, what is Exhibit 49, Mr. Wilson?  
18 I'm not sure what that document is.

19 MR. WILSON: There were two letters from Alameda  
20 County. I think they're looking at them now.

21 HEARING OFFICER CELLI: Okay. And 49 hasn't been  
22 moved in yet. We'll move in exhibits after we hear from  
23 Alameda County today. So the question is regarding policy  
24 150. The county shall recognize the Byron (East Contra  
25 Costa County) airport as a regional resource and shall

1 work with Contra Costa County to ensure that land use is  
2 approved in Alameda County within the Byron Airport's  
3 referral area are compatible with the airport's  
4 operations.

5           The question is what has Alameda County done to  
6 ensure that ECAP policy 150 has been implemented to  
7 protect Byron in the east Contra Costa County Airport  
8 pursuant to ECAP policy 150 with regard to the Mariposa  
9 Energy Project?

10           MR. JENSEN: We have looked to both our ALUC and  
11 to the policy in the ECAP as well as to the efforts that  
12 have taken place within this forum in front of the CEC in  
13 order to try to determine whether or not there could be a  
14 potential existing conflict between the proposals for  
15 Alameda County and the operations of the airport.

16           Our ALUC has told us that they do not have a  
17 specific level of jurisdiction over the airport and its  
18 relationship to the land use in our county. We are under  
19 the impression and we believe it's a correct one that the  
20 ALUC in Contra Costa County also does not have  
21 jurisdiction over land use outside the boundaries of  
22 Contra Costa County. We have looked at the airport land  
23 use plan for the Byron Airport and we note that this is in  
24 I believe it's called sector D. And sector D basically  
25 doesn't do -- doesn't provide a lot of restriction on the

1 type of development. It does set a maximum height limit  
2 of around 100 feet. I believe that the height limits for  
3 this project are below 100 feet. And otherwise it doesn't  
4 have any other restrictive requirements for the type of  
5 development that can occur in that sector.

6           To the extent that the existing policies and  
7 plans don't restrict this type of development, Alameda  
8 County has made a statement to that effect in the document  
9 that we submitted on September 17th and we believe that  
10 probably fulfills that requirement. We're not sure what  
11 else we could do, especially in recognition of the FAA's  
12 determination that there's no hazard as a result of the  
13 juxta positions as it is of these two land uses.

14           HEARING OFFICER CELLI: My next question here  
15 from CalPilots is does the Alameda County land use policy  
16 plan as adopted July 16th, 1986, address and protect the  
17 Byron Airport pursuant to Public Utilities Code Section  
18 21670.4?

19           MR. JENSEN: We don't have the document in front  
20 of us right now. And we weren't anticipating that we  
21 would need to have our transportation planner here. She  
22 would have all of that information I think at the tip of  
23 her fingertips. I think we have to say that we don't know  
24 a precise answer to that question right now.

25           HEARING OFFICER CELLI: Okay. The next question

1 is under what authority does Mr. Bazar, the director of  
2 Alameda County Community Development Agency, have to  
3 overrule the Alameda County Airport Land Use Commission to  
4 review and comment on the Mariposa Energy Project which is  
5 located in Alameda County when in fact they have done so  
6 for the Russell City Energy Center and East Shore Energy  
7 Center?

8 MR. JENSEN: To the first point, Mr. Bazar does  
9 not have the authority to overrule the ALUC for matters  
10 that are within the ALUC's jurisdiction. And in the case  
11 of the East Shore Energy Center and the Russell City  
12 Energy Center, both of those fell under the jurisdiction  
13 of the Alameda County ALUC. In this case, because the  
14 airport is a one jurisdiction and because the land use in  
15 question which is the Mariposa energy proposal is in  
16 another jurisdiction, the ALUC does not have the  
17 jurisdictional authority to comment on the juxta position  
18 of these two land uses. Mr. Bazar's letter does not  
19 therefore overrule their authority. And it does talk  
20 directly to the land use issues that are within the  
21 planning department's and the county of Alameda's purview.

22 HEARING OFFICER CELLI: Thank you.

23 The next set of questions comes from intervenor  
24 Rob Simpson. A perfect segue. What was the basis for the  
25 county opposition of the Russell City energy center and

1 the East Shore Energy Center compared to the support for  
2 this project?

3 MR. LOPEZ: Well, both of those projects were in  
4 another jurisdiction. They were both in the city of  
5 Hayward. They then fall under the jurisdiction of Alameda  
6 County in terms of being the lead agency pursuant to CEQA  
7 or to as the approving body.

8 HEARING OFFICER CELLI: Does the county have --  
9 the question is: What effect would Alameda County's  
10 nuisance laws have on the project were it not for  
11 jurisdiction of the Energy Commission?

12 MR. LOPEZ: Well, I mean, I think the role of the  
13 Energy Commission is to approve a project like this. Do  
14 you want me to ask the question I guess it would fall back  
15 to the county to review it and we would be doing our due  
16 diligence. We would be doing environmental review as well  
17 as a review of all of the environmental impacts mitigation  
18 measures and such. That is not the case. The State is  
19 the approving body and we do have a role and I think  
20 that's why we're here today is to help fulfill that role.

21 HEARING OFFICER CELLI: Thank you very much for  
22 that.

23 The question is did the county consult with its  
24 public health department regarding this project? The  
25 question was did the county consult with its public health

1 department prior to approving this project?

2 MR. WHEATLAND: Can I ask for clarification? I  
3 don't believe the county has approved this project. I  
4 believe that's the Energy Commission's role.

5 HEARING OFFICER CELLI: I'm sorry. I'm reading  
6 directly. Let's ask it this way. Did the county consult  
7 with the Public Health Department regarding this project  
8 at all?

9 MR. LOPEZ: I do not believe that we did.

10 HEARING OFFICER CELLI: Did the county consult  
11 with its Agricultural Advisory Committee regarding this  
12 project?

13 MR. LOPEZ: I don't think that we did.

14 HEARING OFFICER CELLI: Would this project, were  
15 it not for the Energy Commission's jurisdiction, be  
16 subject to a conditional use permit?

17 MR. LOPEZ: I don't know.

18 HEARING OFFICER CELLI: Mr. Jensen, do you have a  
19 different answer?

20 MR. JENSEN: If this project were to come before  
21 Alameda County as the lead agency, and we were to look in  
22 the general plan at the allowance that we have for it, we  
23 were to take the same approach that we took in the letter  
24 that we submitted in May, then we would probably require  
25 the Mariposa Energy, LLC, to come to us with an

1 application for a conditional use permit. And it would  
2 get a full environmental review and we would take it past  
3 every agency and every group or individual with an  
4 interest in it in order to determine what kind of  
5 conditions of approval it would need and ultimately  
6 whether or not we would approve the project.

7 HEARING OFFICER CELLI: Is there a limit to how  
8 many projects of this nature can be developed in this  
9 area? Or specifically, is there a limit on how many  
10 projects of this nature can be developed on this parcel?

11 MR. LOPEZ: The limitation on the parcel is  
12 governed by the large parcel agricultural designation in  
13 the East County Area Plan. As I mentioned earlier, there  
14 is a .01 FAR floor to area ratio roughly -- roughly if you  
15 have a 100 acre parcel, you're allowed .01 of that to be  
16 used as to cover that with structures. So on the parcel  
17 itself, there is that limitation of development and that  
18 would also apply in some ways to the entire East County  
19 area. In terms of how many other power plants or energy  
20 projects like this could be approved in the East County  
21 area, I really don't have an answer to that question.

22 HEARING OFFICER CELLI: Should Alameda County  
23 share the mitigation package or other revenues from this  
24 project with neighboring counties for increased pressure  
25 on its fire department or for other reasons is the

1 question?

2 MR. LOPEZ: I am sorry. Could you repeat the  
3 question?

4 HEARING OFFICER CELLI: Should Alameda County  
5 share the mitigation package or other revenues from this  
6 project with neighboring counties for increased pressure  
7 on its fire department or for other reasons?

8 MR. LOPEZ: Well, in regards to fire, I know that  
9 there is -- I can't remember what you call the agreement.  
10 There is an agreement between both the fire agencies to I  
11 guess it's a mutual aid agreement. So I think that that  
12 particular item has been addressed to that process.  
13 Again, as the host community, we negotiated our  
14 cooperation agreement to the benefit of Alameda County.  
15 And I think there could be some spill over benefits to  
16 adjacent counties just in regards to air quality for some  
17 of the things that we're trying to do. But we aren't  
18 required to nor do we ever anticipate or think that we had  
19 to share any of the resources from this project with  
20 adjacent counties.

21 HEARING OFFICER CELLI: This next question, just  
22 I'm going to modify a little bit, Mr. Simpson, because  
23 Alameda County doesn't approve the project. So I think  
24 the way I would ask this next question is would the  
25 county's determination that the MEP project does not

1 violate the ECAP, would they have made that determination  
2 without the benefit package? Do you understand the  
3 question? I think that's where you were going with the  
4 question, Mr. Simpson.

5 MR. SIMPSON: Thank you.

6 MR. LOPEZ: Well, I think the answer to the  
7 question is no, and we wouldn't -- well, we would have  
8 come down in the same place whether or not there was a  
9 benefit. The letter that we sent to Mr. Craig Hoffman on  
10 May 20th of the CEC where we essentially lay out the very  
11 general -- the general principles of why the project is  
12 consistent with the East County Area Plan, that was dated  
13 May 20th. This was our official record of finding that  
14 the project was compatible with LORS. We didn't go to our  
15 Board until a month later or so with the cooperation  
16 agreement. So I can't remember exactly how you worded the  
17 question, but there is not necessarily relationship  
18 between the two.

19 HEARING OFFICER CELLI: Okay. Would the project  
20 impede upon the Alameda County right to farm? And that's  
21 in quotes. So I take it that's a term of art.

22 MR. LOPEZ: No, it would not.

23 HEARING OFFICER CELLI: Thank you. And then  
24 finally, I'm going to ask some questions from the Sierra  
25 Club. A lot of these questions were really addressed in

1 the statement, but I'll just generally ask again how you  
2 consider the MEP to fall within the category of a public  
3 use.

4 MR. LOPEZ: As a provider, a producer of energy,  
5 I believe that the definition of infrastructure and public  
6 and quasi public uses -- in our view, the project, all the  
7 buildings and all the lateral lines that they need to  
8 construct are considered infrastructure as allowed by  
9 Policy 13.

10 HEARING OFFICER CELLI: Thank you.

11 And what does the county consider a quasi public  
12 use or and would the MEP fall under the category of a  
13 quasi public use?

14 MR. LOPEZ: The question again was what do we  
15 consider to be a quasi public use?

16 HEARING OFFICER CELLI: Yes. And whether the MEP  
17 would fall under the category of a quasi public use.

18 MR. LOPEZ: Yes. What we were just discussing  
19 here was that a quasi public use would be some sort of a  
20 service or need that's provided by a -- potentially could  
21 be provided by a private entity but that would be for the  
22 benefits of the public. Much like a utility.

23 MR. CARLTON: I'm sorry. I didn't understand  
24 that.

25 MR. LOPEZ: It would be a service or product

1 provided to the public that could be provided either by a  
2 private entity or some sort of hybrid private entity with  
3 some sort of government oversight. So the answer is that  
4 we believe the MEP does qualify as either -- we consider  
5 to be a public or quasi public use.

6 MR. CARLTON: I didn't hear the last sentence.  
7 You consider --

8 MR. LOPEZ: We consider the MEP to be a public or  
9 quasi public use.

10 HEARING OFFICER CELLI: Did you hear that?

11 MR. CARLTON: Yes.

12 HEARING OFFICER CELLI: Okay. Measure D deleted  
13 language from the ECAP that previously permitted "other  
14 industrial uses appropriate for remote areas and  
15 determined to be compatible with agriculture." Does the  
16 county agree that when a piece of legislation makes a  
17 specific change that the change must have meaning? It's  
18 kind of argumentative, but if you can answer that  
19 question.

20 MR. LOPEZ: I do believe that removing those  
21 words does have meaning. Also, Measure D did put some new  
22 words in that have meaning in regard to this project,  
23 specifically policy I believe at that time it was called  
24 policy 14A that specifically addresses public/quasi public  
25 uses and infrastructure.

1           HEARING OFFICER CELLI:  And Mr. Carlton and Mr.  
2 Mainland, I wanted you to know that the Committee  
3 considers the remaining questions up until question nine  
4 to be already covered in the previous statement made.  
5 However, we are going to give you a chance to do some  
6 follow up later.  So I'm not going to ask those questions.  
7 You might need to figure out which of those questions you  
8 think need more --

9           MR. CARLTON:  Well, I don't agree, but I will  
10 wait.

11          HEARING OFFICER CELLI:  Thank you.

12          MR. SIMPSON:  And is that the same answer for the  
13 balance of my questions?  I think there were questions of  
14 mine that weren't asked.

15          HEARING OFFICER CELLI:  Yes.  I'm going to give  
16 you all a chance to ask one or two quick questions and  
17 then we're going to move on.  But the reason I'm not  
18 asking a lot of these questions is because they're  
19 duplicative of other people's questions or they may be  
20 argumentative or objectional for some other reason.

21                 For instance, such things as reseeding of  
22 existing grazing land and permitted grazing acreages is a  
23 question that's going to be better asked to staff or  
24 applicant's witnesses about that than these particular  
25 witnesses.

1           MR. CARLTON: The mitigation was determined by  
2 the county.

3           HEARING OFFICER CELLI: That's right. But I  
4 think that you're going to get a little more detailed  
5 answers from the experts.

6           We had a question with regard to the climate  
7 action plan. You had mentioned that earlier, the climate  
8 action plan. And how long -- now, what is the status of  
9 the climate action plan in terms of a LORS right now? Is  
10 this a law? Is it a policy? Is it a proposed? What is  
11 the current status of the climate action plan?

12          MR. JENSEN: Our climate action plan has been in  
13 process now for about two years. We had hoped to have it  
14 adopted as early as a year ago. However, there's been  
15 quite a bit of political controversy over our climate  
16 action plan, we're sorry to say. As it is right now it  
17 is -- as yet, it's unapproved as yet by the Board. It's  
18 been through quite a few hearings before other public  
19 agencies, including our Planning Commission. But it's  
20 still being challenged by certain groups, both private and  
21 public interest groups. And we're right now looking for  
22 possibly a hearing before the Board in April. And that's  
23 as close as we can come with a cap right now. So the cap  
24 is only a draft. It does not constitute a formal public  
25 policy of Alameda County. And even one the Board approves

1 it, it will still have not yet had a CEQA analysis done on  
2 it which will be necessary for final approval.

3 HEARING OFFICER CELLI: I have a question here  
4 that says that the -- CAP, the climate action plan,  
5 proposes to reduce county GHG emissions by 238 -- 238, 200  
6 metric tons per year of CO2 equivalence by the year 2020;  
7 is that correct?

8 MR. JENSEN: That's correct. That's the actual  
9 amount that it would reduce compared to 2020 if the  
10 program is successful.

11 HEARING OFFICER CELLI: And the project  
12 currently, according to the questioner anyway, is  
13 projected to release 440, 500 metric tons per year of  
14 GHGs. Do you know if that's correct?

15 MR. JENSEN: I don't have the document in front  
16 of me. I'll go ahead and take that as a given for the  
17 purpose of the argument.

18 HEARING OFFICER CELLI: What I'm going to do then  
19 is allow the parties to ask any questions of Alameda  
20 County, just a couple of questions. They're here  
21 really --

22 MR. CARLTON: Did he answer that question? I'm  
23 sorry.

24 HEARING OFFICER CELLI: He didn't know the answer  
25 was the response. Did I misstate that, Mr. Lopez or Mr.

1 Jensen?

2 MR. CARLTON: Well, you didn't go through the  
3 number 10, 11, through 17 of our questions.

4 HEARING OFFICER CELLI: That's correct. Because  
5 they're largely argumentative. And what I would say is  
6 that we will allow you to ask a couple of questions now.  
7 But --

8 MR. CARLTON: Well, I object. We were asked to  
9 submit questions. You have now asked about three or four  
10 of the 17 questions I asked. I mean, --

11 HEARING OFFICER CELLI: Mr. Carlton, why are we  
12 here?

13 MR. CARLTON: To get the truth.

14 HEARING OFFICER CELLI: No. Why are we here? If  
15 you want the truth, you go to superior court. Why are we  
16 in this proceeding?

17 MR. CARLTON: We're in this proceeding to  
18 consider the Mariposa application.

19 HEARING OFFICER CELLI: Exactly. So if Alameda  
20 decides to create some LORS having to do with the air  
21 pollution over which there is no jurisdiction, it has no  
22 relevance whatsoever to our proceeding, why would I take  
23 up the time with that?

24 MR. CARLTON: Because Alameda is supporting this  
25 project which directly causes them to violate some other

1 part of their project. We want to understand why. This  
2 project violates their cap.

3 HEARING OFFICER CELLI: Let me just ask you this.  
4 Did you hear the answer that said that the cap is not  
5 currently a LORS? Do you know what I mean by that?

6 MR. CARLTON: I heard the answer, yes.

7 HEARING OFFICER CELLI: So it's not binding.  
8 It's not law. It's just vaporware at this point.

9 MR. CARLTON: Well, I'm glad to hear that  
10 reducing CO2 emissions is vaporware.

11 HEARING OFFICER CELLI: Did you understand why  
12 it's not relevant then? Because we're here to  
13 determine --

14 MR. CARLTON: I don't agree it's not relevant. I  
15 understand what you said.

16 HEARING OFFICER CELLI: So I'm now going to --  
17 there's a bit of a buzz on the line.

18 MR. SIMPSON: Are you saying we have the option  
19 to go to superior court on this matter?

20 HEARING OFFICER CELLI: Ms. Willis, did you have  
21 any questions for Alameda?

22 STAFF COUNSEL WILLIS: No, we do not. And we  
23 thank them for coming.

24 HEARING OFFICER CELLI: Mr. Sarvey, please.

25 EXAMINATION

1           MR. SARVEY: Does Alameda County believe that  
2 project is needed to fulfill the public need and why so,  
3 if they do?

4           MR. LOPEZ: I believe the public need is in this  
5 particular case as the peaker plant. As you may recall, I  
6 think it was five or six years ago when we were being  
7 threatened with rolling blackouts and such. I do think  
8 that that is something that we should plan for in terms  
9 of -- not plan for but --

10          MR. SIMPSON: I'm sorry. Can you speak into the  
11 microphone?

12          MS. SADLER: The question and answer weren't  
13 heard.

14          MR. SARVEY: Do you want me to repeat the  
15 question?

16                 Does Alameda County believe this project is  
17 needed to fulfill a public need and why so?

18          MR. LOPEZ: I do believe it is required to fill a  
19 public need. As a peaker plant, it provides a service  
20 that -- provision of a service that we all use on a daily  
21 basis.

22          MR. SARVEY: So if the electricity from this  
23 project is needed, why did Alameda County oppose both the  
24 Russell City project and the East Shore project?

25          MR. LOPEZ: We opposed -- generally oppose

1 projects that are constructed in an urban area in regards  
2 to the need, that need is not established by Alameda  
3 County but by the CEC.

4 MR. SIMPSON: I didn't understand.

5 MR. SARVEY: (inaudible) whether the project is  
6 needed or not, is that what you're saying?

7 MR. SINGH: Can you repeat that, please?

8 HEARING OFFICER CELLI: The question was does  
9 Alameda County know whether this project is needed or not.

10 MR. WHEATLAND: I'm going to object. The  
11 question was just asked and answered.

12 MR. SIMPSON: I'm sorry. I didn't hear the  
13 answer.

14 HEARING OFFICER CELLI: Could you repeat it, the  
15 answer, please?

16 MR. LOPEZ: Well, the need for power isn't  
17 established -- it's not a function of the county. And the  
18 second part of the question is with regards to two power  
19 plants that were proposed in the city of Hayward. And the  
20 county opposed those on the basis that they were being  
21 introduced into an urban area, which our Board was very  
22 concerned about that and I believe they went on record as  
23 such.

24 MR. SARVEY: You say that the cooperation  
25 agreement was done transparently. And this is a question

1 for Mr. Jensen. I've been talking to you for over  
2 two years about this project. Did you inform me about  
3 this action by the county?

4 MR. JENSEN: I can't recall specifically exactly  
5 what level of notice we gave. We gave public notice as  
6 required by law. And it went before the Board in the  
7 public hearing.

8 MR. SARVEY: Does the county have a requirement  
9 to inform interested parties?

10 HEARING OFFICER CELLI: Did you hear the  
11 question?

12 MR. JENSEN: Yeah. The Brown Act has provisions  
13 that require specific notice under certain circumstances  
14 and the county complied with that.

15 HEARING OFFICER CELLI: Mr. Sarvey, if I can get  
16 you to ask just one more, I need you to move on here. One  
17 more question, please.

18 MR. SARVEY: Oh, one more question.

19 Does the county consider this acquisition of  
20 public land under the Williamson Act?

21 MR. LOPEZ: I don't understand the question. I'm  
22 sorry.

23 MR. SARVEY: Well, the county says this is a  
24 public facility. Is this acquisition of public land under  
25 the Williamson Act?

1 MR. LOPEZ: This land is in private ownership.

2 MR. SARVEY: So then it's not public acquisition?

3 MR. LOPEZ: No.

4 MR. SARVEY: It's not a public facility then;  
5 right?

6 MR. LOPEZ: That's not what I'm saying.

7 HEARING OFFICER CELLI: Mr. Lopez, the question  
8 is does the Williamson Act contract provide for this kind  
9 of a project?

10 MR. LOPEZ: I'll let Mr. Jensen answer that if  
11 you like.

12 MR. JENSEN: The Williamson Act in general has  
13 provisions to allow an electrical facility as a compatible  
14 use.

15 HEARING OFFICER CELLI: Can you give us rational  
16 that this project -- why this project is consistent with  
17 the Williamson Act?

18 MR. SIMPSON: Or not.

19 MR. JENSEN: We believe based on the best  
20 information we have at hand that this project is  
21 consistent with the Williamson Act, as the Williamson Act  
22 allows as a compatible use electrical project. It is  
23 still generally required to fit with the compatibility  
24 requirements of the Williamson Act and we have a letter --  
25 and I forget exactly what the date is, but we have a

1 letter from the State Department of Conservation that  
2 provides us with their opinion on that matter. They  
3 believe it to be compatible use on this property as it's  
4 relatively small and it also mitigates for its own  
5 agricultural impacts on site.

6 HEARING OFFICER CELLI: Is it your view that that  
7 applies to all Williamson contracts or this one in  
8 particular?

9 MR. JENSEN: Since it's the Williamson Act that  
10 provides for an electrical facility as a compatible use,  
11 we believe it would apply to any Williamson Act contract  
12 and we would have to look at the particulars of that  
13 contract and the parcel that it applies to in order to  
14 make a determination of compatibility.

15 COMMISSIONER DOUGLAS: So just to clarify what  
16 you're saying is, regardless of what this particular  
17 contract says, you believe this compatible use provision  
18 would provide any Williamson Act?

19 MR. JENSEN: That's correct.

20 HEARING OFFICER CELLI: Thank you.

21 Mountain House, did you have any questions for  
22 Alameda County?

23 MR. GROOVER: Mr. Lopez, first I'd like to thank  
24 you for coming as the planning director for Mountain  
25 House. I'm betting things on your desk would be much more

1 interesting for you to be dealing with today.  
2 Specifically if they only let you out with counsel, that's  
3 a double bummer.

4           In your prepared statement, you describe this as  
5 a public use or regional public use and therefore it met  
6 the public infrastructure or the regional infrastructure  
7 definitions. Did you consider the region to be anything  
8 beyond the Alameda County line? Did you consider the San  
9 Joaquin County or Contra Costa County when you made that  
10 determination?

11           MR. LOPEZ: That definition is straight out of an  
12 Alameda County document, the East County Area Plan. So I  
13 did not review the plans of other counties in making  
14 that --

15           MR. GROOVER: I'm sorry. That wasn't my  
16 question.

17           I don't have your prepared statement in front of  
18 me. I'm paraphrasing what your prepared statement said.  
19 You said in -- excuse me if I paraphrase it incorrectly.  
20 But you said that because this was providing regional  
21 electricity for the region it was regional infrastructure  
22 and therefore compatible with what is a proposition or  
23 whatever it was. In your assessment of what the region  
24 was in your prepared statement you gave today, did you  
25 consider anything outside of your jurisdiction?

1           MR. LOPEZ: Yes. The definition of region is  
2 actually much probably even greater than those two  
3 counties. I'm not necessarily an expert in power  
4 distribution, but I know that we get power from all over  
5 the state. And so I think it's -- region I mean  
6 electrical region which probably is much larger than just  
7 our area.

8           MR. GROOVER: Thank you.

9           In your -- again in your prepared statement, you  
10 discuss spot fire response times. Did you consider fire  
11 response times outside of your regional area?

12          MR. LOPEZ: In my prepared -- are you referring  
13 to my prepared statement?

14          MR. GROOVER: Yes.

15          HEARING OFFICER CELLI: While he's looking, a  
16 question. I just want to limit you to one more question  
17 after that so we can move on.

18          MR. GROOVER: That's all I have.

19          HEARING OFFICER CELLI: Thank you. We'll get to  
20 Mr. Dighe next after they answer this question.

21          MR. LOPEZ: The answer to your question is no,  
22 it's fire response to this facility.

23          MR. GROOVER: May I have a follow up to that?

24          HEARING OFFICER CELLI: Quickly.

25          MR. GROOVER: So response time from Alameda

1 County is over 20 minutes. Nearly 25 minutes. And  
2 response time from Mountain House community is eight  
3 minutes. So you didn't consider any response time outside  
4 of your regional area as being applicable to consideration  
5 for this project?

6 MR. LOPEZ: That's correct. I mean, our fire  
7 chief and our fire marshals, the statement says they've  
8 reviewed the project. They believe that the fire  
9 protection plans are adequate and that's why you find that  
10 statement in there.

11 MR. GROOVER: All right. Thank you.

12 And my last question. In your prepared statement  
13 again, you said that you had determined that there was no  
14 worker safety impacts for this facility. Did you have a  
15 study for that or that was just a determination based off  
16 of professional opinion?

17 MR. LOPEZ: My statement doesn't have anything in  
18 regards to worker safety.

19 MR. GROOVER: Okay. It had something in it.  
20 Again I'm paraphrasing because I don't have a copy of  
21 that. You said that you determined for fire safety that  
22 there was no impacts from this facility. And I'm just  
23 wondering what was the root of that statement? If there  
24 was a study, if there was a professional opinion, if it  
25 was --

1           MR. LOPEZ: The only thing I can say is that  
2 again it was referred to the fire chief and fire marshal  
3 and they both approved the plan and because of the  
4 dedicated fire water tank that's going to be available in  
5 case of a grass fire or other emergency in the area.  
6 That's what our statement said. I believe that it's been  
7 planned for in regards to any possible emergency.

8           MR. GROOVER: May I have one notice to staff and  
9 I'm done with questions?

10          HEARING OFFICER CELLI: I just want everyone to  
11 know that the way I've sat you, the order that you're in  
12 is the order in which parties intervened. I'm rewarding  
13 people who intervened early. But you're eating up the  
14 clock for the people on the other side of the table when  
15 you take up extra time. So be aware of that.

16          MR. GROOVER: Okay. I'm done with questions.  
17 It's just that at some point I'm going to ask staff in the  
18 staff's assessment they have the same assessment that  
19 there's no impacts. I'm wondering whether staff did an  
20 independent study or took the opinion of Alameda County as  
21 how they determined that there was no impacts and so  
22 eventually I'm going to ask staff that question. With  
23 that, I'm finished.

24          HEARING OFFICER CELLI: Okay. Thank you.

25          Mr. Dighe, go ahead.

1           MR. SIMPSON: Is it possible we can get a copy of  
2 that statement during lunch to review so we don't keep  
3 guessing at what he just said?

4           HEARING OFFICER CELLI: What we decide -- first  
5 of all, he said what he said, which is now in the record.  
6 We've asked him to provide and they've agreed to provide  
7 us a copy of that document. I don't know how quickly we  
8 can get that. I can give you my e-mail and if you can  
9 send it to me, I can disseminate it as quickly as I can  
10 get it.

11          MR. SIMPSON: I'm sure they must have a copy  
12 machine here if we can just make a copy at lunch and pass  
13 it out so we have a basis for our questions.

14          HEARING OFFICER CELLI: I suppose. I really hate  
15 to impose upon Byron Bethany Irrigation District more than  
16 we have which is the use of the room and all of the  
17 amenities. So let's see what we can accomplish. I'll  
18 look into it.

19          Mr. Dighe, go ahead. Questions for Alameda  
20 County.

21          MR. DIGHE: I have one question. So since the  
22 land falls under Measure D and is voter approved, I'm just  
23 wondering what (inaudible) were taken by Alameda County to  
24 collectively present it to the voters (inaudible) the  
25 power plant and what communications have gone out from the

1 county to the voters.

2 MR. LOPEZ: Well, the voters of Alameda County is  
3 a fairly large base. There was no direct contact of the  
4 voters of Alameda County for this project. Again,  
5 infrastructure is an allowed use as part of the Measure D.  
6 I think I've already covered that a couple of times.

7 MR. DIGHE: So just a follow up. So basically  
8 there was no communication to the residents or the voters;  
9 correct?

10 MR. LOPEZ: Other than the publicly noticed  
11 cooperation agreement, there was no voter or I think the  
12 answer -- voter contact in regards to the project.

13 MR. DIGHE: So just a follow up again, so there  
14 is -- so I'm assuming there was no platform for feedbacks  
15 from the voters (inaudible) and this portion from Alameda  
16 County, right? There was nothing as far as communication  
17 by Alameda County to allow this to happen, right?

18 MR. LOPEZ: I believe the process that we're  
19 undertaking today through the CEC provides that forum.  
20 And that's why we are here today, I believe, is to allow  
21 interested parties, residents, voters to bring up these  
22 types of questions.

23 HEARING OFFICER CELLI: Are there any further  
24 questions, Mr. Dighe?

25 MR. DIGHE: Just to follow up what you just said,

1 you said the notices were published. And how were they  
2 published?

3 MR. LOPEZ: They follow the Brown Act. When the  
4 cooperation agreement went to the Board, there was a  
5 requirement that the agenda be published 72 hours prior to  
6 the meeting. It gets into the newspaper general  
7 circulation and is posted in the public place. That is  
8 our requirement and that is the requirement that was  
9 fulfilled.

10 HEARING OFFICER CELLI: Any further, Mr. Dighe?

11 MR. DIGHE: I'm still analyzing. I'll let you  
12 go. (inaudible) thank you.

13 HEARING OFFICER CELLI: Okay. Can you pass the  
14 microphone to Mr. Wilson?

15 MR. WILSON: Thank you.

16 As CalPilots and the intervenors here and the  
17 Commissioners, then we can assume that Alameda County is  
18 siting power plant and hiding behind the county line. And  
19 they're doing that by not pursuing any airport protection.  
20 So there's laws and regulations to co-manage the air space  
21 and work together --

22 HEARING OFFICER CELLI: Mr. Wilson, we need a  
23 question rather than testimony.

24 MR. WILSON: So you showed up without your  
25 Alameda County planner. You have to confirm you have no

1 laws, LORS, laws, ordinances, or regulations. You haven't  
2 change or written any policy to protect the airport zones  
3 within Alameda County; is that correct?

4 MR. JENSEN: We can't say with certainty whether  
5 that's correct or not.

6 MR. WILSON: Well, you just admitted it was  
7 correct when you sited that there was -- you've got a plan  
8 in place for the Hayward Airport. You have a plan in  
9 place for the Livermore Airport. And you have a plan in  
10 place for the Oakland Airport. Do you have any kind of  
11 protection plan based on the airport land use handbook  
12 that protects the approach zones for the Byron Airport?

13 MR. JENSEN: I don't know the answer. I don't  
14 believe so. But I don't know the answer.

15 HEARING OFFICER CELLI: That's his answer.

16 MR. WILSON: Are these the right people?

17 HEARING OFFICER CELLI: You know, as I said, the  
18 Alameda County is here really at the invitation of the  
19 Committee.

20 MR. WILSON: Let me make this statement then and  
21 then I'll ask the question. It was a determination of  
22 inconsistency by the Contra Costa County Land Use  
23 Commission on or about -- in October 14 of 2010. Are you  
24 aware of that determination?

25 MR. JENSEN: Yes.

1           MR. WILSON: And since you're hiding behind the  
2 county line, then you would accept that inconsistency  
3 determination?

4           MR. WASHINGTON: I would object to the tone of  
5 the question. I mean, we're not here to be a punching  
6 bag. If we can just have questions and --

7           HEARING OFFICER CELLI: I'm going to sustain the  
8 objection.

9           Mr. Wilson, I think you can ask a question  
10 without the accusatory tone of hiding behind. The  
11 information you're trying to elicit I think is fair and  
12 reasonable. I think it's the objection has to do with the  
13 way it's being asked.

14          MR. WILSON: So would you accept that  
15 determination by Contra Costa County as the power plant is  
16 inconsistent with their Airport Land Use Plan?

17          MR. JENSEN: Unless advised otherwise, we would  
18 not accept that because we don't believe that they have  
19 the authority to make that determination.

20          MR. WILSON: So since Alameda County has made no  
21 attempt whatsoever to protect the airport protection zones  
22 and the approach zone to the airport, then I would ask the  
23 Commission if they would seriously consider the Contra  
24 Costa County determination.

25          HEARING OFFICER CELLI: Thank you, Mr. Wilson.

1           One of the things I want to be clear with  
2 everyone is that when you have parties here to ask  
3 questions of, you're trying to seek facts. But when it  
4 comes to kind of points that you want to make which would  
5 be like legal argument, you're going to make your legal  
6 argument in your briefs later. So we want to -- this  
7 isn't a big show business trial where we have a trial jury  
8 sitting here listening and we're going to be wowed by  
9 anything other than the facts. So we just want to get the  
10 facts.

11           With that, thank you, Mr. Wilson.

12           Mr. Singh, did you wish to ask any questions of  
13 the Alameda County representatives?

14           MR. SINGH: First of all, Mr. Commissioner, Mr.  
15 Celli, I would like to say one thing. If this  
16 proceeding --

17           HEARING OFFICER CELLI: You're not coming across  
18 your microphone. Can you speak a little more --

19           MR. SINGH: Mr. Celli, Mr. Commissioner, this is  
20 our last opportunity. What we are seeing here, everything  
21 has been rushed out. You can think about the minority  
22 will carry this burden throughout their live, their death  
23 if this plant comes here. And are you going to here be  
24 supporting the minority, a racial minority, environmental  
25 justice so that we all intervenor in the interest of the

1 minority because this is the burden we are going to carry  
2 until death. And we would like that we should be given  
3 ample amount of time that we should ask the questions have  
4 all the justification and all the clarification.

5 HEARING OFFICER CELLI: Well, let me answer the  
6 question and say first of all, you are going to get ample  
7 time, which is pretty much going to be equal time for all  
8 of the parties. And ampleness is defined by the  
9 Committee. And so I'm happy to say that everybody has  
10 gotten ample time. Everybody submitted their testimony in  
11 writing, those who chose to. People submitted their  
12 rebuttal. You had all the time in the world to have your  
13 experts complete their testimony in writing. We've  
14 received most of it by now. And today we're just going to  
15 hear testimony on the follow up.

16 You've got a lot to cover. And we need to move  
17 along. This isn't argument. You're going to have an  
18 opportunity to make argument to the Committee. There is  
19 not time. If you have any questions for Alameda, this is  
20 time to ask these witnesses. If you don't, then I'm going  
21 to move to Sierra Club.

22 MR. SINGH: As the elected official of the  
23 minority, racial minority of Mountain House, all these  
24 (inaudible) interventions and whatever the documents we  
25 have shuttled among each of us, we do not have the facts

1 and the truth -- for example --

2 HEARING OFFICER CELLI: Sir, you're wasting your  
3 time. You want to ask these people -- otherwise, I'm  
4 going to cut --

5 MR. SINGH: Alameda has got a huge --

6 HEARING OFFICER CELLI: Stop talking and listen.  
7 Do you have any questions for Alameda County? If you do,  
8 ask them. This is the time for that. You want to make  
9 argument, we'll give you an opportunity later.

10 MR. SINGH: I'm not making argument.

11 HEARING OFFICER CELLI: This is argument.

12 MR. SINGH: Give me one minute. The truth came  
13 right now in which I was not aware which many of the  
14 intervenors were not aware that they have got millions of  
15 dollars the mitigation and that came out just in this.  
16 And we have all the questions to ask.

17 HEARING OFFICER CELLI: Then how come you  
18 mentioned it in your prehearing conference statement?  
19 Now, this is your chance to ask questions. Ask the  
20 questions or we move to the next person. But you were  
21 aware because I read it in your prehearing conference  
22 statement.

23 MR. SINGH: So --

24 MR. SIMPSON: I'm sorry. I didn't hear the last  
25 thing you said.

1           HEARING OFFICER CELLI: He was aware of the fact  
2 that there were mitigation funds agreed to be paid by the  
3 applicant to Alameda County because he mentioned it in his  
4 prehearing conference statement.

5           MR. SINGH: But (inaudible) and the dollar amount  
6 was not available at that time, sir. It is in millions.  
7 Right now if you count I'm thinking that 1.4 million has  
8 been given.

9           HEARING OFFICER CELLI: Is that a question to  
10 Alameda County?

11          MR. SINGH: So let me ask you in one of your  
12 conversation, you mentioned that the mitigation was given  
13 because of health, safety issues and air quality. Now, if  
14 let's say if this mitigation doesn't come so would you  
15 compromise on health, safety, and air quality for your  
16 residents in Alameda County?

17          MR. LOPEZ: Well, health and safety of Alameda  
18 County residents is always going to be a concern of ours.  
19 We do have a cooperation agreement in place with Mariposa  
20 and we are -- we fully expect to honor the agreement as we  
21 expect them to honor their side as well.

22          MR. SINGH: So let's say if you have to build the  
23 society around this Mariposa plant in Alameda County, is  
24 there any guidelines that you will not build a town in so  
25 many miles around this power plant?

1           MR. LOPEZ: Well, there's no guideline right now  
2 in any of our general plans that would -- that speak  
3 directly to that.

4           MR. SINGH: Let's say you have a town of 10,000  
5 people which is in 2.5 miles away from the power plant  
6 within Alameda County. Would you approve this power  
7 plant?

8           MR. LOPEZ: We don't approve the power plant.  
9 The State does.

10          MR. SINGH: If you don't approve it, you don't  
11 get the mitigation plan, do you think you would be sitting  
12 with us at this point?

13          MR. LOPEZ: Well, we're here because the CEC  
14 asked us to be here.

15          HEARING OFFICER CELLI: Anything further, Mr.  
16 Singh?

17          MR. SINGH: No. Another -- you said that your  
18 department or Alameda County did not consult agriculture  
19 authorities or agriculture departments for making some of  
20 the decisions.

21          HEARING OFFICER CELLI: That question was asked  
22 and answered. Let's ask one more question, please, and  
23 let's move on.

24          MR. SINGH: Are you aware of anybody who has met  
25 with applicant, broker, agent directly or indirectly for

1 any financial transaction or for any economical gain apart  
2 from mitigation, including your Board members or  
3 Supervisor of Board members? You're under penalty of  
4 perjury.

5 MR. LOPEZ: Other than the cooperation agreement,  
6 I am not aware of any meetings that have occurred.

7 MR. SINGH: Is that on behalf of all the three of  
8 you?

9 HEARING OFFICER CELLI: Let the record reflect  
10 that Mr. Jensen is nodding his head in the affirmative.

11 Anything further, Mr. Singh?

12 MR. SINGH: You mentioned here like there is  
13 contingency approval for the power plant. I would like to  
14 hear more on that. What of contingency plans you have for  
15 the approval of the power plant. You made one of the  
16 statements if I'm not correct.

17 HEARING OFFICER CELLI: While you're considering  
18 the answer, I just want you to understand that I'm going  
19 to let you have one more question and then I'm going to  
20 have to move on. So I want you to consider which is the  
21 question you need most answered, Mr. Singh. If you folks  
22 could go ahead and answer the question.

23 MR. LOPEZ: We do not have a contingency plan for  
24 this power plant.

25 MR. SINGH: As you mentioned, need is not part of

1 county jurisdiction. Then let's say county responsible  
2 for supplying water, having clean roads. So why do you  
3 think that the need of power is not part of county  
4 jurisdiction?

5 MR. LOPEZ: Well, there's certain functions and  
6 particularly energy is one of them where we are preempted  
7 by the State and the CEC in this case has a lead role in  
8 determining need and permitting electrical facilities.

9 MR. SIMPSON: I'm sorry. You're what by the  
10 State?

11 MR. LOPEZ: CEC is the lead in approving  
12 electrical facilities such as this one.

13 MR. SIMPSON: Yeah. I heard that part. You said  
14 something about something about the State.

15 MR. LOPEZ: Preempted.

16 HEARING OFFICER CELLI: And when he says CEC,  
17 he's speaking of the California Energy Commission. And  
18 with that, I'm going to move to Mr. Carlton.

19 MR. CARLTON: Mr. Mainland has one question and  
20 then I have a couple of questions.

21 MR. WHEATLAND: I'm going to just ask for  
22 clarification. Generally, the Commission does not allow  
23 multiple parties to conduct questioning. I mean, several  
24 individuals interrupting is letting the same party to  
25 conduct questionings. So I'm just going to --

1           HEARING OFFICER CELLI: I don't see how much harm  
2 it causes. I think Mr. Mainland has been -- was the  
3 original intervenor. I think he's got a vested interest.  
4 I'm going to let him ask the questions. He has counsel  
5 here to support him. I think it's fair. So I'm going to  
6 let you ask the question, Mr. Mainland.

7           MR. MAINLAND: Thank you, Mr. Celli.

8           Can you hear me through this microphone?

9           HEARING OFFICER CELLI: We need a -- thank you  
10 for asking. It's really important that we do hear you  
11 because there's multiple parties on the phone who want to  
12 be able to hear. Is the gentleman from the building --  
13 let him know we're talking about the second to the last  
14 microphone. Try that microphone.

15          MR. MAINLAND: Mr. Celli, can you hear me on this  
16 one?

17          HEARING OFFICER CELLI: That sounds a little  
18 better. So the second to the last one needs more power.  
19 Go ahead, Mr. Mainland.

20          MR. MAINLAND: This is a question for Mr. Lopez.

21          One question, Mr. Lopez, you stated in your  
22 opening statement that the MEP is needed infrastructure.  
23 It's public use or quasi public use as needed  
24 infrastructure. You refer to this as a key need and an  
25 essential service. What analysis, if any, has the county

1 done to lead you to arrive at this judgment? And in  
2 making any such analysis, are you aware of the California  
3 Public Utilities Commission's long term procurement  
4 proceeding currently underway and the filing of  
5 standardized planning assumption for system resource plans  
6 to guide utilities of December 3rd, 2010, which point to a  
7 huge over procurement and surplus of energy with a  
8 trajectory leading to the year 2020 at which point  
9 according to this analysis which I have in my hand for the  
10 PG&E service area, page 17 of these assumptions lead to a  
11 69 percent reserve margin considerable surplus. And if  
12 you were aware of these assumptions in the LTPP, would  
13 this lead you to altering your judgment? This is a key  
14 need for eastern Alameda County?

15 MR. LOPEZ: I'm not aware of the process that you  
16 mention or the document you're referring to. When I say a  
17 key need, I meant a key need of the public, a key need of  
18 the public in the sense that the provision of electrical  
19 service and electrical services that don't experience a  
20 reduction in service or black-outs, in our view, that is a  
21 key need of the public to maintain efficient electrical  
22 services and so that is -- that was contained in my  
23 statement. And I stand by that.

24 MR. MAINLAND: So am I correct in understanding  
25 you that you did no analysis as a county on this question

1 of coalition need?

2 MR. LOPEZ: Well, we're not required to do an  
3 analysis on whether or not the facility in terms of the  
4 original network of the electrical delivery services I  
5 believe that there's other State entities that do that.

6 HEARING OFFICER CELLI: All right. Mr. Carlton.  
7 And please use the microphone because we need to get the  
8 people on the phone.

9 MR. CARLTON: You stated this is a public use.  
10 Is MEP a public company? Is it public?

11 MR. LOPEZ: I don't believe that it is.

12 MR. CARLTON: And now it's selling electricity to  
13 PG&E. Is PG&E owned by the public?

14 MR. LOPEZ: They're a private utility.

15 MR. CARLTON: Owned by private shareholders;  
16 correct?

17 MR. LOPEZ: Well, I believe that's the way it  
18 works, yes.

19 MR. CARLTON: Now, you said that it's important  
20 that because this is a key need, but food and water are  
21 key need to Alameda County residents. So under that  
22 analysis would not a Wal-Mart be a key need under this? I  
23 don't have an answer to that question.

24 MR. CARLTON: Now, you've stated this is a public  
25 facility and I'd like you to read -- I'd like to read you

1 the California Government Code Section 8698(c), public  
2 facility means any facility of a public subdivision,  
3 including parks, schools, and vacant or under utilized  
4 facilities which are owned, operated, leased, or  
5 maintained or any combination thereof by the political  
6 subdivision through money derived by taxation or  
7 assessment. So how is this a public facility?

8 MR. WHEATLAND: I object. First of all, what  
9 portion of the Government Code are you reading from?

10 MR. CARLTON: 5698.

11 MR. WHEATLAND: What is that codified? What is  
12 that related to?

13 MR. CARLTON: In the Government Code.

14 HEARING OFFICER CELLI: Mr. Wheatland, address  
15 the Committee, please. What's the objection?

16 MR. WHEATLAND: The objection is that it hasn't  
17 established that that code section is relevant to this  
18 inquiry. He hasn't identified where that code section  
19 come from. Whether it applies to projects that are  
20 licensed by the California Energy Commission or with  
21 respect to the authority of Alameda County.

22 HEARING OFFICER CELLI: I'm going to -- what was  
23 the code section? What was the actual section?

24 MR. CARLTON: 8698

25 HEARING OFFICER CELLI: Of the --

1 MR. CARLTON: Government Code.

2 HEARING OFFICER CELLI: Are you familiar with  
3 that section?

4 MR. LOPEZ: No, I'm not.

5 HEARING OFFICER CELLI: Okay. They're not  
6 familiar with that section.

7 MR. CARLTON: I will defer that question.

8 ECAP Policy 13 provides the county shall not  
9 provide or authorize public facility or other  
10 infrastructure in excess of that needed for permissible  
11 development consistent with this initiative. How is the  
12 MEP power production not in excess of what is needed for  
13 permissible development?

14 MR. LOPEZ: I believe I covered that in my  
15 opening statement by saying that as the peaker plant that  
16 this project does not seek to promote new development but  
17 is designed to serve existing power users. I'd further  
18 state it will not have an excessive growth inducing effect  
19 on the East County area

20 MR. SIMPSON: I'm sorry. Can you speak up and  
21 slow down a little bit?

22 MR. LOPEZ: Sure. I've also stated in my opening  
23 statement that it will not have an excessive growth  
24 inducing effect on the East County area and it is not  
25 designed to support any quantity of new development in

1 excess of what is permissible in the plan. As you know,  
2 Measure D in ECAP limits development significantly. We do  
3 not believe that this power plant would change that in any  
4 way.

5 MR. CARLTON: But if the language says that it --  
6 so then if it's not -- the people of eastern Alameda  
7 County have electricity provided now; correct?

8 MR. LOPEZ: Correct.

9 MR. CARLTON: Building this plant doesn't effect  
10 that, does it?

11 MR. LOPEZ: I believe it gives them more  
12 efficient service and it gives them more stable service.

13 MR. CARLTON: Whether this plant is built or not,  
14 they will still have lights and electricity in their  
15 house. So this is in excess of any possible need of  
16 residential eastern Alameda County.

17 MR. LOPEZ: That doesn't sound like a question to  
18 me.

19 HEARING OFFICER CELLI: In other words, that's  
20 not really a question. That's an argument, Mr. Carlton.

21 MR. CARLTON: Well, there is an answer of yes or  
22 no.

23 HEARING OFFICER CELLI: Or if he knows.

24 MR. WASHINGTON: If I could just generally  
25 object. I feel like we're getting really cumulative here.

1 I'd ask us to move on if possible, please.

2 HEARING OFFICER CELLI: Sustained. The objection  
3 is sustained, Mr. Carlton. One more question, please.  
4 Just one. If you have one more question.

5 MR. CARLTON: No. That's all. Thank you.

6 HEARING OFFICER CELLI: Thank you.

7 Mr. Simpson, please. And I'm going to try to set  
8 it up to your mike and Mr. Simpson, Mr. Carlton's mike --  
9 stay there. And try to get to one for Mr. Mainland and  
10 Mr. Singh to work so we don't have to move them around.  
11 When we break for lunch, they'll be working on the  
12 microphone.

13 Go ahead, Mr. Simpson.

14 MR. SIMPSON: Mr. Lopez, Mr. Jensen, Mr.  
15 Washington, thank you for being here today. We all  
16 obviously have a lot of questions for you.

17 I think the discussion of need has gone a fair  
18 ways. Did you consider any alternatives to the project,  
19 Mr. Lopez?

20 MR. LOPEZ: No, we did not.

21 MR. SIMPSON: It sounded like in your opening  
22 statement -- as I've mentioned, I don't have a copy of  
23 it -- that you relied on the Department of Conservation's  
24 determination that this is consistent with the Williamson  
25 Act; is that correct?

1           MR. LOPEZ: In part. But that is true, we did  
2 reference the Department of Conservation in the opening  
3 statement.

4           MR. SIMPSON: So it's their determination that  
5 it's consistent with the act?

6           MR. LOPEZ: I think it's -- we have our own  
7 policies regarding Williamson Act and they are consistent  
8 with the Department of Conservation's their take on this  
9 project.

10          MR. SIMPSON: Okay. Would you agree that this  
11 project may actually discourage new residential  
12 development in the immediate area?

13          MR. LOPEZ: Well, speaking for Alameda County,  
14 residential development essentially is prohibited by  
15 Measure D. I can't speak to the other counties.

16          MR. SIMPSON: So the neighboring parcel can't  
17 build a house on his parcel?

18          MR. LOPEZ: You can do -- you can do limited  
19 residential development in eastern Alameda County. As  
20 long as you have 100 acre parcel size, you can do one  
21 house.

22          MR. SIMPSON: I see. So do you agree with the  
23 statement that this project may actually discourage new  
24 residential development in the immediate area?

25          MR. LOPEZ: I think that is speculative. I don't

1 have an answer to that question.

2 MR. SIMPSON: Thank you. I have a couple  
3 questions about the public notice. Mr. Jensen, thank you  
4 for sending me a copy of the public notice that was  
5 apparently published pursuant to the Brown Act.

6 My understanding the public participation mandate  
7 I suppose opportunity at least if it was a conditional use  
8 permit you would have additional public notice  
9 requirements; is that correct?

10 MR. JENSEN: If we were doing a conditional use  
11 permit, just generally speaking, whether it's this kind of  
12 a project or another one, we would go through a very  
13 different process. We would be going through a process  
14 that would involve scoping. We'd be going through a  
15 process that would involve writing some kind of CEQA  
16 review, putting it out for public review, there would be  
17 quite a few more steps than what we would normally go  
18 through if we're responding to a simple CEC request for  
19 information.

20 MR. SIMPSON: So you didn't do any of that?

21 MR. JENSEN: We didn't do any of that.

22 MR. SIMPSON: So the public notice that you  
23 published in the newspaper, it wasn't posted at the site?  
24 It wasn't disseminated to the neighbors, it was merely  
25 published and posted maybe in the county building?

1           MR. JENSEN: Yes. And that's what we're required  
2 to do basically.

3           HEARING OFFICER CELLI: Mr. Simpson, if you can  
4 please try to hone in on your last few questions now.

5           MR. SIMPSON: Sure. Sure.

6           Did the Planning Commission review this proposal?

7           MR. LOPEZ: No, they did not.

8           MR. CARLTON: Can I ask one more question?

9           MR. SIMPSON: I'll defer my --

10          HEARING OFFICER CELLI: Why don't you let --  
11 okay, Mr. Simpson is going to ask his last question for  
12 him. Mr. Carlton, go ahead.

13          MR. CARLTON: Mr. Jensen, you testified about the  
14 ECAP planning and emissions and I believe it was stated  
15 that the emissions from this plant would exceed the ECAP  
16 intended reductions. How can ECAP work in this plant --  
17 if this plant goes into operation?

18          MR. JENSEN: Our climate action plan has  
19 inventory. And the inventory covers primarily the  
20 greenhouse gas emission, the CO2 equivalent emissions of  
21 residential and commercial and to an extent industrial  
22 types of emissions. The inventory does not cover -- at  
23 least at this point in time -- emissions from things like  
24 power plants. And there are a few other things like  
25 agriculture that we don't have any decent modeling for.

1 And so if we were to include this plant under our  
2 inventory, then we would have obviously a much bigger  
3 burden that we would have to try to base our reduction on.  
4 However, this is a State project. It's not a county  
5 project. I mean, there are things within our borders that  
6 we're just -- we really can't account for them. They're  
7 not under our jurisdiction, and if we had to take on this  
8 burden, might be impossible for us to do it anyway.

9           On the other hand, the State is under the same  
10 set of requirements that the county is under statewide.  
11 All agencies are required to by the year 2020 reduce their  
12 greenhouse gas emissions pursuant to SB 32 -- AB 32. And  
13 that means a 15 percent reduction statewide. And my  
14 impression based on the description of this project is  
15 that it's no different from any other projects. Somewhere  
16 along this line this is going to be part of the statewide  
17 effort to reduce those emissions.

18           HEARING OFFICER CELLI: And the next question is  
19 with Mr. Wheatland, please. Go ahead.

20           MR. WHEATLAND: I'd like to thank the county for  
21 coming here this morning. We have no questions.

22           HEARING OFFICER CELLI: Thank you.

23           Ladies and gentlemen, we're going to take a lunch  
24 break. Right now, according to my computer, it's 12:33.  
25 We will resume at 1:00. I want to really thank Mr.

1 Washington, Mr. Jensen, Mr. Lopez, thank you for coming  
2 and answering questions on such short notice. We will see  
3 everybody back on the record at 1:00. We're off the  
4 record.

5 (Whereupon a lunch recess was taken from  
6 12:34 p.m. to 1:10 p.m.)

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1 AFTERNOON SESSION

2 1:10 p.m.

3

4 HEARING OFFICER CELLI: Ladies and gentlemen,  
5 it's 1:10. And we're back on the record. The applicant  
6 has the burden, so the applicant goes first. The  
7 applicant -- as I said at the prehearing conference,  
8 what's going to happen is in this case we are going to  
9 have a panel of experts rather than calling one expert at  
10 a time in the interest of time. So I want to thank you,  
11 Mr. Wheatland, for having everybody in place. I'm going  
12 to ask the parties to stand and be sworn. Did you want to  
13 swear them in, Mr. Petty?

14 MR. SINGH: Mr. Celli, before we start this, I  
15 want to make a motion, joint motion.

16 HEARING OFFICER CELLI: I'm sorry? A motion?

17 MR. SINGH: Yes. I want you to consider that  
18 motion.

19 HEARING OFFICER CELLI: A motion to?

20 MR. SINGH: We last night we got in touch with  
21 Mr. Travis Miller and he lives in our community, recently  
22 moved in. And he's an attorney and environmental expert  
23 along (inaudible). So we would like to have this as  
24 second (inaudible) so that he can be part of this  
25 (inaudible) to be considered on that.

1 HEARING OFFICER CELLI: Did you want him to --  
2 did you want him to come appear as your attorney?

3 MR. SINGH: Yes.

4 HEARING OFFICER CELLI: Okay. I absolutely think  
5 that's a great idea. So the motion to be represented --  
6 is he going to represent you, Mr. Singh, or you and Mr.  
7 Dighe who are both residents as Mountain House?

8 MR. SINGH: He will be representing Mountain  
9 House residents.

10 HEARING OFFICER CELLI: Now, you are an  
11 intervenor as an individual. Mr. Dighe is an intervenor  
12 as an individual. Mountain House Community District is  
13 their own intervenor. Are we creating a new group like a  
14 new intervenor called the residents of Mountain House  
15 separate from Rajesh Dighe and Jass Singh?

16 MR. SINGH: Okay. I need to understand, Mr.  
17 Celli, from you what is the appropriate words I would be  
18 using. As I said that English is not my first language.  
19 So what is the appropriate word I would use like this  
20 attorney can displace me.

21 HEARING OFFICER CELLI: He wants to represent  
22 you?

23 MR. SINGH: Yes. I would say indirectly  
24 representation me and Rajesh, we are representation of  
25 Mountain House community.

1           HEARING OFFICER CELLI: You know, the Presiding  
2 Member has the ability to consolidate at the party's  
3 request parties. I think that it would be more efficient  
4 if we had one attorney asking the questions representing  
5 either yourself or both of you. I don't really care. I  
6 just think that it's helpful to have an attorney. I  
7 wish -- well, I'm not going to say that. But it's good to  
8 have attorneys. So the motion would be granted as to Mr.  
9 Singh. I want to know if Mr. Dighe is making the same  
10 motion.

11           MR. SINGH: Let me move three points into the  
12 motion and then we can decide.

13           HEARING OFFICER CELLI: Have a seat.

14           MR. SINGH: No legal expert has represented us,  
15 so we want to take this opportunity.

16           The second problem we are facing is being English  
17 not being my first language for me and Dighe, we are  
18 missing portion of the communication here. We want some  
19 translator who can help us in this.

20           The third thing is that we can go door to door  
21 talk to the community members in Mountain House and they  
22 are not able to understand all the documents which are put  
23 on CEC, therefore we request those documents to be  
24 translated into the native language of we being the  
25 minorities.

1 HEARING OFFICER CELLI: So is there anything  
2 further on this point?

3 MR. SINGH: Yeah. These are the three points.

4 HEARING OFFICER CELLI: And the three points are  
5 brought by you, Mr. Singh, or you and Mr. Dighe jointly?

6 MR. SINGH: Together. Jointly.

7 HEARING OFFICER CELLI: So I would rule as  
8 follows. As to point one, your motion is granted. What  
9 is the name of your attorney?

10 MR. SINGH: His name is Travis Miller.

11 HEARING OFFICER CELLI: Is he here today?

12 MR. SINGH: Travis, no, he is not able to make it  
13 because he's working. And we only were able to contact  
14 him yesterday.

15 HEARING OFFICER CELLI: When will he show up?  
16 When will he come?

17 MR. SINGH: He may come today in the evening  
18 around 6:00.

19 HEARING OFFICER CELLI: Okay. So the motion will  
20 be granted and intervenors Dighe and Singh can have legal  
21 representation Travis Miller, whenever he shows up.

22 MR. DIGHE: Can I make a second --

23 HEARING OFFICER CELLI: Please. Yes.  
24 Ms. Jennings, could you come forward? We're going to go  
25 off the record.

1 (Off record.)

2 HEARING OFFICER CELLI: I'm sorry. So Mr. Dighe,  
3 go ahead.

4 MR. DIGHE: I just want to make sure -- I want to  
5 clarify that the motion, that has nothing to do with  
6 representation. So the motion is about the continuation  
7 of the second evidentiary hearing and there is a  
8 (inaudible) to that. What Mr. Jass Singh is saying is  
9 having the attorney represent him. What I would like  
10 to -- basically I would like myself -- I want to represent  
11 myself. So let the attorney represent Mr. Jass Singh. So  
12 two different things. So this motion is the joining  
13 motions and I will continue to represent myself and Mr.  
14 Jass Singh will be represented by Travis miller.

15 HEARING OFFICER CELLI: Thank you for that  
16 clarification. That's understood.

17 And what I'm going to suggest is first of all,  
18 welcome, Mr. Miller. I see that you're just on with your  
19 computer and you may or may not have your phone on, but we  
20 welcome your participation and your representation of Mr.  
21 Singh. That motion has been granted.

22 The translator motion will be denied because it  
23 came too late in the game. We do not -- shall we say, you  
24 are able to have your own translator if you want come in  
25 and translate for you if you think that would be helpful.

1 But the Committee will deny the motion with regard to a  
2 translator and having translated documents in some other  
3 language -- what language did you want it translated into  
4 anyway?

5 MR. SINGH: What we found out within last one  
6 week, the people in our community which are minority, they  
7 are Vietnamese, Chinese, Indian, Filipinos, and within  
8 India, like we have four languages which need to be  
9 translated, because there is south and east and west. So  
10 now this is very important because we can go door to door  
11 talking to people, we directed them to CEC site for the  
12 documentation and they could not do anything with these  
13 documentation. And what's happening is that since the  
14 house's value have dropped so much, there are more and  
15 more minority people moving into that community. So we  
16 would like that these thing should be granted. And we did  
17 our best to find out a translator and they could not find  
18 it. We do not have the resources. We are just going door  
19 to door poling all the people. And trust me, it took us  
20 six hours to write this.

21 HEARING OFFICER CELLI: I understand the  
22 difficulty that you're having. And I want to acknowledge  
23 the fact that I think that it's very courageous act for  
24 you, both of you as English is a second language to come  
25 in and participate in these proceedings which are very

1 technical, very deep subjects that require a lot of  
2 knowledge. It isn't easy. I understand that. And I  
3 appreciate and I applaud your participation. And ideally  
4 we want as much participation as we can from the community  
5 usually anyway.

6           Here we're faced with a problem which is language  
7 barrier and that's a real problem. I'm not saying it is  
8 not. The problem is is that if this type of request were  
9 to be brought again in the future, it would have to be  
10 brought so much in advance that we would be able to deal  
11 with it and handle it logistically.

12           But secondly, what I would say is that the best  
13 we can do is proceed in English. I'm happy that you have  
14 an attorney who presumably is an English speaker and will  
15 be able to follow with what's going on and he'll be able  
16 to assist you and hopefully Mr. Dighe as much as he can.  
17 But at this time, that motion is denied.

18           So when it comes to motions in general, and  
19 everybody should be aware of this, a motion is simply  
20 this, it's a request of the Committee to take some action.  
21 It's the same thing as a petition, which is a motion in  
22 writing. And the same is true with any objection that the  
23 parties make, if you object to anything coming in or  
24 whatever. The Committee's going to make a ruling. And  
25 when we make a ruling, then the ruling will stand, unless

1 we ask for what's called an offer of proof. Sometimes  
2 we'll ask why do you think this should be admitted if it's  
3 over objection.

4           So with that, I need to move on. So the motion  
5 for your attorney is granted. The motion for a translator  
6 and for documents to be translated is denied. And this  
7 motion, which is a joint motion to have a continuation of  
8 a second evidentiary hearing, I have to move on and I  
9 can't read it right now. I'll try to get to it maybe  
10 tonight. And we'll look at it and make a decision then  
11 once the Presiding Member has a chance to look at it. So  
12 I'm not going to rule on this now. We need to take  
13 evidence. We have all these people who are here to  
14 provide evidence. The clock is ticking and we want to  
15 make the record.

16           Go ahead, Mr. Sarvey, you had a question.

17           MR. SINGH: I just want to make last request. I  
18 thank you very much for taking time to consider this  
19 motion. Now, this is the burden of a minority community  
20 will be getting until death once the power plant comes.  
21 So please take those considerations to light and make sure  
22 that you know our community understand impacts of the  
23 power plant once those documents have been translated into  
24 their native language and they could make a decision  
25 whether to live in the community or they can choose

1 somewhere else to go.

2 HEARING OFFICER CELLI: You know, that's a burden  
3 that's beyond the California Energy Commission. But what  
4 I will tell you is this. Whether you live in a minority  
5 community is a fact which is an issue within these  
6 proceedings. And we haven't taken that evidence yet. We  
7 will hopefully tonight. And we will find out at that  
8 time. And if it is, then certain duties will be  
9 triggered. And so we will -- the Committee will respond  
10 appropriately. But at this time I'm just denying the  
11 motion because we just --

12 MR. SINGH: I just want to make sure all this  
13 conversation is on the record.

14 HEARING OFFICER CELLI: It sure is. All of this  
15 is on the record.

16 Mr. Dighe, one last thing go ahead and then I  
17 want to swear these witnesses.

18 MR. DIGHE: Is it me or --

19 HEARING OFFICER CELLI: Yeah, Mr. Dighe, go  
20 ahead.

21 MR. DIGHE: Thank you. I have a very quick  
22 follow up comment. So basically so we are a minority  
23 community. So that we are going to probably discuss  
24 later. Okay. And this specific motion about having  
25 continuation of the evidentiary hearing, the last part of

1 the motion does talk about translation as well. So I was  
2 wondering if having the translators can be considered when  
3 you actually open up and get time to go about this.

4 HEARING OFFICER CELLI: We'll consider the  
5 whole -- hopefully this evening we'll go through the  
6 entire motion and we'll rule on it then. Okay. So with  
7 that, I am sorry, witnesses. Thanks for your indulgence.

8 Mr. Petty, did you want to swear these witnesses?

9 (Whereupon the witnesses were sworn.)

10 HEARING OFFICER CELLI: If you wouldn't mind  
11 starting on my right and going to the left so we know  
12 who's who.

13 MR. BLACKWELL: My name is David Blackwell,  
14 D-a-v-i-d, B-l-a-c-k-w-e-l-l. I'm a partner with the law  
15 firm of Allen, Matkins, Leck, Gamble, Mallory & Natsis.  
16 I'm a land use partner. I do land use entitlements and  
17 litigation. I'm here to provide testimony on the land use  
18 topic and particularly the Williamson Act.

19 HEARING OFFICER CELLI: Thank you.

20 Next?

21 MR. MARTINELLI: My name is Aldolph Martinelli,  
22 A-d-o-l-p-h, M-a-r-t-i-n-e-l-l-i. I am an independent  
23 land use consultant. Previously I was the Director of  
24 Alameda County's Community Development Agency, and prior  
25 to that, the Planning Director of Alameda County during

1 the period when East County Area Plan was written and  
2 adopted and when Measure D was enacted and the East County  
3 Area Plan was modified to reflect those changes. I'm here  
4 to speak with respect to land use issues.

5 HEARING OFFICER CELLI: Thank you.

6 Next?

7 MR. GWERDER: My name is Jim Gwerder. The last  
8 name is spelled G-w-e-r-d-e-r. I work for Souza Realty  
9 and development in Tracy. And I've worked at Souza Realty  
10 for the Souza family for about 24 years. The first  
11 two years I worked for the family I worked on their cattle  
12 ranch. And then for about 18 years after that, I was  
13 involved with the management of their cattle ranch which  
14 is right over the county line in the East Hills.

15 I've had a real estate and sales license for 22  
16 years, a broker's license for 18 years and the majority of  
17 my real estate transactions have been with agricultural  
18 and mitigation properties.

19 I'm here today to answer any questions about the  
20 agricultural resource values that are in question.

21 MR. HOHN: My name is Joshua Hohn. J-o-s-h-u-a,  
22 last name is H-o-h-n. I'm a planner at CH2MHILL. And I  
23 was the primary author on the land use section of the  
24 application for certification and can speak to any of the  
25 work that went into writing that initial report.

1 HEARING OFFICER CELLI: Thank you.

2 Go ahead, Mr. Wheatland.

3 MR. WHEATLAND: Our testimony on the subject of  
4 land use, the opening testimony and rebuttal testimony has  
5 been previously submitted and served on all parties. I  
6 know the Committee and the parties have read it  
7 thoroughly. So I do not intend to ask any additional  
8 direct. So in the interest of time, I will tell you that  
9 the witnesses are available for cross-examination.

10 HEARING OFFICER CELLI: Thank you very much. I  
11 really appreciate that. The point is, folks, we've  
12 already received their testimony in writing and now we're  
13 going to just open the matter for your cross-examination.  
14 Starting with staff.

15 STAFF COUNSEL WILLIS: We have no  
16 cross-examination. Thank you.

17 HEARING OFFICER CELLI: Thank you. Bob Sarvey.

18 MR. SARVEY: First of all, it's a longstanding  
19 condition that we don't allow attorneys to testify at the  
20 Energy Commission. And I can't remember any particular  
21 case where I was involved and an attorney was allowed to  
22 testify. So I just wanted to know if that's now a new  
23 standard. Because otherwise I would have brought my land  
24 use attorney to sit here and testify as well. But my  
25 understanding is that's not allowed.

1 HEARING OFFICER CELLI: Well, based on what code  
2 section did you rely on that says that you can't have an  
3 attorney testify?

4 MR. SARVEY: I've just relied on the 15 or so  
5 proceedings I've done where every time an attorney steps  
6 to the microphone the Commissioner or the Hearing Officer  
7 said sorry we can't take your testimony. That's legal  
8 opinion. That's not factual. So --

9 HEARING OFFICER CELLI: That's actually -- you're  
10 onto something there, because that's usually the case when  
11 it comes to coming to a legal opinion. In my experience  
12 though what we'll do is allow in the evidence in its  
13 written form usually and then give it the weight it  
14 deserves depending on what the testimony goes to. So I  
15 would not exclude the witness.

16 MR. SARVEY: My second question is does everyone  
17 up here have pre-filed testimony? I haven't read any  
18 testimony from Mr. Gwerder. So I would like to know if he  
19 has pre-filed testimony.

20 HEARING OFFICER CELLI: Applicant?

21 MR. WHEATLAND: From who do you not have  
22 testimony?

23 MR. SARVEY: Mr. Gwerder.

24 MR. WHEATLAND: No. You have his declaration in  
25 support of the applicant's testimony. His declaration was

1 filed.

2 MR. SARVEY: (inaudible) his own testimony  
3 first --

4 MR. WHEATLAND: The panel is jointly sponsoring  
5 the applicant's opening testimony and the applicant's  
6 rebuttal testimony.

7 MR. SARVEY: I would object. Unless he has some  
8 pre-filed testimony, I can't question him on anything.

9 HEARING OFFICER CELLI: Okay. My understanding  
10 is that these are joint authors of testimony is that  
11 what --

12 MR. WHEATLAND: That's correct. In the  
13 introduction to our land use testimony, the very first  
14 item, item 1A names, and we listed four names in support  
15 of this piece of testimony.

16 HEARING OFFICER CELLI: So the motion is  
17 overruled. Go ahead and ask your question.

18 CROSS-EXAMINATION

19 MR. SARVEY: Okay. Mr. Gwerder, did you write  
20 any of this testimony, sir?

21 MR. GWERDER: I participated in its writing, yes.

22 MR. SARVEY: Mr. Martinelli, in Exhibit 67,  
23 page 2 of rebuttal testimony you stated that the Mariposa  
24 Energy Project can be considered a public facility as it  
25 serves the needs of the public at large. Based upon

1 having a long term power purchase agreement with Pacific  
2 Gas and Electric. If this project didn't have a long term  
3 power purchase agreement, would it no longer be a public  
4 facility?

5 MR. MARTINELLI: I didn't follow the negatives  
6 there. I'm not sure of the question. Could you ask it  
7 again.

8 MR. SIMPSON: Would you be able to speak up, sir?

9 MR. SARVEY: You state on page 2 of your  
10 testimony, which is Exhibit 67, that the Mariposa project  
11 can be considered a public facility as it serves the need  
12 of the public at large based upon having a long-term power  
13 purchase agreement with Pacific Gas and Electric and local  
14 electric and gas utility. Now, if this MEP did not have  
15 the power purchase agreement, would it still be a public  
16 facility?

17 MR. MARTINELLI: It conceivably could be  
18 considered a public facility or a quasi-public facility if  
19 it provided energy or other type of use that would be  
20 distributed by a public utility.

21 MR. SARVEY: Does PG&E serve the public at large  
22 or does it serve its rate payers and shareholders?

23 MR. MARTINELLI: PG&E is the public utility  
24 providers for the great majority of Alameda County.

25 MR. SARVEY: In this particular instance, you're

1 stating that the MEP is a public facility because it has  
2 its power purchase agreement. What happens when this  
3 purchase power agreement is no longer in effect?

4 MR. MARTINELLI: I don't know.

5 MR. SARVEY: Exhibit 67, page 8 of your testimony  
6 states that PG&E did not contract with specific power  
7 requirements that it would build the facility itself. Are  
8 you aware that PG&E cannot build a power plant in the  
9 current long term procurement process?

10 MR. MARTINELLI: No.

11 MR. SARVEY: Exhibit 63, page 3 of your testimony  
12 states as explained above, uses that constitute a public  
13 facility or statement of infrastructure necessary to  
14 provide adequate utility service to East County and the  
15 rest of Alameda County are consistent with Measure D  
16 overall. Has anyone provided you with an analysis which  
17 determines that the MEP is needed to provide adequate  
18 utility service to East County?

19 MR. MARTINELLI: I've seen a Beck study that  
20 indicates that there is much more demand for power than  
21 generated in the East County or in Alameda County for  
22 Alameda County uses. I'm also very much aware that  
23 there's significant growth occurring in the East County  
24 area.

25 MR. SARVEY: To your knowledge, does the Beck

1 study include the East Altamont Energy Center as part of  
2 their analysis?

3 MR. MARTINELLI: I believe it did, yes.

4 MR. SARVEY: So Policy 19 of the ECAP limits  
5 development necessary to serve eastern Alameda County. Is  
6 there any language in Policy 19 that expands that to all  
7 of Alameda County or the rest of the state?

8 MR. MARTINELLI: I believe you're speaking to  
9 Policy 13. But I'll look at ECAP. The Policy 19 reads,  
10 "The county shall encourage cities in west Alameda County  
11 to promote infill development both residential and  
12 employment generating and the conversion of excess  
13 industrial and commercial land uses to residential uses."  
14 I'm not sure -- it shows that intensification of uses in  
15 the west part of Alameda County is consistent with ECAP,  
16 but I don't think that's the question.

17 MR. SARVEY: Is the Byron cogen facility a public  
18 facility?

19 MR. MARTINELLI: No.

20 MR. SARVEY: And how is that different than the  
21 Mariposa Energy Project, which also supplies electrical  
22 power to eastern Alameda County?

23 MR. MARTINELLI: I'm not sure how the cogen  
24 facility works. I don't believe that it's operating.

25 HEARING OFFICER CELLI: Is that a responsive

1 answer to your question, Mr. Sarvey?

2 MR. SARVEY: I think we need to move on. I don't  
3 think he understood he could answer the question. There's  
4 no need going further.

5 You state on Exhibit 67, page 6 of your testimony  
6 it says that in contrast, the Mariposa Energy Project --  
7 and you're referring to contrast with East Altamont Energy  
8 Center -- is designed to be a contractual peaker  
9 facility -- peaking facility such as Mariposa provide  
10 highly flexible dispatchable energy capacity, fast  
11 (inaudible) capacity and better needed to balance load,  
12 help integrate intermittent renewable resources such as  
13 wind and solar and support base load and (inaudible)  
14 generation.

15 Mr. Martinelli, do you know what duct firing is?

16 MR. MARTINELLI: Pardon me?

17 MR. SARVEY: Do you know what duct firing is?

18 Are you familiar or do you know that the East Altamont  
19 Energy Center has between 200 and 250 megawatts of duct  
20 fire capability?

21 MR. MARTINELLI: No.

22 MR. SARVEY: Then in Exhibit 67, page 6, you  
23 state that the Mariposa Energy Project is needed in  
24 eastern Alameda County in light of the fact that eastern  
25 Alameda County has little load generation. Do you know

1 how much generation eastern Alameda County currently has?

2 MR. MARTINELLI: I have reviewed the Beck -- I've  
3 looked at the Beck study. I don't know the exact numbers.  
4 It was a very conservative assessment in that it included  
5 projects like East Altamont that doesn't exist and is  
6 likely to be constructed.

7 MR. SIMPSON: I'm sorry. Can you speak up, sir?

8 MR. MARTINELLI: The Beck study was a very  
9 conservative analysis in that it included a facility, the  
10 East Altamont facility, which does not exist and is  
11 unlikely to be constructed since its period to demonstrate  
12 it would have a market capability is nearly expired and  
13 they have a lot of environmental and documentation work to  
14 be submitted and that has not been submitted. The term  
15 period concludes I believe in August of this year.

16 MR. SARVEY: So do you have some information that  
17 East Altamont is not going to request an extension to  
18 their license; is that your testimony?

19 MR. MARTINELLI: My testimony is that there is no  
20 evidence that they will move forward with the project.

21 MR. SARVEY: East Altamont Energy Center has a  
22 license with this Commission, Mr. Martinelli. And at the  
23 current time, the MEP does not have a license. So doesn't  
24 that make East Altamont Energy Center much more reasonably  
25 foreseeable than the MEP?

1 MR. MARTINELLI: Not in my judgment.

2 MR. SARVEY: Do you know how much generation is  
3 either permitted or is going through the permitting  
4 process right now for eastern Alameda County?

5 MR. MARTINELLI: I know of the repowering of the  
6 wind, a good portion of the wind farm area in the eastern  
7 Alameda County that has a total potential for 240  
8 megawatts. I know that there was a small solar project  
9 just recently approved by Alameda County for three  
10 megawatts. I know that there's been discussion for a  
11 water pump storage facility. That application has not  
12 been submitted. And then there's the Mariposa Energy  
13 Project. I do not know of any others.

14 MR. SARVEY: Would it be possible to (inaudible)  
15 in the eastern Alameda County?

16 MR. MARTINELLI: I didn't understand?

17 MR. SARVEY: Would it be possible to site a  
18 refinery in eastern Alameda County under the Measure D in  
19 the ECAP?

20 MR. MARTINELLI: I don't believe so.

21 MR. SARVEY: And why is that?

22 MR. MARTINELLI: A refinery would be an  
23 industrial use. It would also need access to a port, at  
24 least the ones I'm aware of.

25 MR. SARVEY: You state that Mariposa Energy is

1 needed to provide backup for renewable generation. Do you  
2 have any idea whether eastern Alameda County has enough --  
3 has adequate regulation up and down to support the  
4 existing renewable energy in Alameda County and eastern  
5 Alameda County.

6 HEARING OFFICER CELLI: Mr. Martinelli, if you  
7 can speak directly into your microphone so we can all hear  
8 you.

9 MR. MARTINELLI: No.

10 MR. SARVEY: That is no there isn't, or no, you  
11 don't?

12 MR. MARTINELLI: It's I don't know.

13 MR. SARVEY: That's all I have. Thank you.

14 HEARING OFFICER CELLI: I want to say before we  
15 move on to all of the intervenors, that is what we want to  
16 see in cross-examination. He had his questions ready. He  
17 knew what he was asking. He asked them quickly. There  
18 was no fumbling. I thank you, Mr. Sarvey, for that. I do  
19 appreciate that.

20 Now, according to Mountain House Community  
21 Service District's prehearing conference statements, they  
22 had no questions for these witnesses. Is that still the  
23 case?

24 MR. GROOVER: Yes, Mr. Chairman. That's the  
25 case.

1 HEARING OFFICER CELLI: And Rajesh Dighe, you may  
2 cross-examine these witnesses.

3 MR. DIGHE: So anybody can answer this. So the  
4 Measure D, and the eastern in your plan, there are a lot  
5 of policies. Can you actually explain can the definition  
6 of violation and consistent with the policy? Does it mean  
7 that (inaudible) trying to respect some of the other  
8 policies and then try to get to the consistency of Measure  
9 D is okay for the MEP project and how does it work?  
10 Explain in detail violations and consistency.

11 MR. MARTINELLI: If I understand correctly, I  
12 would preface the answer by saying that Measure D modified  
13 a portion of the East County Area Plan. The East County  
14 Area Plan was modified to reconcile the changes that was  
15 caused by Measure D. So the applicable general plan  
16 policy is the East County Area Plan. As any general plan,  
17 it has a series of policies and programs that apply  
18 through a broad array of the requirements of society. The  
19 policies -- need to be balanced such that there is a  
20 consistent internally consistent program. But if you take  
21 any one policy out of context or read it solely, you may  
22 not achieve the overall objective of the general plan.  
23 For example, there is a policy that says you have to  
24 protect the environment. And there's other policies that  
25 says it's great to have renewable resources and wind

1 farms. You have to balance those two, the windmills kill  
2 birds. There's mitigation proposed so that impact is  
3 mitigated but you then accomplish protection of the  
4 environment and also generating alternative energy.

5           There are policies that says you need to provide  
6 adequate utility infrastructure for the growing  
7 communities and you need to look at the region as a whole.  
8 And then there are policies that say you need to protect  
9 agriculture. So looking at the general plan in its  
10 complete context, you draw a decision or make a decision  
11 based on a blending of the policies that sometime appear  
12 to be in competition. But you have discretion to reach a  
13 conclusion.

14           MR. DIGHE: Thank you.

15           My next question is are you aware of policies  
16 which are conflicting with each other? For example, the  
17 Policy 13 and Policy 93, right? I mean, how does it work?  
18 How do you guys decide on violation and consistency when  
19 93 clearly says the county shall seek to stimulate  
20 agricultural investment (inaudible) variety of existing or  
21 potential agricultural uses? And some of the other  
22 policies go kind of against where it says limited  
23 infrastructure is allowed. So do you say -- do you agree  
24 to the statement that there are policies which are kind of  
25 inconsistent with each other?

1 HEARING OFFICER CELLI: Do you understand the  
2 question?

3 MR. MARTINELLI: Not entirely, but I think my  
4 prior answer spoke to this question.

5 HEARING OFFICER CELLI: Can I ask you to hold the  
6 answer for one moment?

7 Somebody's Blackberry or iPhone or something is  
8 too close to the microphones. So if you have one sitting  
9 next to the microphone, please pull it away.

10 And I'm also going to ask that the people who are  
11 on the telephone, if you have a mute button on your phones  
12 at home and you're just listening in, I ask that you press  
13 your mute button so we don't have to listen to anybody  
14 breathing on their telephone line. That will facilitate  
15 the high fidelity sounds we're trying to achieve here.

16 So with that, I'm sorry for the interruption.  
17 Please go ahead.

18 MR. MARTINELLI: Further, I just had a chance to  
19 find Policy 93. It states the county shall seek to  
20 stimulate agricultural investment and enhance the economic  
21 viability of existing or potential rural agricultural  
22 areas. And I believe the question said how do you  
23 reconcile that policy with Policy 13, which sets the  
24 standards for permissible infrastructure. They're not  
25 mutually exclusive. Infrastructure is required for

1 economic viability of agriculture. The water that comes  
2 through the South Bay Aqueduct that's pumped over the  
3 Altamont water that irrigates agricultural activities is  
4 moved by pumps. Energy is used to draw water out of  
5 wells, to run the tractor, in order to -- they're not  
6 mutually exclusive. They're complementary.

7 MR. DIGHE: (inaudible) space specific to the  
8 proposed site which we heard from Alameda County that it  
9 has to respect Measure D. My question is and Measure D is  
10 kind of an amendment to the cap. And the recent Measure D  
11 was approved clearly was to say that agriculture and open  
12 space land. So does it mean that MEP infrastructure is  
13 going to try to be consistent with Measure D or how do you  
14 put it now? Because Measure D is clearly saying to say  
15 that agriculture and open space land. And we saw this  
16 morning from Alameda County that there were policies to  
17 which they were trying to be consistent with, but so can  
18 you please explain? Do you feel that MEP is consistent  
19 and how is it consistent with Measure D? Specifically to  
20 say that agriculture and open space land.

21 MR. MARTINELLI: The policy towards agricultural  
22 preservation and the uses that are permitted in an  
23 agricultural area are two separate things. The policy --  
24 there's the goal and there are programs to accomplish it.  
25 But there are also exceptions to the limitations on the

1 uses in an agricultural district and infrastructure is a  
2 permissible exception to the agricultural activity. And  
3 there are examples of infrastructure throughout the East  
4 County area that exist, are being developed, are being  
5 expanded to serve the community at large, are in  
6 agricultural areas but they do not preclude the  
7 agricultural use of the remaining properties. So they're  
8 compatible with the agricultural use.

9 I could site a lot of examples of infrastructure.

10 MR. DIGHE: So in the testimony you say that -- I  
11 think it was Policy 93 to stimulate agriculture  
12 (inaudible) the MEP is actually investing in providing  
13 more grazing for cattels. Is that something sufficient to  
14 be consistent with Measure D in addition to on the  
15 (inaudible) in the MEP infrastructure? And just  
16 (inaudible) you have raising cattles. Is that consistent?  
17 That's all.

18 HEARING OFFICER CELLI: Thank you, Mr. Dighe.

19 Mr. Wilson.

20 MR. WILSON: CalPilots has no questions at this  
21 time. But we will have questions for staff and their  
22 documentation on land use. So that's -- we're getting  
23 into the aviation issue versus land use and it's crossing  
24 a little bit here.

25 HEARING OFFICER CELLI: I thought you had

1 reserved -- I mean, of course you can ask questions of  
2 staff's witnesses. But my recollection was you were  
3 interested in aviation and land use.

4 MR. WILSON: Yes. So we did that with Alameda  
5 County.

6 HEARING OFFICER CELLI: And you'll have an  
7 opportunity -- basically what we're doing, folks, is  
8 taking the cross-examination of these witnesses. After  
9 we're finished with these witnesses, we'll next call  
10 staff's witnesses. And then I'm going to work my way down  
11 the line to each party's witnesses as we go.

12 So thank you, Mr. Wilson.

13 Mr. Singh, any questions of these witnesses?

14 MR. SINGH: Yes, I do have. But I would like to  
15 take the opportunity and then let maybe the last  
16 (inaudible) so I'll be the last. So let them others on  
17 this.

18 HEARING OFFICER CELLI: Okay. As time permits,  
19 because time may not permit. But we'll see what we can  
20 accomplish here. Mr. Mainland or Mr. Carlton. I'm sorry.  
21 Sierra Club California.

22 MR. CARLTON: Excuse me. Mr. Martinelli, are you  
23 aware that Measure D which it passed when it was being  
24 considered deleted language from what was on the ballot  
25 that previously permitted other industrial uses

1 appropriate for remote areas and determined to be  
2 compatible with agriculture?

3 MR. MARTINELLI: Yes.

4 MR. CARLTON: When things are not taken out of  
5 legislation, does that not indicate some of the intent of  
6 the legislation?

7 MR. MARTINELLI: Could you repeat that?

8 MR. CARLTON: When something is in a proposal and  
9 then taken out, does that not help indicate the intent of  
10 the legislation?

11 MR. MARTINELLI: Yes.

12 MR. CARLTON: So is the MEP a type of industrial  
13 facility, a facility that generates electricity, is that  
14 not other industrial use appropriate for remote areas?

15 MR. MARTINELLI: No. First, the deleted term as  
16 used historically in the context of agricultural  
17 provisions of the general plan and that phrase was in the  
18 agricultural general plan well before East County Area  
19 Plan was adopted. And historically it dealt with uses  
20 such as packing plants, canneries, slaughter houses,  
21 things like that. You know, the Mariposa facility has  
22 industrial characteristics, but it's a permissible  
23 infrastructure and not an industrial use under the East  
24 County Area Plan.

25 MR. CARLTON: We'll get to infrastructure. Okay.

1 So Policy 13 allows infrastructure such as pipelines,  
2 canals and power transmission lines which have no  
3 excessive growth inducing effect in East County area and  
4 have permit conditions to ensure that no service can be  
5 provided beyond that consistent with the development  
6 allowed by the initiative. Are there any such conditions  
7 in this application or permit?

8 MR. MARTINELLI: Well, in part there are not  
9 conditions but just the project itself. It is not a  
10 portion of infrastructure that was directed toward urban  
11 growth as it was depicted in the Measure D initiative. It  
12 generates power that would go into the grid. It's not at  
13 a distribution level. The facilities that are associated  
14 with the project do not include sewer lines or water lines  
15 that could serve other development. So it does not have  
16 any direct undue growth inducement.

17 MR. CARLTON: So it doesn't provide anything at  
18 all for East County?

19 MR. MARTINELLI: It provides the service to East  
20 County. But it does not stimulate growth as it was  
21 defined in the preparation of Measure D.

22 MR. CARLTON: So if it wasn't built, would East  
23 County still have sufficient electricity?

24 MR. MARTINELLI: I'm not sure. To the extent  
25 East County is part of the region and to the extent that

1 the -- as I understand it, the PUC indicated that this  
2 type of facility was required of PG&E and PG&E did a  
3 request for proposals and selected this facility to  
4 pursue, I believe that it's essential as within the terms  
5 of the public utility service of PG&E which serves the  
6 East County and the rest of Alameda County.

7 MR. CARLTON: You're saying this plant isn't  
8 built -- essential public services will not be provided to  
9 Alameda County?

10 MR. MARTINELLI: I'm saying --

11 MR. WHEATLAND: Asked and answered.

12 HEARING OFFICER CELLI: Sustained.

13 MR. CARLTON: Okay. Policy 13 provides  
14 infrastructure shall include public facilities, community  
15 facilities, and all structures and development necessary  
16 to (inaudible) the public services and utility. How is  
17 MEP necessary to the provision of public services and  
18 utilities necessary?

19 MR. MARTINELLI: Could you repeat the question?  
20 I need to look at Policy 13.

21 MR. CARLTON: Policy 13 provides infrastructure  
22 shall include public facilities, community facilities and  
23 all structures and development necessary to the provision  
24 of public services and utilities. How is MEP necessary to  
25 the provision of public services and utilities?

1           MR. MARTINELLI: Well, it would not be a  
2 public -- electric utility unless there was a power  
3 generating source to provide electricity. I think if you  
4 read it in the context of the way it's written, it is  
5 structured necessary for the provision of public  
6 utilities.

7           MR. CARLTON: What's necessary though?

8           MR. MARTINELLI: You need to generate electricity  
9 to distribute it.

10          MR. CARLTON: But they already generate enough  
11 electricity.

12          All right. I think Mr. Mainland has one  
13 question.

14          HEARING OFFICER CELLI: Go ahead, Mr. Mainland.  
15 Is your microphone that's right in front of you not  
16 working, because they were supposed to have fixed that  
17 over lunch. Speak into that one and let's see how we do.

18          MR. MAINLAND: Testing. Testing.

19          HEARING OFFICER CELLI: That sounds great. So  
20 now this one that Mr. Carlton has, that's for you and Mr.  
21 Simpson. And the one that you have, Mr. Mainland, is for  
22 you and Mr. Singh. And the one that Mr. Wilson is holding  
23 is for Mr. Wilson and Mr. Dighe. And this way everyone  
24 will have a dedicated mike.

25          Go ahead.

1           MR. MARTINELLI: Mr. Martinelli, you apparently  
2 also maintained that this is a key need of infrastructure  
3 for east Alameda County. Much of the argument for this  
4 being a key need rests on the Mariposa settlement  
5 agreement, which is under let's say criticism by numerous  
6 groups in the CPUC for PG&E's violation of it and in fact,  
7 DRA has asked that severe sanctions against PG&E for  
8 violating the agreement be imposed and they've recommended  
9 staying or suspending approval of the Mariposa PPA as  
10 others have recommended. If this --

11           MR. WHEATLAND: Objection. The entire statement  
12 assumes facts not in evidence.

13           HEARING OFFICER CELLI: Sustained.

14           MR. MAINLAND: If the Mariposa settlement  
15 agreement were to be stayed or suspended and approval of  
16 the Mariposa PPA set aside, would you still see that there  
17 was a need for this project?

18           MR. MARTINELLI: It's -- it's not in my role to  
19 venture an opinion on need. The need would be determined  
20 by the California Energy Commission or other State  
21 agencies in reviewing this project. I don't have the  
22 information to respond to that question beyond that.

23           HEARING OFFICER CELLI: Anything further, Mr.  
24 Mainland? You shook your head to indicate no? Okay. He  
25 just answered by shaking his head yes. Because we're on

1 the record, I need to hear no's and yes's.

2 MR. MAINLAND: That's all our questions.

3 HEARING OFFICER CELLI: I'm sorry. I don't mean  
4 to be so formal, but we're making a record. And if I have  
5 a question that says do you have any further questions and  
6 the record is silent, we don't know if you did or did not.  
7 That's why I make the question and that's why I need an  
8 answer on the record.

9 We're at Rob Simpson now. Go ahead.

10 MR. SIMPSON: First, I'd like to make a motion  
11 that we open the public comment briefly. I think we have  
12 members of the public who would like to speak now that may  
13 not be available later and we may have new elected  
14 officials in the room.

15 HEARING OFFICER CELLI: Thank you. Mr. Simpson,  
16 you know, because we're so pressed for time, I'm going to  
17 deny the motion. But I'm going to say that we have WebEx  
18 available. So if you are here today because you wanted to  
19 speak but you have to leave for some reason, you can call  
20 in between 5:00 and 6:00 tonight depending on how many  
21 people show up or call in, we may have to go longer, you  
22 can still comment. And your comments will be taken on the  
23 phone. We'll hear people from WebEx. And your comments  
24 will be heard by the Committee. So we're not going to  
25 take public --

1 MS. SARVEY: I wanted to tell you I was on WebEx  
2 and people would be speaking. I couldn't hear the first  
3 quarter of what they were saying. The most important part  
4 of what I needed to hear it would either be completely  
5 silent or it would be staticy. And I finally had to leave  
6 work and come here because it happened so much I could not  
7 tell what was being said.

8 HEARING OFFICER CELLI: I'm sorry about that.  
9 We're doing our best. The whole idea of WebEx is supposed  
10 to reach out to people like you and let you participate.  
11 I'm told that the audio has been good all day. But the  
12 problem has been that when people are speaking what will  
13 happen is they'll start moving away from their microphone  
14 and they will and you lose that.

15 MS. SARVEY: And I can't say "I can't hear you"  
16 when I'm there and you're here.

17 HEARING OFFICER CELLI: Right. So I want to  
18 thank you for that. That helps us have a better  
19 proceeding.

20 And I want to please remind all the speakers to  
21 stay on top of your microphones and speak directly into  
22 your microphone.

23 However, we just don't have the time to take  
24 public comment at this time. So we're in the middle of  
25 cross-examination. Mr. Simpson, go ahead with your cross.

1           MR. SIMPSON: Okay. I didn't think that whether  
2 they commented now or later would effect the length of  
3 their comment or the length of our proceeding. Based on  
4 the failure of WebEx to provide the service that you've  
5 described, I'd like to make a motion that you open the  
6 public comment period at this time.

7           HEARING OFFICER CELLI: Maybe if we can finish  
8 this panel we can let this woman make a quick statement  
9 and get back to work.

10          MR. SIMPSON: I'll ask each of the panel members  
11 is this a public facility?

12          MR. BLACKWELL: To who are you directing this?

13          MR. SIMPSON: To each member.

14          MR. WHEATLAND: Well, the panel is here to speak  
15 within their areas of expertise. So that's a question  
16 that's appropriate for Mr. Martinelli.

17          HEARING OFFICER CELLI: And what I would say is  
18 panel members, experts, you know what your expertise is  
19 and you should know who the people -- so when he asks the  
20 question, the person with the expertise and appropriate  
21 information should respond. Go ahead.

22          MR. SIMPSON: I think this is a legal question.  
23 I'd like to ask the attorney.

24          MR. BLACKWELL: My expertise is the Williamson  
25 Act. It's Mr. Martinelli's (inaudible) and the ECAP.

1 HEARING OFFICER CELLI: Please say that again,  
2 Mr. Blackwell.

3 MR. BLACKWELL: As I stated at the outset, I'm  
4 here to testify about the application of the Williamson  
5 Act and if there are any questions related to that. Mr.  
6 Martinelli is here to testify primarily to the ECAP as  
7 he's been doing throughout the day.

8 MR. MARTINELLI: The project can be considered a  
9 public facility since it serves needs of the public at  
10 large, has a long term power purchase agreement with  
11 Pacific Gas and Electric Company, which is a public  
12 utility provider for Alameda County, accept for a few  
13 spots. And it's also a structure that's necessary for the  
14 development of public utilities, which is a public -- it's  
15 necessary to provide electricity which is a public utility  
16 function.

17 MR. SIMPSON: I see. Would a gas station be a  
18 public facility?

19 HEARING OFFICER CELLI: Please speak into your  
20 mike.

21 MR. MARTINELLI: No.

22 MR. SIMPSON: But roads would be a public  
23 facility?

24 MR. MARTINELLI: Yes. I mean, most roads would  
25 be a public facility.

1           MR. SIMPSON: Public road would be a public  
2 facility? But cars need gas. So wouldn't gas then be a  
3 public facility?

4           MR. MARTINELLI: No. It's a commodity.

5           MR. SIMPSON: Are power plants considered an  
6 industrial use? Maybe I didn't understand that response  
7 earlier.

8           MR. MARTINELLI: It has industrial  
9 characteristics. But under the terms of the East County  
10 Area Plan it's permissible infrastructure.

11          MR. SIMPSON: I see.

12          I notice some distinction between the site and  
13 the parcel. We've got 150 acre parcel and a 10 acre site.  
14 Can you help me understand why the site size is delineated  
15 different than the parcel size?

16          MR. MARTINELLI: Well, my understanding is that  
17 the Mariposa Energy Project is leasing the 158 acre site,  
18 and that is the parcel. It's not being subdivided. The  
19 actual area that will be developed directly for the  
20 project will be approximately ten acres. So that the area  
21 of which the facility will be constructed is limited to  
22 that small percentage of the overall site.

23          MR. SIMPSON: I see. Do you know what the  
24 percentage of coverage of the site would be?

25          MR. MARTINELLI: I don't know the exact amount,

1 but it was well below what is required to meet the .01  
2 FAR ratio.

3 MR. SIMPSON: So .01 of the site or the parcel?

4 MR. MARTINELLI: Of the site -- I mean of the  
5 parcel. I'm sorry. The coverage limitation is based on  
6 the area of a parcel. So it's 158 acres it would allow  
7 approximately 65,000 or 70,000 square feet of coverage.

8 MR. SIMPSON: Isn't ten acres more than that?

9 MR. MARTINELLI: It's the difference between  
10 building site area and building coverage. In fact, in the  
11 discussion of permitted agricultural uses, infrastructure  
12 is the only use other than certain agricultural activities  
13 that is allowed to go beyond the building site limitations  
14 that are in the agricultural district.

15 MR. SIMPSON: So this is infrastructure?

16 MR. MARTINELLI: This is infrastructure, yes.

17 MR. SIMPSON: I see.

18 So the .01 percentage of -- you say --

19 MR. MARTINELLI: It's building coverage.

20 MR. SIMPSON: It's building coverage. So it's  
21 above .01 for the site.

22 MR. MARTINELLI: I'm not following that.

23 MR. SIMPSON: Well, you said it's below .01  
24 percentage of the 150 acres that's being covered.

25 MR. MARTINELLI: Correct.

1           MR. SIMPSON: But is it below .01 period of time  
2 of the ten acres that's being covered?

3           MR. MARTINELLI: No.

4           MR. SIMPSON: No?

5           MR. MARTINELLI: But it doesn't matter, because  
6 it's tied to the site. It's not a separate parcel. It's  
7 one parcel.

8           MR. SIMPSON: I see.

9           MR. MARTINELLI: It's an expansion of intensity  
10 of use over the broad agricultural area.

11          MR. SIMPSON: I see. So if the ten acres was  
12 subdivided from the rest of the parcel, then the coverage  
13 of the ten acres would be .01 percentage. Is that --

14          MR. MARTINELLI: That subdivision is precluded by  
15 Measure D in its requirements. But if there were a ten  
16 acre parcel, you would be limited to -- no, actually there  
17 is an exemption so you can have a minimum of 20,000 square  
18 feet of coverage of any individual parcel in the  
19 agricultural district.

20          MR. SIMPSON: I'm sorry. I'm getting feedback  
21 here on the mike. Not on the mike, in the PA system.

22          So I believe the contention is that this coverage  
23 is not significant -- or this use is not significant in  
24 the amount of land it takes from agricultural use?

25          MR. MARTINELLI: Yes.

1 MR. SIMPSON: What amount would be significant?

2 MR. MARTINELLI: It is beyond the discussion of  
3 significance is beyond the amount of land. It also  
4 depends on the compatibility of the use. You know, that  
5 is, can the agricultural operation that exists in function  
6 in the environment without interference from the use as  
7 proposed.

8 MR. SIMPSON: So if this thing killed all the  
9 cows or chased them away, then that would be significant;  
10 is that what you're saying?

11 MR. MARTINELLI: Yes.

12 MR. WHEATLAND: Objection.

13 MR. MARTINELLI: Well, I wasn't saying that  
14 but --

15 HEARING OFFICER CELLI: The objection is?

16 MR. WHEATLAND: The objection is relevance.

17 HEARING OFFICER CELLI: Well, it's relevant.  
18 It's argumentative.

19 MR. WHEATLAND: It's speculative too.

20 HEARING OFFICER CELLI: But the cat's out of the  
21 bag. So let's move on.

22 MR. SIMPSON: Well, I'm trying to determine  
23 what's significant. Is it how much land is covered? Is  
24 it how much land is taken from agriculture? And where  
25 that threshold is. I see that is not significant, but I

1 don't understand does this mean they can put five more  
2 facilities like this on this parcel or make up a bunch of  
3 different sites and put more facilities or is there a  
4 threshold?

5 MR. MARTINELLI: It's abstract to even speculate  
6 on what a threshold would be. I just know what this  
7 project is. This project is compatible with the  
8 functioning of this project would not interfere with the  
9 agricultural activities, the mitigation that's proposed as  
10 part of this project would increase productivity on the  
11 property beyond -- or equal to or beyond what it is now.  
12 It's very low intensity agriculture as it is. It isn't  
13 prime soils or soils of statewide significance.

14 HEARING OFFICER CELLI: Any further questions,  
15 Mr. Simpson?

16 MR. SIMPSON: Oh, yes. Are you familiar with  
17 this Department of Conservation letter dated July 6th,  
18 2009, between the county and the Department of  
19 Conservation regarding the Williamson Act?

20 HEARING OFFICER CELLI: Do we have an exhibit  
21 number?

22 MR. MARTINELLI: I am, but Mr. Blackwell should  
23 respond to that.

24 HEARING OFFICER CELLI: Before we do, is this an  
25 identified exhibit?

1 MR. WHEATLAND: Yes, it is. Just a minute.

2 We'll find it for you.

3 HEARING OFFICER CELLI: Thank you. The reason  
4 I'm asking is because when the day comes for us to start  
5 working on this, we want to know what document you're  
6 talking about. So when you refer to a document, if we can  
7 refer to it as an exhibit number, that is most helpful to  
8 the Committee.

9 MR. SIMPSON: Thanks. I think it was referenced  
10 earlier by the county of Alameda also.

11 HEARING OFFICER CELLI: Was that Exhibit 41, the  
12 letter from Mr. Bazar?

13 MR. BLACKWELL: Mr. Celli, no. That's actually  
14 Exhibit 20 is the letter that the intervenor is referring  
15 to. And I am familiar with that letter if you'd like to  
16 direct questions about that.

17 HEARING OFFICER CELLI: Go ahead, Mr. Simpson.

18 MR. SIMPSON: Oh, good. Is this the Department  
19 of Conservation determining that this is compatible land  
20 use?

21 MR. BLACKWELL: Yes, it made the determination  
22 under 51238.1 that under the principles of compatibility  
23 established by the Legislature this would be considered  
24 compatible use.

25 MR. SIMPSON: I see. As far as -- we've got a

1 real estate broker here. Would it be your opinion that  
2 land that residences could be built is of higher value  
3 than agricultural land?

4 MR. GWERDER: I don't understand the question.  
5 Please restate it.

6 MR. SIMPSON: If you have a parcel of land that  
7 you can build a house on, is that a higher value piece of  
8 land than a parcel you can't build a house on?

9 MR. GWERDER: It depends on what the buyer is  
10 trying to accomplish.

11 MR. SIMPSON: Let's take the neighboring parcel.  
12 If the neighboring parcel can build one house on his 100  
13 acres or whatever he has, is that a higher value than the  
14 neighboring parcel not being able to build a house?

15 MR. GWERDER: It would be a higher value to  
16 somebody who's looking for an estate home for a place to  
17 build a home. But it might not be a higher value who  
18 wants to clearly just do some sort of agricultural --  
19 again, it depends on what they're looking for.

20 MR. SIMPSON: Would you agree with this statement  
21 that this project may actually discourage new residential  
22 development in the immediate area?

23 MR. GWERDER: I don't particularly agree with  
24 that, no.

25 MR. SIMPSON: No? That was the project

1 proponent.

2 HEARING OFFICER CELLI: Anything further, Mr.  
3 Simpson?

4 MR. SIMPSON: We don't really know what  
5 percentage of land is covered. I want to make sure I  
6 understand that --

7 MR. BLACKWELL: I'm sorry. Is that a threshold  
8 you were getting at or are you talking about as far as  
9 this particular project on this particular parcel of land?  
10 It's 158 parcel of land --

11 MR. SIMPSON: Yes, on this 158 acre parcel or  
12 tanker site, do we know anything about what percentage of  
13 coverage?

14 MR. BLACKWELL: I saw an earlier county  
15 correspondence referring to 7.6 percent.

16 MR. MARTINELLI: That's 7.6 percent is the site  
17 area that would be occupied by this. But building  
18 coverage is different. Different requirement.

19 MR. WHEATLAND: We can provide the building  
20 coverage for the record. It is part of the record now.  
21 We can provide that figure.

22 HEARING OFFICER CELLI: Do you have it right now  
23 at your fingertips?

24 MR. WHEATLAND: We're digging it out as we speak.  
25 But we can do it before we conclude land use.

1 HEARING OFFICER CELLI: Okay. Anything further?

2 MR. SIMPSON: Oh, I do have one more question.  
3 If the facility is built and it doesn't operate because  
4 it's not needed, is it still a public facility?

5 MR. MARTINELLI: I can't answer that. I don't  
6 know.

7 HEARING OFFICER CELLI: Is there anyone at this  
8 panel who can answer this question?

9 MR. BLACKWELL: That asks for some speculation,  
10 but I would assume that it's the use that it's being  
11 defined for is what you defined it as. So if it's  
12 designed to produce energy, then it would be considered a  
13 public facility because there are uses that don't operate.  
14 But that's still what the use is defined under typical  
15 planning and zoning law.

16 MR. SIMPSON: Thank you.

17 HEARING OFFICER CELLI: Thank you.

18 Now, Mr. Singh, what I wanted to do is I had a  
19 request from Travis Miller to ask questions. And since  
20 he's working on your behalf, we're going to let him ask  
21 the question.

22 MR. SINGH: Thank you.

23 HEARING OFFICER CELLI: Mr. Miller, can you hear  
24 me?

25 MR. MILLER: Yeah. I had a question. I was

1 wondering how was it established that a 200 megawatt  
2 facility was voted deviant for the intended purpose as  
3 opposed to, say, a 100 megawatt facility if the operated  
4 permit is only going to be half of the annual allowance or  
5 the annual total generation capacity?

6 HEARING OFFICER CELLI: Did you get the question,  
7 experts? What I'm going to ask you to do, Mr. Miller, is  
8 speak really loudly into your phone because we're having a  
9 hard time. You're a little muffled.

10 MR. MILLER: Okay. I'll try to speak up a bit.

11 HEARING OFFICER CELLI: Let me ask you this, Mr.  
12 Miller. Do you happen to be on a speaker phone?

13 MR. MILLER: Yes. I dialed in by the computer.  
14 I can type the question.

15 HEARING OFFICER CELLI: The reason I'm asking is  
16 generally I find that when people go off the speaker and  
17 onto their headset, they're a lot clearer. Go ahead. I  
18 guess this is as good as we're going to get.

19 MR. MILLER: My question was how is it determined  
20 a 200 megawatt facility was necessary as opposed to say  
21 100 megawatt facility?

22 MR. WHEATLAND: That's a question either for  
23 alternatives or for project description. But it's not a  
24 question --

25 MR. SIMPSON: Can you identify yourself for the

1 speaker on the call?

2 HEARING OFFICER CELLI: We have an objection. Go  
3 ahead, Mr. Wheatland.

4 MR. WHEATLAND: Mr. Miller, this is Greg  
5 Wheatland. I'm the attorney for the applicant. And I was  
6 objecting to the question that's a question that's  
7 appropriate for the discussion of alternatives or for the  
8 project description, but it's not an issue that the land  
9 use panel is here to address.

10 HEARING OFFICER CELLI: And that objection is  
11 sustained. And I want to be clear for your purposes, Mr.  
12 Miller, that this panel is here to talk about land use, so  
13 if you can limit your questions to land use and things  
14 that come under land use.

15 MR. MILLER: Yes. I was attempting to ascertain  
16 why it was that this use was intended to be for a 200  
17 megawatt facility as opposed to a smaller facility,  
18 judging on the impacts for the land use of the surrounding  
19 (inaudible).

20 HEARING OFFICER CELLI: Did you hear the  
21 question?

22 MR. GWERDER: I think he asked why it was 100  
23 megawatts instead of 200 megawatts and how that effects  
24 the surrounding parcels. That's all I could catch.

25 HEARING OFFICER CELLI: Does that sound like the

1 question you asked, Mr. Miller? Is your question that  
2 it's the choice to proceed by way of a 200 versus a 100  
3 megawatt power plant and how does it effect the nearest  
4 parcels?

5 MR. MILLER: Yes.

6 HEARING OFFICER CELLI: Okay. That's the  
7 question. Can you answer that?

8 MR. GWERDER: So is the question that if the  
9 power plant was half the size would there be less of an  
10 effect on surrounding parcels? Is that the question?

11 MR. MILLER: Yes. Why a 200 megawatt facility?  
12 Why such a heavy use if it's only going to be a peak  
13 operating plant?

14 HEARING OFFICER CELLI: Well, go ahead.

15 MR. GWERDER: This is Jim Gwerder. I can't  
16 answer why 200 instead of 100 megawatts. But as to the  
17 effect on the surrounding parcels, in my opinion, there  
18 would be no difference.

19 HEARING OFFICER CELLI: Go ahead, Mr. Miller.  
20 Next question.

21 MR. MILLER: The reason I ask -- the reason I ask  
22 was because of it seems as though there are concerns about  
23 the neighboring value of property and seeing as the way  
24 that the wind blows and such, was there any level of  
25 (inaudible) or any evaluation of (inaudible) to the

1 downstream party if it be subject to the emissions coming  
2 from the plant.

3 MR. WHEATLAND: I'm going at the object on the  
4 basis of relevance.

5 HEARING OFFICER CELLI: Sustained. Mr. Miller,  
6 that is a question -- the topic we're going to take up  
7 after land use would be air quality impacts which is  
8 emissions and things like that. So right now we're just  
9 limiting this inquiry into the land use question, which  
10 are things like Williamson Act, contract, and the parcel  
11 size and use and Measure D and that kind of thing. So did  
12 you have any questions that are relevant to land use?

13 MR. MILLER: That was my question. I was just  
14 wondering if there was estimate done of what the impact  
15 would be based upon the (inaudible) being placed where it  
16 was.

17 HEARING OFFICER CELLI: Well, because what's  
18 going to happen after we finish with land use is we're  
19 going to get to air quality. And that question is  
20 appropriate for the air quality panel of experts.

21 MR. MILLER: Thank you.

22 HEARING OFFICER CELLI: Thank you.

23 Mr. Lamb, did you have a question?

24 MR. LAMB: I have a follow up question.

25 HEARING OFFICER CELLI: I'm sorry? A follow up

1 question? Just one, please. Because I just want to  
2 acknowledge that

3 MR. LAMB: The intervenors it seemed like there  
4 was a common thread in the questions because it seems  
5 Measure D says that infrastructure is only allowed. And  
6 I'm wondering how I don't know (inaudible) how you define  
7 infrastructure. How do you determine what is  
8 infrastructure legally; what is not infrastructure? When  
9 I think of infrastructure, I think of ancillary or  
10 supportive things to do to something that's happening.  
11 For instance, a freeway is (inaudible) to driving. You  
12 wouldn't call the act of driving the structure. I look at  
13 this as more the pursuit here is producing power to sell  
14 to residents or consumers. And the infrastructure is to  
15 support that, power lines, conveyances. Can you correct  
16 my line of thinking? How do you define infrastructure?  
17 Is there anything in the power generation chain that's not  
18 infrastructure by your definition?

19 MR. MARTINELLI: I can't easily grasp anything  
20 that's possible in a power generation environment. But I  
21 can tell you the plain language of the definition of  
22 infrastructure. It says infrastructure shall include all  
23 development necessary to the provision of public services  
24 and utilities.

25 MR. LAMB: That's -- what are you reading from?

1           MR. MARTINELLI: That's Policy 13 of the East  
2 County Area Plan.

3           MR. LAMB: That's defined by the county's plan?

4           MR. MARTINELLI: Yes.

5           MR. LAMB: Okay. Thank you.

6           HEARING OFFICER CELLI: Thank you.

7           Go ahead, Commissioner.

8           COMMISSIONER DOUGLAS: I have a few questions for  
9 this panel and staff's witnesses may also want to address  
10 this question.

11           When I look at the land conservation agreement  
12 for this parcel, it seems to be very narrow and the  
13 agreement says that during the term of the agreement the  
14 property should not be used for any purpose other than  
15 agricultural uses for producing agricultural commodities  
16 or compatible uses as provided in Exhibit B. And when you  
17 look at Exhibit B, it says graze and green and entrainment  
18 of horses and cattle and item two is cogen wastewater  
19 distillation facility per a specific conditional use  
20 permit. So my question is how was a power plant a  
21 compatible use in terms of this agreement?

22           MR. BLACKWELL: Yes, Commissioner Douglas.  
23 Government Code 51201(e) defines compatible use. And that  
24 recognizes that compatible use can be determined by either  
25 the local agency or by the Act itself. And therefore when

1 the Legislature adopted 51238, that sets forth statutory  
2 compatible uses that are separate from and above and  
3 beyond compatible uses that are determined locally. The  
4 Legislature recognized that there are certain statutory  
5 uses that must be deemed compatible unless the local  
6 agency through a noticed public hearing expressly finds  
7 otherwise. And that is not the case here. Therefore,  
8 electric facilities are specifically defined as compatible  
9 uses by the State Legislature.

10 COMMISSIONER DOUGLAS: I see. So what you're  
11 saying is unless the local jurisdiction affirmatively  
12 finds that something like power use anything under this  
13 provision is ran into in a contract?

14 MR. BLACKWELL: That's correct.

15 HEARING OFFICER CELLI: All right. And when was  
16 this? When did the Legislature adopt this provision?

17 MR. BLACKWELL: Well, there's several parts. The  
18 Act itself was adopted in 1965 and the compatible use  
19 definition was in a different section than where it is  
20 now. But the electricity facilities portion of it has  
21 remained throughout the life of the Act. It's always been  
22 recognized as a statutory compatible use. What happened  
23 in 1994 through AB 2663, the Legislature then also adopted  
24 what is 51238.1, which is the principles of compatibility  
25 which sets forth if a local agency decides it wants to add

1 compatible uses --

2 MR. SIMPSON: Could you talk a little slower,  
3 please?

4 COMMISSIONER DOUGLAS: Maybe go back a few  
5 phrases.

6 MR. BLACKWELL: The Legislature in 1994 through  
7 AB 2663 adopted what is now enumerated in 51238.1, which  
8 are the three principles of compatibility. And that's  
9 what's addressed by the Department of Conservation in  
10 Exhibit 20. That sets forth that if a local agency is  
11 going to decide what are additional compatible uses  
12 besides those set forth in 51238, that those uses meet  
13 those three principles of compatibility, which are  
14 essentially you don't displace agriculture, substantially  
15 interfere with agriculture uses, that type of thing. And  
16 here, the county and the Department of Conservation looked  
17 at 51238.1 and applied it to this site and found that the  
18 MEP was a compatible use.

19 COMMISSIONER DOUGLAS: I looked at the letter and  
20 it says that the Department of Conservation finds that it  
21 would be reasonable to consider that a compatible use.

22 Let me ask -- because I haven't looked at that  
23 provision of the Government Code. Is electric generation  
24 called out as well as transmission? Or is it more broadly  
25 covered under electrical facilities?

1 MR. BLACKWELL: It's electric facilities.

2 COMMISSIONER DOUGLAS: All right. Are you aware  
3 of how this issue was handled in the -- for the Energy  
4 Commission in the Tesla or East Altamont cases?

5 MR. BLACKWELL: I was not involved with either of  
6 those actions, and I don't know the details.

7 COMMISSIONER DOUGLAS: Okay. I think that's all  
8 the questions. I wanted to see if Mr. Martinelli knows  
9 the answer to that question, given your experience with  
10 Alameda County.

11 MR. MARTINELLI: Yes. I believe the property was  
12 placed into the Williamson Act in early 1970s, maybe 1971.

13 COMMISSIONER DOUGLAS: And specifically, Mr.  
14 Martinelli, which property are you addressing? The  
15 property for this proposed --

16 MR. MARTINELLI: Oh, I'm sorry. This property,  
17 the Mariposa Energy Project. Were you questioning this or  
18 the other property?

19 COMMISSIONER DOUGLAS: I was actually asking if  
20 you are aware of how this issue was dealt with in the  
21 Tracy or East Altamont projects, Tesla and East Altamont.

22 MR. MARTINELLI: I was just trying to look  
23 through the records to see if either of these projects  
24 were in the Williamson Act. I don't recall that they were  
25 under the Williamson Act restrictions.

1           COMMISSIONER DOUGLAS: Our understanding -- the  
2 reason I'm asking this question is at least with regard to  
3 the Tesla project, the Board of Supervisors went through a  
4 partial cancellation of the Williamson Act contract during  
5 the Energy Commission process. So I'm trying to  
6 understand if there's anything that's changed between then  
7 and now that would make this a compatible use when in the  
8 other case the contract was actually partially canceled.

9           MR. MARTINELLI: Even though I was not present in  
10 either of those proceedings and can't talk about exactly  
11 what happened there, what I do know -- somewhat anecdotal,  
12 the Department of Conservation, some members of staff over  
13 the years have said even though it's not codified anywhere  
14 that such contract should be canceled or partially  
15 canceled.

16           When we spoke to the Department of Conservation  
17 about this and the head of the land resource protection  
18 group, Mr. Leahy who authored the letter, he agreed with  
19 us that that unwritten, uncodified way of doing things  
20 wasn't necessarily appropriate. Even though people have  
21 done it before doesn't mean it's the right way to do it.  
22 And he recognized that keeping the land under the  
23 Williamson Act contract as opposed to canceling it and  
24 therefore ceding any DOC jurisdiction of it makes more  
25 sense. It's now under -- stays under the contract which

1 is a good thing for the DOC and for protection.

2 COMMISSIONER DOUGLAS: Thank you.

3 HEARING OFFICER CELLI: Thank you.

4 Any redirect by the applicant?

5 MR. WHEATLAND: No redirect.

6 HEARING OFFICER CELLI: Thank you. This panel is  
7 excused. I want to thank you for coming in today.

8 MR. SARVEY: Will we get redirect?

9 HEARING OFFICER CELLI: There's no redirect, sir.  
10 There's no recross.

11 So at this point, we now excuse this panel and  
12 we're going to call staff's panel. But before we do,  
13 there was -- I am sorry. I didn't get the name of the  
14 person who needed to get to work, but if you would please  
15 come forward to the podium --

16 MR. SIMPSON: I had some questions based on the  
17 Commissioner's questions.

18 MR. SARVEY: I have to object -- (inaudible).

19 HEARING OFFICER CELLI: One moment. Let's go off  
20 the record.

21 (Off record.)

22 HEARING OFFICER CELLI: The ruling of the  
23 Committee then is that the parties were all given a chance  
24 to cross. The parties will be able to file briefs and  
25 make arguments in their briefs. And that's --

1 MR. SARVEY: (inaudible)

2 HEARING OFFICER CELLI: This is testimony that is  
3 going to get whatever weight it deserves. But that's all  
4 argument from your brief. That isn't necessarily we need  
5 to hear cross-examination on now. Thank you.

6 Thank you, panel.

7 Ma'am, I didn't get your name. Please state your  
8 name and spell it.

9 MS. SARVEY: My name is Susan Sarvey. S-u-s-a-n  
10 S-a-r-v-e-y.

11 I have a couple of different areas I want to  
12 speak about.

13 Mr. Martinelli based a lot of his testimony on  
14 East Altamont not being built. Mr. Wheatland is the  
15 attorney of record for East Altamont, so I would like to  
16 ask him, have your services been terminated by CalPine in  
17 have they walked away?

18 COMMISSIONER DOUGLAS: Maybe --

19 MS. SARVEY: I think that's a perfect question.  
20 If they still have an attorney, they are not dead.

21 COMMISSIONER DOUGLAS: I think your point is the  
22 East Altamont may go forward. Is that your point?

23 MS. SARVEY: My point is that East Altamont is  
24 going forward. It is alive. They still have an attorney  
25 of record sitting in this room and they are basing their

1 opinions on it not going forward. How can that be when  
2 they have an attorney of record sitting here?

3 COMMISSIONER DOUGLAS: Thank you for that  
4 question, comments. Can I ask if you can continue.

5 MS. SARVEY: Yes, please. In regards to the  
6 discussion of Measure D, I was at every single proceeding  
7 for Tesla and East Altamont and the GWF peaker plant and  
8 participated fully in all three proceedings.

9 My understanding of Measure D based on these  
10 three previous proceedings was if you were putting in  
11 infrastructure into a Measure D area, it had to be for the  
12 sole consumption and use of the people in that area. It  
13 could not be for San Joaquin County. It wouldn't be for  
14 people in Contra Costa County. It cannot be for people in  
15 San Francisco. That energy can only be used in the  
16 Measure D area and that's what was testified to over and  
17 over again. Mariposa power plant is not just for Contra  
18 Costa County -- for Alameda County is what my thing is  
19 there. But now I would like to read my other thing. But  
20 that is just on what I heard here so far.

21 CEC staff is proposing to defer to Alameda County  
22 and its interpretation of its land use regulations.  
23 Alameda County says the Mariposa project is a public  
24 facility. How can a merchant power plant selling power to  
25 an inventory owned utility be a public facility? The CEC

1 staff is deferring to Alameda County's interpretation that  
2 that project is not (inaudible). That's absurd. Alameda  
3 County is stating that the project is needed for the  
4 public necessity, but the fact is we are currently having  
5 35 percent planning reserve margin in PG&E's territory.  
6 And we are expending rate payer funds to build another  
7 2,000 megawatt with Oakley, Marsh Landing and Russell City  
8 projects. As the CEC has reported peak demand is falling,  
9 not rising due to successful energy efficiency measures  
10 and the economic downturn.

11           Before I go forward with the rest of my  
12 statement, I would like to also remind you I as a public  
13 rate payer and taxpayer of San Joaquin County, we paid  
14 \$170 million to build the Tracy Peaker Plant right down  
15 the street. It went online at the end of 2003. It is  
16 2011. It has run less than 500 hours. We are paying well  
17 over \$1,000 a megawatt when you can just go on the grid  
18 and buy it for \$65 max. That's crazy. That's not for the  
19 public good or me as a taxpayer or a rate payer.

20           In 2002, when we had the hearings on the Tracy  
21 Peaker Plant, the city of Tracy and San Joaquin County  
22 intervened and told the Commission staff that the peaker  
23 plant was not consistent with our land use policy. And  
24 yet, the Commission staff refused to defer to them. Why?  
25 Because Commission staff didn't agree with their

1 conclusions. There seems to be a double standard in the  
2 Commission process where agencies' opinions are only valid  
3 and deferred to when they agree with the Commission  
4 decision on land use laws.

5           The same thing happened to Carlsbad and is also  
6 happening in this proceeding with regards to the Byron  
7 Airport Land Use Commission. It is easy to see why  
8 Alameda County supports this project. They have a  
9 lucrative cooperation agreement with the applicant. When  
10 CalPine wanted to build the Russell City Plant, Alameda  
11 County opposed it because it was the city of Hayward and  
12 not Alameda County that get the ten million dollar  
13 agreement. When East Shore was proposed, Alameda County  
14 opposed that also. Now Alameda County says Mariposa is  
15 needed by the public to provide additional generation in  
16 Alameda County.

17           HEARING OFFICER CELLI: Ms. Sarvey --

18           MS. SARVEY: Surely it's not their decision in  
19 Russell City --

20           HEARING OFFICER CELLI: Ms. Sarvey --

21           MS. SARVEY: -- and in the East Shore  
22 proceedings --

23           HEARING OFFICER CELLI: May I ask you a question?

24           MS. SARVEY: Yes.

25           HEARING OFFICER CELLI: I was informed that you

1 have another person's statement as well and I --

2 MS. SARVEY: No, I don't have anybody else's  
3 statement.

4 HEARING OFFICER CELLI: Thank you. Sorry for the  
5 interruption.

6 MS. SARVEY: I'm only talking about land use.  
7 This is a great deal for Alameda County because they  
8 got -- the county and San Joaquin Valley gets the  
9 pollution yet again. It is no secret that the San Joaquin  
10 County is much more polluted than Alameda County and the  
11 rest of the Bay Area. In the Russell City proceeding, the  
12 Alameda County Health Department came out against the  
13 project and its particulate matter impacts to its  
14 residents. Where is the Alameda County Health Department  
15 now? They're certainly not looking out for me.

16 And I want to remind you once again, I cannot do  
17 the math standing here, but \$170 million for a 500 hour  
18 maximum use at a peaker plant and you want to build  
19 another one right down the street. It's never going to  
20 turn on. This last Wednesday I went to the  
21 ground-breaking for a combined cycle plant next to the  
22 Tracy Peaker Plant. It's going online in 2012. It's  
23 going to run 24/7. We will have even more power in the  
24 corner than we have right now and we're already not  
25 turning on the peaker plant we have. This is a ridiculous

1 situation we are in. You are reaming the taxpayers and  
2 the rate payers. It is really not right.

3 HEARING OFFICER CELLI: Thank you, Ms. Sarvey,  
4 for coming in.

5 Now let's resume. Staff, please call your panel.  
6 We'll have the public comment at 5:00.

7 STAFF COUNSEL WILLIS: Thank you.

8 At this time, staff calls Amanda Stennick and  
9 Lisa Worrall.

10 HEARING OFFICER CELLI: And Mr. Petty, if you'll  
11 have them sworn.

12 (Whereupon the witnesses were sworn.)

13 MR. PETTY: Please state and spell your names for  
14 the record.

15 MS. STENNICK: My name is Amanda Stennick,  
16 A-m-a-n-d-a, S-t-e-n-n-i-c-k.

17 MS. WORRALL: My name is Lisa Worrall, L-i-s-a,  
18 W-o-r-r-a-l-l.

19 STAFF COUNSEL WILLIS: Why don't you guys move  
20 the microphone over.

21 HEARING OFFICER CELLI: Now, staff, Ms. Willis,  
22 you submitted direct testimony from these witnesses. Did  
23 you have any -- I'm sorry -- written testimony. Do you  
24 have any direct?

25 STAFF COUNSEL WILLIS: Yes, I do.

1 HEARING OFFICER CELLI: Okay.

2 DIRECT EXAMINATION

3 STAFF COUNSEL WILLIS: First of all, I need to  
4 just establish since Ms. Stennick was not on the  
5 testimony. Just her qualifications.

6 Ms. Stennick, first of all, was the statement of  
7 qualifications filed on your behalf?

8 MS. STENNICK: I am the supervisor for the land  
9 use and the socioeconomics analyses that are done by staff  
10 at the Step Division. I've been employed at the Energy  
11 Commission as a planner for over 17 years. Prior to that,  
12 I worked for Yolo County as a planner, Sacramento County  
13 as a planner, and two consulting firms as a planner.

14 STAFF COUNSEL WILLIS: Thank you.

15 Ms. Worrall, I'm going to turn to you now. Was  
16 the statement of your qualifications attached to your  
17 testimony?

18 MS. WORRALL: Yes, it was.

19 STAFF COUNSEL WILLIS: And did you prepare the  
20 testimony entitled, "Land Use in the Supplemental Staff  
21 Assessment," that we've marked Exhibit 301?

22 MS. WORRALL: Yes.

23 STAFF COUNSEL WILLIS: Do you have any changes to  
24 your written testimony that you're proposing today?

25 MS. WORRALL: Yes. Just, first of all, let me

1 state that the reason for these changes, it's to keep  
2 document consistency.

3 HEARING OFFICER CELLI: Please speak directly  
4 into that mike. Bring it up to your mouth. Thanks.

5 MS. WORRALL: Originally when I was drafting up  
6 the proposed Conditions of Certification, I had lumped  
7 what is proposed as Land 2 and Land 3 into one condition.  
8 And towards the end of my analysis, I decided it's better  
9 to put it out into two separate conditions for ease of  
10 verification of these conditions. And so the changes that  
11 we're proposing today are to reflect the change from Land  
12 2 to Land 2 and Land 3.

13 First of all, on page 4.12-13 of land use doc  
14 supplemental assessment proposed on the first paragraph  
15 under the bulleted list at the end of the last sentence  
16 to add with the inclusion of the proposed Conditions of  
17 Certification Land 2 and Land 3.

18 The next is on page 4.12-19, second paragraph,  
19 line 5, add Land 3.

20 On page 4.12-21, first paragraph, line 6, add  
21 Land 3.

22 On page 4.12-23, first paragraph, line 4, add  
23 Land 3.

24 And finally, on page 4.12-36, under the basis for  
25 determination in the land use Table 2, add Land 3 in the

1 first paragraph, line 4, and in the second paragraph, add  
2 Land 3 on line 3.

3 STAFF COUNSEL WILLIS: Thank you. And with those  
4 changes, did the opinions contained in your testimony  
5 represent your best professional judgment?

6 MS. WORRALL: Yes.

7 STAFF COUNSEL WILLIS: First of all, how did you  
8 address the project's potential impacts related to land  
9 use?

10 MS. WORRALL: To determine the project's impacts  
11 as related to land use, I addressed the project's  
12 compatibility with the existing or reasonably foreseeable  
13 land uses, the project's consistency with applicable LORS,  
14 and the potential project-related direct, indirect, and  
15 cumulative environmental impacts. Also determined the  
16 significance of the potential project impacts using  
17 Appendix G of CEQA guidelines, plus other performance  
18 standards and thresholds that has been identified by  
19 Energy Commission staff, other public agencies, other  
20 subject experts and have been supported by substantial  
21 evidence. And lastly, proposed Conditions of  
22 Certification when necessary.

23 STAFF COUNSEL WILLIS: In general, what documents  
24 did you review in performing your analysis?

25 MS. WORRALL: First of all, the project's

1 application for certification. And then the applicable  
2 State and county LORS and the county, specifically Alameda  
3 and Contra Costa County. I also consulted representatives  
4 from State Department of Conservation, Alameda, and Contra  
5 Costa Counties as well as Byron-Bethany Irrigation  
6 District.

7 STAFF COUNSEL WILLIS: And Ms. Worrall, are you  
8 familiar with the Williamson Act?

9 MS. WORRALL: Yes.

10 STAFF COUNSEL WILLIS: Did you determine that the  
11 project is consistent with the Williamson Act?

12 MS. WORRALL: Yes, I did.

13 STAFF COUNSEL WILLIS: And why is that?

14 MS. WORRALL: I -- in doing my analysis, I  
15 reviewed the Williamson Act contract for the property. I  
16 reviewed previous county actions on the property.  
17 Reviewed the Williamson Act and most specifically the  
18 principles of compatibility in the Williamson Act and the  
19 county regulations on the Williamson Act. I also spoke  
20 with Department of Conservation representative and Alameda  
21 County. I also noted the comments from Department of  
22 Conservation in their letter of July 2009. And also noted  
23 the Alameda County's letter May 20, 2010, that addressed  
24 Williamson Act contract and compatibility.

25 STAFF COUNSEL WILLIS: Thank you. Have you

1 reviewed the East County Area Plan?

2 MS. WORRALL: Oh, yes.

3 STAFF COUNSEL WILLIS: And in your opinion, is  
4 the project consistent with the ECAP?

5 MS. WORRALL: Yes.

6 STAFF COUNSEL WILLIS: Did you review height  
7 requirements for the project as it pertains to the  
8 airport?

9 MS. WORRALL: Yes, I did.

10 STAFF COUNSEL WILLIS: And do the right  
11 requirements apply to plumes?

12 MS. WORRALL: Height requirements pertain to  
13 objects such as structures, antennas, trees, but they  
14 don't actually apply to plumes.

15 STAFF COUNSEL WILLIS: And you've heard a lot of  
16 discussion this morning about need for the project. On  
17 page 4.12-25 of the supplemental staff assessment, you  
18 identified four findings that would have been made by the  
19 county of Alameda for conditional use permit if they were  
20 the permitting agency, one of which is "is the use  
21 required for the public need." Did you analyze need for  
22 the project?

23 MS. WORRALL: No. Staff does not conduct any  
24 need analysis. However, in order to assess if the project  
25 would be compatible with the findings that in the case the

1 Energy Commission would make, I looked at the PG&E's  
2 request for offers. And I also noted in Alameda County's  
3 May 2010 letter their statement roughly saying that they  
4 will require significant electrical energy, especially in  
5 times of peak demand, even with the growth constraints  
6 built into the ECAP and obviously this is peaker, so --

7 STAFF COUNSEL WILLIS: Did you conclude that the  
8 project was in compliance with all LORS?

9 MS. WORRALL: Yes, I did.

10 STAFF COUNSEL WILLIS: And did you determine  
11 whether or not this project would create adverse  
12 environmental impacts?

13 MS. WORRALL: Yes, I did that analysis.

14 STAFF COUNSEL WILLIS: And what was your  
15 conclusion?

16 MS. WORRALL: I concluded that with the proposed  
17 Conditions of Certification Land 1 through Land 4 that no  
18 significant adverse land impacts would result from the  
19 project.

20 STAFF COUNSEL WILLIS: Thank you. Does that  
21 conclude your testimony?

22 MS. WORRALL: Yes.

23 STAFF COUNSEL WILLIS: These witnesses are open  
24 to cross-examination.

25 HEARING OFFICER CELLI: Thank you.

1 Mr. Sarvey, cross-examination.

2 MR. SARVEY: Thank you. (inaudible).

3 STAFF COUNSEL WILLIS: We can provide that for  
4 you.

5 MR. SARVEY: (Inaudible).

6 STAFF COUNSEL WILLIS: We don't have them written  
7 down. I mean, we can provide them for you at a later  
8 date. But they were basically adding Land 3 to five  
9 different pages.

10 MR. SIMPSON: I object to them not being  
11 prepared. It's the same thing with the county. They came  
12 in with written testimony. We should have got a copy. We  
13 should get a copy of these changes. I'd like a  
14 continuance until they provide the complete testimony.

15 HEARING OFFICER CELLI: Overruled. Go ahead, Mr.  
16 Sarvey.

17 CROSS-EXAMINATION

18 MR. SARVEY: Is this project considered a cogen  
19 facility with a water distillation capability?

20 STAFF COUNSEL WILLIS: I'm going to object to  
21 that question. I think we're aware the project is not a  
22 cogen facility.

23 HEARING OFFICER CELLI: I'm sorry. Because of  
24 the echo in the room, I couldn't hear your objection.

25 STAFF COUNSEL WILLIS: I think we're aware of

1 what the project is proposed. He's asking if it's a  
2 cogeneration facility. It seems argumentative to me.

3 HEARING OFFICER CELLI: I think it's a fair  
4 question and these witnesses should be able to say yes or  
5 no or I don't know. Those seem to be the options.

6 Go ahead, Mr. Sarvey.

7 MR. SARVEY: Do I need to repeat the question?

8 HEARING OFFICER CELLI: No.

9 MS. WORRALL: I just wanted to clarify, you  
10 wanted to inquire if the project is a cogen facility  
11 that's being proposed?

12 MR. SARVEY: Right. (Inaudible) water  
13 distillation.

14 MS. WORRALL: I know the project is not a cogen  
15 facility. As far as water distillation, that's outside of  
16 my area of analysis.

17 MR. SARVEY: Will the project (inaudible).

18 MS. WORRALL: That is actually the noise and  
19 vibration specialist's area of expertise.

20 MR. SARVEY: Mr. Celli, this is what I was  
21 pointing to in our pre-hearing conference.

22 HEARING OFFICER CELLI: Right. You know what?  
23 They are land use people, not the noise people. Let's do  
24 the land use questions.

25 MR. SARVEY: We have to be able to ask these

1 questions. I've raised in the comments in the pre-hearing  
2 conference why I (inaudible) noise.

3 HEARING OFFICER CELLI: Right. But you said you  
4 wanted the noise people with regard to biology.

5 MR. SARVEY: I wanted them with regards to water,  
6 but you talked me out of it. I asked specifically for the  
7 people to answer noise questions and you told me they  
8 would.

9 HEARING OFFICER CELLI: No, I did not say that  
10 the land use people are going to be able to answer your  
11 noise questions. But I happen to have -- the conversation  
12 had to do with noise in the context of biology which we  
13 said that you would be able to cross on when we get to  
14 biology. This is land. So let's do land use.

15 MR. SARVEY: I think it's the same. (inaudible).

16 MR. SIMPSON: Mr. Sarvey, can you speak up a  
17 little bit, please?

18 MR. SARVEY: Sure. How will the project be  
19 consistent with the existing contract Commissioner Douglas  
20 referred to earlier on this project that specifically says  
21 no other use is allowed on this land? This is a cogen  
22 facility, water distillation, or could meet the  
23 requirement of 55 CPA (inaudible) of the existing contract  
24 on this project? That would be Exhibit 8.

25 HEARING OFFICER CELLI: Exhibit 8 is what, Mr.

1 Sarvey? Just for description.

2 MS. STENNICK: Excuse me, Mr. Sarvey. Are we  
3 being asked to determine whether this proposed project is  
4 consistent with the existing agricultural Williamson Act  
5 contract?

6 MR. SARVEY: The one that runs with the property  
7 right now.

8 MS. STENNICK: Okay.

9 MS. WORRALL: Yes, the project is consistent with  
10 the contract as written now. Excuse me one second.

11 Alameda County also even when they testified, they  
12 determined that the project would not require cancellation  
13 or a change of the contract in order to go forward if --

14 MR. SARVEY: What does your independent analysis  
15 say?

16 MS. WORRALL: My independent analysis said that  
17 as I reviewed the principles of compatibility with the  
18 Williamson Act, it met all the principles of  
19 compatibility. And I found that it was consistent.

20 MR. SARVEY: I understand that. The question I'm  
21 asking is it (inaudible) water distillation facility cogen  
22 and projects that have (inaudible).

23 STAFF COUNSEL WILLIS: Just to clarify. You said  
24 existing project, you mean existing contract?

25 MR. SARVEY: Existing contract.

1 STAFF COUNSEL WILLIS: Thank you.

2 HEARING OFFICER CELLI: Can I make an inquiry of  
3 applicant? Is the contract in evidence going to be -- is  
4 it marked for evidence?

5 MR. SARVEY: It is. I'll look it up for you.

6 HEARING OFFICER CELLI: Thank you. It helps to  
7 know what document. Exhibit 12? Is that the contract,  
8 Mr. Wheatland?

9 MS. POTTENGER: We're checking right now.

10 STAFF COUNSEL WILLIS: I just want to address my  
11 witnesses. Do you guys have the contract in front of you?

12 MS. WORRALL: Yes.

13 STAFF COUNSEL WILLIS: Okay.

14 MS. WORRALL: My understanding -- and I'm not --  
15 the contract is between -- sorry. The contract is it's a  
16 contract between Alameda County and the property owner.  
17 And in looking at whether or not any cancellation would be  
18 required, I relied on Alameda County's determination. The  
19 contract is between the county and the property owner.

20 MR. SARVEY: It's Exhibit 8.

21 HEARING OFFICER CELLI: 8. Thank you.

22 MR. SARVEY: Alameda County has (inaudible)  
23 determination whether it's consistent with the existing  
24 contract. They said that (inaudible) compatible with the  
25 Williamson Act. So my question is is it compactible with

1 the existing contract? And I'm giving you the  
2 requirements of the existing contract (inaudible).

3 MS. STENNICK: It's staff's opinion that the  
4 proposed project is consistent with the contract and with  
5 the proposed uses currently on the site.

6 MR. SIMPSON: On the site or the parcel?

7 MS. STENNICK: Excuse me. On the 154 plus, 158  
8 acre parcel.

9 MR. SIMPSON: Thank you.

10 MS. STENNICK: You're welcome.

11 MR. SIMPSON: So staff's --

12 MS. WORRALL: Energy Commission staff has no --  
13 has no jurisdiction over entering into any or requiring  
14 any contractual change between any county and any project  
15 owner regarding their property in the Williamson Act.

16 MR. SARVEY: Is your testimony it complies with  
17 all the laws (inaudible) contract is the law?

18 STAFF COUNSEL WILLIS: Objection. Assumes facts  
19 not in evidence. A contract is not a law.

20 HEARING OFFICER CELLI: I need to hear the  
21 question and then I want to hear the objection. So  
22 because I didn't get what the question was.

23 MR. SARVEY: The question was staff in their  
24 testimony says the project is compatible with all the  
25 laws, ordinances, regulations and standards. I'm saying

1 (inaudible) Williamson Act contract is something that is  
2 a LORS (inaudible) comply with (inaudible).

3 STAFF COUNSEL WILLIS: And I'm going to continue  
4 my objection. It's not a LORS. It's a contract. It's  
5 between a private party and a county.

6 HEARING OFFICER CELLI: I'm going to sustain the  
7 objection, because I don't believe the contract is a LORS.  
8 But the rest of your -- I think you can rephrase to get  
9 the information you're asking for.

10 MR. WHEATLAND: If I could -- while Bob is  
11 composing his question, the contract is set forth in  
12 Exhibit 12, which is data request set 2-A. And it's data  
13 request number one which requested that we attach the  
14 agreement.

15 HEARING OFFICER CELLI: Thank you for the  
16 clarification.

17 So Mr. Sarvey, sustain the objection as asked.  
18 Go ahead with your next question.

19 MR. SARVEY: On page 4.12-2 of your testimony,  
20 you state that Alameda County (inaudible) cogeneration  
21 plant and subject property Williamson Act contract have  
22 also been reviewed by staff. Would the MEP as it's  
23 currently proposed apply to the existing Williamson Act  
24 contract on the project?

25 MS. WORRALL: Yes, it would.

1 MR. SARVEY: Is it your testimony that the  
2 project (inaudible) water and is a cogen facility?

3 STAFF COUNSEL WILLIS: Objection. Asked and  
4 answered.

5 HEARING OFFICER CELLI: Overruled. Go ahead and  
6 answer.

7 MS. WORRALL: Well, the project is not a cogen  
8 facility as far as distilling water. That wasn't part of  
9 my land use analysis. And it's not within my expertise.

10 MR. SARVEY: All of the (inaudible) on page  
11 4.12-2 of your testimony (inaudible) on the property  
12 (inaudible) cogeneration plant. And subject property  
13 (inaudible) does staff and the existing bio cogen facility  
14 a public facility?

15 MS. WORRALL: I didn't analyze that. That's  
16 not -- wasn't relevant.

17 MR. SARVEY: If the Byron cogen plant is not a  
18 public facility, how (inaudible).

19 MS. WORRALL: Mariposa Energy Project is a public  
20 facility, because it provides electrical energy that would  
21 then in turn be used to supply electricity for the  
22 residents, businesses. So in the end run, it does provide  
23 a service, a public service for the public by providing  
24 electricity.

25 MR. SARVEY: So would a (inaudible).

1 STAFF COUNSEL WILLIS: Objection. Outside her  
2 scope of testimony.

3 HEARING OFFICER CELLI: I don't believe he did  
4 ask these witnesses. I know it being asked of the  
5 previous witnesses.

6 STAFF COUNSEL WILLIS: I didn't say asked and  
7 answered. I said it's outside the scope of her testimony.  
8 She didn't discuss oil refineries in her testimony. She's  
9 really --

10 HEARING OFFICER CELLI: This is cross. You can  
11 ask the question and answer it, please. Go ahead, Mr.  
12 Sarvey.

13 MR. SARVEY: Would staff consider an oil refinery  
14 in this cap here a public facility and appropriate in  
15 eastern Alameda County?

16 MS. WORRALL: Well, I would need to analyze that  
17 use with the existing LORS in order to make that  
18 determination. And it wasn't part of the scope of this  
19 project, so it wasn't something that I analyzed.

20 MR. SARVEY: (Inaudible).

21 MS. WORRALL: I don't make opinions.

22 MR. SARVEY: Since staff considers MEP a public  
23 facility, does staff public (inaudible) governed by  
24 Government Code Section 51290 to 51296.

25 MS. WORRALL: An acquisition?

1           MR. SARVEY: Of public facility. Public  
2 acquisition by Williamson Act land is acquisition by  
3 (inaudible).

4           MS. STENNICK: Excuse me, Mr. Sarvey. Could you  
5 read more slowly, please, if you're quoting from a  
6 specific Government Code, it would be actually more  
7 helpful to read what --

8           HEARING OFFICER CELLI: I'm going to ask everyone  
9 to sit back in your chair, take a deep breath and relax  
10 for a second, because if you want to drive a court  
11 reporter crazy, have two people or more talk at the same  
12 time. And I don't want to drive Mr. Petty crazy. So  
13 we're going to not let that happen. Please be mindful  
14 that we need to have everybody talk one at a time. The  
15 questioner asks the questions, the witness answers the  
16 question. And they don't talk over each other. So thank  
17 you.

18           Go ahead.

19           MR. SARVEY: Since the MEP is considered a public  
20 facility --

21           HEARING OFFICER CELLI: Mr. Sarvey, I'm getting  
22 people giving me this in the back of the room. They can't  
23 hear you. Bring your mike up.

24           MR. SARVEY: Since the MEP is considered a public  
25 facility, does staff consider this a public acquisition of

1 Williamson Act lands governed by Government Code Section  
2 50290 and 50296?

3 MS. WORRALL: No.

4 MR. SARVEY: Why?

5 MS. WORRALL: There is no acquisition being  
6 proposed.

7 MR. SARVEY: Are you familiar with those  
8 governing codes that I cited?

9 MS. WORRALL: Can you repeat those numbers again?

10 MR. SARVEY: It's 51290, 51295, and 51296.6.

11 MS. STENNICK: Again, is this you're reading from  
12 the Government Code regarding the definition of a public  
13 facility?

14 MR. SARVEY: No. I'm asking you is -- since this  
15 is considered a public facility, it's a public acquisition  
16 of Williamson Act land. Is this subject to Government  
17 Code Section 51290 to 51296?

18 STAFF COUNSEL WILLIS: Well, I'm going to object  
19 because it assumes facts not in evidence and  
20 mischaracterizes their testimony.

21 MR. SIMPSON: I can't hear.

22 STAFF COUNSEL WILLIS: Once again, I object. It  
23 mischaracterized their testimony. They said it was not a  
24 public acquisition of land, not that it was.

25 HEARING OFFICER CELLI: Okay. And what I'm going

1 to ask you to do Mr. Sarvey -- because I'm not sitting  
2 here reading the code section, and I'm trying to see where  
3 you're going with this so I can see whether the answer is  
4 responsive or not, can you kind of get to the heart of it?  
5 And there's something that there is a qualifying act that  
6 you're trying to get to, and I'd like to see if you can  
7 cut to the chase and get that information into the record.

8 MR. SARVEY: Well, there's a lot of requirements  
9 related to public acquisition of Williamson Act land, and  
10 I'm wondering if staff has analyzed that and whether they  
11 think it's something that the project should be subject to  
12 and do they even know what those code sections are,  
13 basically.

14 HEARING OFFICER CELLI: Now, that's the bottom  
15 line, right?

16 MR. SARVEY: Right

17 HEARING OFFICER CELLI: Can we get an answer to  
18 that question?

19 MS. WORRALL: As the project is not a public  
20 acquisition of Williamson Act land, I didn't review that  
21 section, because I determined it wasn't applicable to the  
22 project.

23 MR. SARVEY: Your testimony -- all this is  
24 Exhibit 301, by the way. I don't know whether you want me  
25 to say that every time.

1 HEARING OFFICER CELLI: I appreciate that. The  
2 FSA, just be clear, it's actually the supplemental staff  
3 assessment is Exhibit 301. Go ahead.

4 MR. SARVEY: Your testimony on page 4.2-76 of the  
5 Contra Costa County Airport Land Use Compatibility Plan  
6 includes policies for Byron Airport to ensure  
7 compatibility between the new development and the airport  
8 influence area. The airport a land use Commission  
9 presented a finding that the (inaudible) MEP is not  
10 compatible with the airport. How come you have not  
11 deferred to them as you have deferred to Alameda County in  
12 all their LORS interpretations?

13 MS. WORRALL: My recollection of their letter --  
14 make a specific in their letter, the date. October 14 of  
15 2010, reading their letter, they didn't make any  
16 determination with respect to specific policies or  
17 anything that had a relation to land use. So there wasn't  
18 really anything applicable to the decision, any  
19 determinations on my side.

20 MR. SARVEY: Under what circumstances does staff  
21 not defer to the city or county with land use  
22 jurisdiction?

23 MS. WORRALL: When the basis of the  
24 determinations by the county who would have been  
25 jurisdictions, if the determination based on (inaudible)

1 legally deficient information that would then put forward  
2 flawed information legally efficient information to the  
3 Committee that they might find -- base their findings on  
4 legally deficient information.

5 MR. SARVEY: And has the Byron Airport Land  
6 Commission provided you with legally deficient  
7 information?

8 STAFF COUNSEL WILLIS: Objection. Assumes facts  
9 not in evidence. Are you talking about --

10 MR. SIMPSON: I can't hear you.

11 STAFF COUNSEL WILLIS: Objection. It assumes  
12 facts not in evidence. We were talking about the  
13 deferring to a local jurisdiction that would have  
14 jurisdiction over this project. And he's talking about  
15 the Airport Land Use Commission, which is not the  
16 jurisdictional as we established earlier with Alameda  
17 County.

18 HEARING OFFICER CELLI: Maybe you can ask it a  
19 different way without assigning jurisdiction.

20 MR. SARVEY: I'll move on.

21 Without Alameda County's input, would your  
22 independent judgment conclude that the MEP, a 200 megawatt  
23 power plant is not an urban use?

24 MS. WORRALL: In reviewing the ECAP, I look at  
25 the definitions as laid out in the ECAP how they define

1 infrastructure, how they define urban use. Underlying  
2 those definitions, these are their policies in LORS. I  
3 rely on their interpretation. I would -- I'm sorry. Can  
4 you restate your question? I mean, I --

5 MR. SARVEY: Okay. Without Alameda County's  
6 input, would your independent judgment conclude that the  
7 MEP is a 200 megawatt power plant is not an urban use?

8 MS. WORRALL: Would I consider it not an urban  
9 use if Alameda County hadn't made any determinations?

10 MR. SARVEY: Yes.

11 MS. WORRALL: Yes. It is not an urban use.

12 MR. SARVEY: Is the Byron cogen plant an urban  
13 use?

14 MS. WORRALL: I didn't actually analyze that.  
15 It's outside of my analysis.

16 MR. SARVEY: You list the Byron cogen as similar  
17 infrastructure to the MEP. If these projects, the MEP and  
18 the Byron cogen, are compatible with the land use LORS,  
19 why is a conditional use permit required?

20 MS. WORRALL: What page are you referring to?  
21 Are you referring to my supplemental staff assessment?

22 MR. SARVEY: I apologize. I don't have a page  
23 number. I'll bring back later.

24 MS. WORRALL: Okay.

25 MR. SARVEY: Did Alameda County provide you with

1 an analysis that the MEP was necessary to create adequate  
2 infrastructure for Alameda County? I understand earlier  
3 you said you didn't make that analysis. So I just wanted  
4 to ask you did the county provide one?

5 MS. WORRALL: No.

6 MR. SARVEY: Thank you.

7 MS. WORRALL: Infrastructure such as pipelines,  
8 canals, and power transmission lines would have no  
9 excessive growth inducing effect on east county area and  
10 have permit conditions to ensure that no service can be  
11 provided beyond that consistent with the development  
12 allowed by the initiative. Did Alameda County provide you  
13 with an analysis that the MEP is consistent and does not  
14 provide any growth inducing effects on east county?

15 MS. WORRALL: Consistent with what exactly?

16 MR. SARVEY: Consistent with the fact that  
17 infrastructure such as pipelines, canals, and power  
18 transmission lines have no excessive growth inducing  
19 effect. Did Alameda County provide you with an analysis  
20 that the MEP does not have any excessive growth inducing  
21 effect on east county?

22 STAFF COUNSEL WILLIS: Just for point of  
23 clarification, are you reading from somewhere, Mr. Sarvey?  
24 Because I'm not sure.

25 MR. SARVEY: I can't hear you.

1 HEARING OFFICER CELLI: I can't hear you,  
2 Ms. Willis.

3 MR. SARVEY: Policy 13.

4 STAFF COUNSEL WILLIS: And I would just ask that  
5 in the future if you're reading something from somewhere,  
6 we need to know where -- they all have laptops and we  
7 don't. And I don't know where they're reading from, if  
8 it's from the staff assessment or some --

9 HEARING OFFICER CELLI: I understand. I just  
10 need you to speak directly into the mike.

11 STAFF COUNSEL WILLIS: And I just need to know  
12 where the questions are coming from. Thank you.

13 HEARING OFFICER CELLI: Go ahead, Mr. Sarvey.

14 MR. SARVEY: Your testimony on page 4.12-20  
15 states that the project design in isolated location would  
16 not encourage urban infill development and increase  
17 urbanization of open space areas. Does the project design  
18 preclude this project from converting to a combined cycle  
19 plant?

20 MS. WORRALL: I'm sorry. Specifically where are  
21 you on page 4.12-20?

22 MR. SARVEY: 4.12-20.

23 MS. WORRALL: Entitled starting with paragraph  
24 the project property is developed with the Byron  
25 cogeneration plant. Is that where you're referring?

1           MR. SARVEY: The exact language is the project  
2 designed in isolated location would not encourage urban  
3 in-fill development and increased urbanization of open  
4 spaces.

5           MS. WORRALL: Can you provide a little more  
6 specifics on what paragraph number you're on? Because I  
7 don't see that language.

8           MR. SARVEY: I'll move on. Isn't the existence  
9 of all these water and energy facilities and the approval  
10 of the east Altamont Energy Center, the Byron cogeneration  
11 and now the MEP evidence that the project area is rapidly  
12 becoming urbanized contrary to the intent of Measure D in  
13 the ECAP?

14          MS. WORRALL: Well, I would say that that would  
15 be speculative of staff to answer. Staff based its  
16 analysis -- staff did an analysis on one specific project  
17 including potential cumulative effects and including  
18 whether or not this project would be consistent with the  
19 ECAP and the build out in the energy requirements of the  
20 ECAP.

21          MR. SARVEY: And in staff's cumulative analysis,  
22 they actually call out all these particular facilities.  
23 And I'm asking does all this urbanization is that contrary  
24 to the intent of Measure D in ECAP?

25          MS. STENNICK: Staff -- in staff's analysis on

1 page 4.12-40 lists numerous projects that we considered in  
2 our cumulative section. Lists numerous projects. Some of  
3 them -- we took a look at whether or not it would convert  
4 agricultural land as one of the prime reasons of -- as one  
5 of the prime effects of cumulative impacts. Numerous  
6 projects were not applicable because they did not convert  
7 any agricultural land. Some of the projects were approved  
8 but not built. Some were under review.

9 MR. SARVEY: On page 4.12-25, do you conclude  
10 that the project is eligible for conditional use permit  
11 because it is required by the public need? What are the  
12 findings and requirements necessary to conclude that the  
13 MEP is required by the public need?

14 MS. WORRALL: In order to look at one of the  
15 findings necessary for conditional use permit is the use  
16 required by the public need. I looked to the PG&E's  
17 request for proposals for energy facilities, energy  
18 resources.

19 MR. SARVEY: Was that the extent of what you  
20 examined?

21 MS. WORRALL: Oh, yes. I actually looked at  
22 Alameda County's comments in their May 20 letter. I think  
23 I said that in my opening testimony about how they  
24 consider that Alameda County -- that Alameda County would  
25 require significant electrical energy, especially at times

1 of peak demand, even with the growth constraints built  
2 into the ECAP. So (inaudible) it's based on those two.

3 MR. SARVEY: I may have asked you this earlier.  
4 Did Alameda County provide you that analysis that they  
5 need additional energy?

6 MS. WORRALL: They provided me with their  
7 determination.

8 MR. SARVEY: But no analysis?

9 MS. WORRALL: I didn't receive analysis.

10 MR. SARVEY: Okay. Thank you.

11 Are there any other requirements other than the  
12 PG&E long term procurement project to find it necessary  
13 for the public need? I mean, does it have to be no other  
14 place they can put it? What's the requirements of public  
15 need?

16 STAFF COUNSEL WILLIS: I object. Asked and  
17 answered. Mr. Celli?

18 HEARING OFFICER CELLI: I am sorry.

19 STAFF COUNSEL WILLIS: I just objected to a  
20 question. It was already asked and answered regarding  
21 public need.

22 HEARING OFFICER CELLI: Let me ask you this, Mr.  
23 Sarvey, because we're getting a little far afield here  
24 with the public need business. And I wanted to ask you  
25 how many more questions did you have on cross?

1 MR. SARVEY: I have about five more questions.

2 But this one is specifically important because --

3 HEARING OFFICER CELLI: You don't have to tell me  
4 why. But what I'd like to do is ask that you please reask  
5 the question, repeat the question and let me make a  
6 determination.

7 MR. SARVEY: On page 4.12-25 -- well, that was my  
8 previous question. She answered only that she looked to  
9 the long-term procurement contract to determine if the MEP  
10 was required by the public need. And I was asking was  
11 there other requirements outside of the PG&E 2008  
12 long-term procurement contract that is required, other  
13 findings that are required for her to state that this  
14 project is for the public need? I mean, there are other  
15 elements of that.

16 HEARING OFFICER CELLI: Did she -- what did she  
17 look at?

18 MR. SARVEY: Yeah.

19 STAFF COUNSEL WILLIS: And she already answered  
20 that she also looked at the county's letter when they gave  
21 their determination.

22 HEARING OFFICER CELLI: That's right.

23 STAFF COUNSEL WILLIS: But she just testified to  
24 that minutes ago.

25 HEARING OFFICER CELLI: So did you have a follow

1 up question? Anything other than that? Is that what  
2 you --

3 MR. SARVEY: Is there a requirement that this  
4 project cannot be located on some other land to meet this  
5 need, that it has to be this land because it's a  
6 requirement like that? I'm just trying to understand what  
7 you mean when you say public need. Public convenience and  
8 necessity has all kinds of requirements. You're just  
9 saying public need. Is this the same as public  
10 convenience and necessity? Is that the standard that  
11 you're setting here?

12 MS. WORRALL: I didn't write the ECAP. I'm just  
13 reading it, and I also look to Alameda County's  
14 interpretation of their policies.

15 MR. SARVEY: So you're not aware of any other  
16 requirements that are necessary to make a finding that  
17 this is needed for the public?

18 MS. WORRALL: No.

19 MS. STENNICK: Not in the land use section.

20 MR. SARVEY: Okay. Page 4-12-12 states the  
21 Department of Conservation staff indicated in its July  
22 2000 letter to the applicant that the MEP appears to be a  
23 compatible use with ongoing agricultural activities during  
24 on the 158 acre parcel. Is a power plant explicitly  
25 called out in the Williamson Act as a compatible use?

1 MS. WORRALL: I don't happen to have the  
2 Williamson Act with me.

3 HEARING OFFICER CELLI: Is that something that  
4 would be in the terms of the contract that's provided  
5 under Exhibit 12?

6 MS. STENNICK: Excuse me. Are you referring to  
7 the principles of compatibility?

8 MR. SARVEY: No. I'm asking is an electrical  
9 generating facility like MEP automatically compatible use  
10 with the Williamson Act?

11 MS. STENNICK: It's compatible with land in the  
12 agricultural preserves and it's also compatible -- it can  
13 be compatible through the local agency actions under  
14 specific contracts.

15 MR. SARVEY: And is there an agency action that  
16 has occurred by Alameda County that's determined that this  
17 power project is a compatible use?

18 MS. STENNICK: Past actions from the county and  
19 letter from the Department of Conservation indicates to us  
20 that these two agencies are satisfied that it would be  
21 consistent with the Williamson Act under that particular  
22 contract. The Energy Commission staff cannot require the  
23 county to change a contract with a third party as part of  
24 its CEQA analysis or its LORS analysis.

25 MR. SARVEY: Part of your -- strike that. In the

1 east Altamont and GWF proceedings, staff required acre for  
2 acre mitigation for conversion of grazing land to host the  
3 power plant to prevent a significant impact to  
4 agricultural resources. How is this project any different  
5 and why aren't you requiring acre for acre mitigation?

6 MS. STENNICK: Which project? I'm sorry. Which  
7 project?

8 MR. SARVEY: East Altamont, all of them.

9 MS. STENNICK: East Altamont. Well, I remember  
10 that the East Altamont was converting prime agriculture  
11 land and this is grazing land. So the difference in terms  
12 of the quality of land and the designation of the land. I  
13 happen to recall that in the ordinances there is no  
14 mitigation program written in the ordinance.

15 MR. SARVEY: Are you sure the East Altamont is  
16 not grazing land?

17 STAFF COUNSEL WILLIS: First of all, I'm going to  
18 object. I'm not sure if this witness testified in East  
19 Altamont or prepared that testimony. So --

20 HEARING OFFICER CELLI: It's the kind of question  
21 that really has an implied parenthetical if you know at  
22 the end of the question. But I just want to say we're  
23 winding down here.

24 Go ahead, Mr. Sarvey. Let's move.

25 MR. SARVEY: Has a scientific method been

1 utilized in any way to calculate how much of the property  
2 for the Mariposa would need to be seeded with the higher  
3 quality seed to mitigate the ten acre loss of grazing  
4 land?

5 MS. WORRALL: Not to my knowledge.

6 MR. SARVEY: Pardon me?

7 MS. WORRALL: Not to my knowledge.

8 MR. SARVEY: Has a range manager evaluated the  
9 property and recommended how many acres would be needed to  
10 reseed to mitigate the ten acres of grazing land?

11 MR. SARVEY: Thank you very much. I'm sorry for  
12 shouting at you. I'm done, Mr. Celli.

13 HEARING OFFICER CELLI: Thank you. Thank you,  
14 Mr. Sarvey.

15 Cross is next with Mountain House. But again,  
16 Mountain House said in their prehearing conference  
17 statement they had no cross.

18 MR. GROOVER: But I reserve the right to cross  
19 any testimony that they gave orally today and I have one  
20 question in that regard.

21 HEARING OFFICER CELLI: I'll let you do your one  
22 question. Go ahead.

23 MR. GROOVER: In your testimony, you stated that  
24 your land use analysis and methodology was first you  
25 looked at this project in relationship to the CEC land use

1 requirements. Then you checked with Alameda County and  
2 Contra Costa County and received advise from both of those  
3 counties and reviewed their land use as well. Was there  
4 some reason you did not include San Joaquin County or  
5 Mountain House community land use policies either? Is  
6 there some reason you included Contra Costa and excluded  
7 the communities that are closest to in project?

8 MS. WORRALL: I actually -- no, I did not exclude  
9 Mountain House community at all. I reviewed the  
10 environmental documents that were prepared and the zoning  
11 and for the Mountain House community. The actual use of  
12 the land is going to take place in Alameda County so their  
13 laws naturally are applicable.

14 MR. GROOVER: Understood. But you said your  
15 methodology included Contra Costa County. So I'm asking  
16 why Contra Costa County looked at and took the time to do  
17 that and you didn't take the time to do San Joaquin County  
18 or actually the land use for Mountain House. I just want  
19 to know the difference in your methodology.

20 MS. WORRALL: I did actually maybe -- I was  
21 trying to be kind of broad because I was hearing and I was  
22 kind of going on. But I did look at Mountain House  
23 community and also the reason why I looked at Contra Costa  
24 County is because Byron Airport is in Contra Costa County.  
25 The compatible Zone D extends into the project site and so

1 I want to review their policies and check that off. But I  
2 did look at Mountain House community indeed. And it's  
3 also written in my SSA, too.

4 HEARING OFFICER CELLI: Thank you. Mountain  
5 House, Rajesh Dighe, any questions for these witnesses  
6 regarding land use? Staff witnesses on land use?

7 MR. DIGHE: So regarding the ECAP policies, I  
8 heard (inaudible) I'm wondering did you actually go to all  
9 the other policies of the ECAP?

10 MS. WORRALL: Oh, yes.

11 MR. DIGHE: In what way do you review these  
12 policies?

13 MS. WORRALL: I reviewed each and every policy.  
14 I've gone through the ECAP many, many times. And I've  
15 reviewed each policy for its applicability to the project  
16 and what the project is proposing.

17 MR. DIGHE: Did you find any inconsistency  
18 between the policies and how did you resolve that? Did  
19 you actually go back to Alameda County and review their  
20 (inaudible)?

21 MS. WORRALL: If I had any questions as far as  
22 interpreting policies, I communicated with Alameda County  
23 and to kind of answer any questions and I know they're  
24 part of the live references and I know the docketed items  
25 in the Commission. I looked to their determination and

1 explanation for definition of some terminology and took  
2 that into consideration when looking at interpreting in my  
3 analysis the policies and applicability and potential  
4 impact or inconsistency with the policies.

5 MR. DIGHE: So do you agree then maybe a small  
6 infrastructure or large infrastructure project --

7 MS. WORRALL: I would --

8 MR. DIGHE: Maybe I (inaudible). Small or large  
9 infrastructure project.

10 MS. WORRALL: Well, it's a peaker plant. And  
11 it's considered -- I would consider it limited  
12 infrastructure, which is allowed in the ECAP.

13 MR. DIGHE: So what is a large infrastructure?

14 MS. STENNICK: Excuse me, Mr. Dighe. Are you  
15 asking us to give you a definition of what a large  
16 infrastructure is?

17 MR. DIGHE: I think the answer was it is a  
18 limited infrastructure. So my question is you probably  
19 must have analyzed and you made a decision it's a limited  
20 infrastructure. And I understand that's what the policy  
21 says. And Alameda County said it's a limited  
22 infrastructure and then it came to the review for the CEC  
23 staff. Do you agree it's a limited infrastructure so you  
24 probably could have compared with some other projects? So  
25 can you give some examples around small, limited, and

1 large infrastructure?

2 MS. WORRALL: As I just said just a little  
3 earlier, I relied on county's definition because these are  
4 their policies how they determine or how they consider  
5 large or small, whether they consider the project limited  
6 infrastructure or not. And based on their letters, the  
7 May 20 letter and the September letter indicated that the  
8 project is consistent with policies in the ECAP and which  
9 I seem to remember pertains to the limited infrastructure.

10 MR. DIGHE: Yes, but I thought the whole idea was  
11 to review their statements about what is large and what is  
12 limited. So let's say -- they say it's limited and then  
13 you just agreed upon it or I'm just trying to understand  
14 why is it a limited infrastructure? Why is it called a  
15 limited?

16 MS. WORRALL: Okay. I looked at the footprint of  
17 the project, the ten acres with respect to the 158 acres  
18 on the parcel. I also considered the fact that the  
19 project is a peaker plant that is designed to kick into  
20 full operation in less than ten minutes in times of peak  
21 demand such as the summertime when you can have  
22 brown-outs. So versus, say, a base load facility that  
23 would probably have more operation hours and also looked  
24 at the number of hours that the Commission license would  
25 limit the facility to. And I considered all that as well

1 to determine that yes, it's a limited infrastructure.

2 It's not a large project.

3 MR. DIGHE: If it's a limited infrastructure in  
4 the letter May 2010 from the Alameda County Director Chris  
5 Bazar, why does he state the MEP not easily consistent  
6 with ECAP but with judicious use of planning and  
7 mitigation it could be made? I think it's probably the  
8 general section. I should have wrote it down. Did you  
9 actually analyze why the statement of it's not easily  
10 consistent with ECAP? So what is the judicious use of  
11 planning and mitigation mean?

12 MS. WORRALL: Yes, actually, I sent an e-mail to  
13 Bruce Jensen inquiring if -- because the letter also  
14 referenced the proposed -- the applicant's proposed  
15 mitigation, i.e., the reseeding of the construction lay  
16 down area on the property plus the permanent water supply  
17 for the cattle. I asked Bruce Jensen if what kind of  
18 mitigation are you looking for, what would be necessary.  
19 And he said the applicants. And it's in the documented  
20 items as well. And I also referenced it in my  
21 supplemental staff analysis that the reseeding and the  
22 water supply, permanent water supply meet their needs as  
23 far as providing mitigation in order for consistency with  
24 the ECAP and specifically the large parcel agriculture  
25 land use designation. And that's what it was in reference

1 to.

2 MR. DIGHE: Did you question Alameda County about  
3 why this specific land which was approved by Measure D for  
4 big open space and for agriculture purpose was  
5 specifically being proposed for MEP?

6 MS. WORRALL: I'm sorry. I'm not sure I  
7 understood the question. You're talking about open space.

8 MR. DIGHE: My understanding of Measure D is to  
9 keep this land open and preserve the agriculture. So did  
10 you actually question Alameda County around wouldn't it  
11 actually go against the water approved Measure D and how  
12 was the -- I mean, first question is do you actually  
13 question that?

14 MS. STENNICK: It's our understanding that  
15 Measure D, which was a voter approved initiative in 2000,  
16 amended the ECAP and in amending the ECAP made allowance  
17 for public infrastructure.

18 HEARING OFFICER CELLI: Mr. Dighe, I just want to  
19 check in with you. How many more questions do you have?

20 MR. DIGHE: I have two more questions.

21 HEARING OFFICER CELLI: Thank you.

22 MR. DIGHE: Does that mean if you violate  
23 Williamson Act, yes or no? According to you, do you feel  
24 that MEP violates the Williamson Act?

25 MS. WORRALL: Violates the Williamson Act?

1 MR. DIGHE: Yes or no.

2 MS. WORRALL: No.

3 MR. DIGHE: Does MEP comply with all the FAA  
4 regulations and laws?

5 MS. WORRALL: The FAA?

6 MR. DIGHE: Yes, the land use.

7 MS. STENNICK: Excuse me. Did you say MEP or  
8 FAA, sir?

9 MR. DIGHE: Does the MEP project right on this  
10 specific land -- and since the Byron Airport is close by,  
11 what all the land use around aviation, all the laws and  
12 regulation analyzed and does it comply with everything  
13 just specifically for land use I'm talking about.

14 MS. WORRALL: I looked at the Contra Costa County  
15 Airport Land Use Compatibility Plan and the policies for  
16 zone D and specifically with an eye to land use and  
17 impacts for land use. And as I've presented in my  
18 supplemental staff assessment, it is the project is  
19 compatible with the policies that I determined applicable.

20 MR. DIGHE: Can I question one of the intervenors  
21 just related to specifically around aviation?

22 HEARING OFFICER CELLI: I'm sorry. Say again?

23 MR. DIGHE: Can I question Mr. Andy Pilot around  
24 the same --

25 HEARING OFFICER CELLI: You know what? The way

1 we work is we call one party at the time, applicant,  
2 staff, intervenor one, two, three, four. And we will call  
3 their witnesses when it's their turn. So you can ask Cal  
4 Pilots' witnesses when they're on the stand questions.  
5 But not right now.

6 MR. DIGHE: You just remind me. I might forget.

7 HEARING OFFICER CELLI: I'm not going to remind  
8 you because I can't really prosecute your case for you.

9 MR. DIGHE: That's okay.

10 MR. WHEATLAND: Although, Hearing Officer Celli,  
11 I would like to have a discussion about friendly cross  
12 before we allow intervenors to cross other parties whose  
13 position is not adverse.

14 HEARING OFFICER CELLI: We'll talk about that.  
15 Thank you.

16 Mr. Wilson, did you have questions of these  
17 witnesses?

18 MR. WILSON: Yes. I would like -- I would like  
19 to -- Mr. Sarvey asked a question. It was so long ago  
20 because I have a couple of follow up questions -- if you  
21 would repeat the question. So this is in regards to  
22 Exhibits 300, 301, and it is in regards to the  
23 determination that Contra Costa County Airport Land Use  
24 Commission made relative to the power plant and its  
25 location. So there would be termination of inconsistency

1 with the Contra Costa County Airport Land Use  
2 Compatibility Plan on the proposed Mariposa Energy  
3 Project.

4 Now, the statement or language I was looking for  
5 you right now, what was your answer to that that you  
6 reviewed -- you reviewed and then you came to a  
7 conclusion.

8 MS. WORRALL: Yes. I reviewed Contra Costa  
9 County's Airport Land Use Commission letter dated October  
10 2010, and I looked through there to see if there was any  
11 determinations with respect that would have any role with  
12 respect to the land use policies in their compatibility  
13 plan and I didn't see anything that touched on any of the  
14 specific policies.

15 MR. WILSON: Okay. So I'm looking at an October  
16 14th determination letter. Is that what you're asking?

17 MS. WORRALL: Yes. That's what I was looking at,  
18 yes.

19 MR. WILSON: So you determined that. Did you  
20 write a letter to the Contra Costa County Airport Land Use  
21 Commission to notify them of that?

22 MS. WORRALL: No, I didn't.

23 MR. WILSON: Did you notify Caltrans Aeronautics  
24 of your decision? What would you consider the --

25 HEARING OFFICER CELLI: I'm going to tell

1 everyone to back off for a minute. You need to -- you're  
2 doing a fine job of asking good questions, but you need to  
3 let the witness answer your question before you ask your  
4 next question. So just let her finish her answer.

5 MR. WILSON: First question, what's the answer?  
6 Question was: Did you send a letter or notify Contra  
7 Costa County Airport Land Use Commission in any way of  
8 your decision?

9 MS. WORRALL: No, unless they looked at the SSA.

10 MR. WILSON: Did you notify Caltrans Aeronautics  
11 of your decision and why?

12 MS. WORRALL: I didn't, because they have  
13 jurisdiction of air space with respect to transportation  
14 and I wasn't coordinating that effort.

15 MR. WILSON: So if the Contra Costa County  
16 Airport Land Use Commission makes a determination, there  
17 are certain laws and regulations that have to be followed  
18 for and this could be considered as an override or  
19 overrule. What in your opinion do you think you do?

20 MS. STENNICK: Alameda County would be the agency  
21 of jurisdiction. We sought out information from Contra  
22 Costa County --

23 HEARING OFFICER CELLI: How many more questions  
24 do you have, Mr. Wilson?

25 MR. WILSON: I'm waiting for the answer, per your

1 instructions.

2 HEARING OFFICER CELLI: I thought I would inquire  
3 while I had some dead air.

4 MS. WORRALL: In reviewing the letter, I didn't  
5 determine any land use related -- as it relates to the  
6 policies in the ALUCP. They talk about the plumes. I was  
7 reading the ALUCP and the policies related to land use,  
8 there's nothing in there with respect to plumes or -- so I  
9 don't necessarily think I overruled them because I didn't  
10 see anything in their offering their determination with  
11 respect to the specific policies with regard to land use.

12 MR. WILSON: Okay. So Exhibit 300 on page  
13 4-12-33 --

14 STAFF COUNSEL WILLIS: Objection. 300 is not  
15 part -- is not her testimony. It's 301.

16 HEARING OFFICER CELLI: I couldn't hardly hear  
17 you. Actually, Mr. Groover, I'm going to ask you both to  
18 turn your mikes off if you're going to whisper. I didn't  
19 hear.

20 STAFF COUNSEL WILLIS: I'm going to object.  
21 Exhibit 300 is not her testimony. It's Exhibit 301.

22 HEARING OFFICER CELLI: 301.

23 STAFF COUNSEL WILLIS: So if we're going back to  
24 that, we're not in the right place.

25 HEARING OFFICER CELLI: 301.

1           MR. WILSON: We'll do 301. There is a reference  
2 to -- you've just testified that you've determined that  
3 there isn't a hazard. Does talk about plumes. Doesn't  
4 talk about plumes. However, in your same section, you  
5 then refer to traffic and transportation Trans 7 and Trans  
6 8 where you're going to prevent pilots from flying over  
7 that area. So you've made a determination on your own.  
8 You've now made reference back to transportation which we  
9 haven't covered yet and you're saying that pilots can't  
10 fly over that area.

11           STAFF COUNSEL WILLIS: I'm going to object.  
12 First of all, it's argumentative. Second of all, you're  
13 talking about traffic and transportation that's a topic  
14 that will be coming up hopefully sometime tonight. These  
15 witnesses did not analyze aviation impacts. They are land  
16 use witnesses.

17           MR. WILSON: It is in the land use section. It's  
18 refer --

19           STAFF COUNSEL WILLIS: It's referencing.

20           HEARING OFFICER CELLI: There you go. So it's a  
21 fair question if it's in the land use section. So I'm  
22 going to allow you to ask the question. But it was a  
23 rather long question and I'd like you to just kind of get  
24 to the question.

25           MR. WILSON: It was a long question, but I'm

1 looking for a short answer.

2           STAFF COUNSEL WILLIS: Mr. Celli, just for  
3 clarification, the section says that these issues are  
4 discussed in the traffic and transportation section and  
5 references Trans 7 and Trans 8. I don't -- that's  
6 different than her making -- providing an alternative  
7 subsidies. She's just referencing where else in the  
8 supplemental staff assessment this actually -- the  
9 analysis appears.

10           HEARING OFFICER CELLI: He can ask questions on  
11 what she wrote in this section. And if there's a question  
12 that goes beyond her expertise, he'll have to indicate as  
13 such. So let's get on with the questioning, please.

14           MR. WILSON: So you made reference to Trans 7 and  
15 Trans 8. Is this a -- are you thinking that's a  
16 mitigation?

17           HEARING OFFICER CELLI: Oh, I'm sorry. I didn't  
18 get that the question had to do with Trans 7 and Trans 8.  
19 Trans 7 and Trans 8 are conditions specific to  
20 transportation and traffic transportation.

21           MR. WILSON: But they're referring back to Trans  
22 7 and Trans 8 saying that -- referring in one statement we  
23 have the CEC staff saying that it's not a problem. Plumes  
24 aren't addressed. Plumes aren't the problem with  
25 aviation. Then in another paragraph they refer back to

1 the mitigation of preventing pilots from flying over the  
2 plume.

3 HEARING OFFICER CELLI: So here's what the big  
4 picture looks like. A land use people are doing an  
5 analysis and they are referring to conditions that were  
6 apparently drafted and created by the traffic and  
7 transportation people. And they're saying we're referring  
8 to these things in traffic and transportation. That  
9 doesn't (inaudible) with traffic and transportation  
10 expertise I'm afraid. So now that I understand the  
11 context, I think that I would sustain the objection as  
12 irrelevant. So go ahead.

13 MR. WILSON: Okay. So then in conclusion on what  
14 the Contra Costa County Airport Land Use Commission  
15 determined, you didn't site any reasons yourself as to why  
16 you overruled the Contra Costa land use determination.

17 MS. WORRALL: I didn't overrule. There was a lot  
18 of information with respect to land use policy in the  
19 ALUCP as referenced in the ALUCP --

20 MR. WILSON: It doesn't say if they made a  
21 determination.

22 HEARING OFFICER CELLI: Let her finish.

23 MS. WORRALL: I'm sorry. What was the last?

24 MR. WILSON: Regardless, they made a  
25 determination and you have to inform --

1 MS. STENNICK: Sir, their determination spoke to  
2 airport hazards to airport traffic and pilots. That is  
3 handled in the traffic and transportation section. The  
4 land use section nearly referenced Conditions of  
5 Certification and traffic and transportation which would  
6 with the implementation of those conditions would make the  
7 project consistent with surrounding land uses based on the  
8 applicable land use plans.

9 MR. WILSON: The Contra Costa Airport Land Use  
10 Commission is a State agency authorized to make a  
11 determination. You need to do that. You didn't do it.  
12 You didn't notify them.

13 HEARING OFFICER CELLI: We need a question  
14 actually.

15 MR. WILSON: She answered the question.

16 HEARING OFFICER CELLI: Do you have any further  
17 questions?

18 MR. WILSON: No, I don't. Thank you very much.

19 HEARING OFFICER CELLI: Thank you.

20 Mr. Miller, are you still on the line on behalf  
21 of Jass Singh? He's not on the line. Okay. Mr. Singh,  
22 did you have any questions with regard to land use for  
23 staff witnesses?

24 MR. SINGH: Yes. For the land use (inaudible) of  
25 the resident properties around the area, is there any

1 rules, regulations and Legislature what would be the  
2 minimum radius that (inaudible) should take place from the  
3 power plant?

4 MS. WORRALL: I'm sorry. I'm not sure --

5 HEARING OFFICER CELLI: You need to speak right  
6 into your mike.

7 MR. SINGH: The development of the residential  
8 properties, is there any rules, regulations or Legislature  
9 that you have to follow that will not permit any  
10 residential properties within that much radius of the  
11 power plant?

12 MS. STENNICK: Mr. Singh, are you talking about  
13 residential uses adjacent to the power plant?

14 MR. SINGH: Yes.

15 MS. WORRALL: And with respect to restrictions  
16 of --

17 MR. SINGH: Right.

18 MS. WORRALL: -- putting in new residences  
19 adjacent to --

20 MR. SINGH: Yes. Are there any rules or  
21 regulations that dictates that residences will not be  
22 developed with this much radius of the power plant?

23 MS. WORRALL: Well, the ECAP and the actual  
24 property zoning and the zoning around the project property  
25 it's zoned for primarily large parcel agriculture and not

1 residential. So that would restrict.

2 MR. SINGH: So basically -- but did you look into  
3 all those -- I'd like to understand the ECAP and all of  
4 that. But is there any definition of the compliance there  
5 that residential properties (inaudible) within so much  
6 radius of the power plant or any public utility or  
7 (inaudible) or whatever, you know?

8 MS. STENNICK: Are you talking about public  
9 health and safety issues regarding proximity of  
10 residential uses the a power plant?

11 MR. SINGH: Right.

12 MS. STENNICK: That information is in the public  
13 health and safety section of this document. We did not  
14 address public health and safety issues.

15 MR. SINGH: No. No. Miss, I'm not asking --

16 HEARING OFFICER CELLI: Mr. Singh, can you wait  
17 one second? A couple of things.

18 First of all, Ms. Willis, when you shake your  
19 head no -- I'm sure you don't mean to do this -- but it  
20 looks like you're trying to indicate something to your  
21 witnesses. So I'm going to ask that you not --

22 STAFF COUNSEL WILLIS: Well, it just depends on  
23 if it's in their section or not. They should have just  
24 asked if it was public health. We do have someone here  
25 from public health.

1 HEARING OFFICER CELLI: I understand. It looks  
2 like you might be communicating with your witnesses. I'm  
3 sure that's not what you mean to do.

4 Mr. Singh, you see how your mike is off to the  
5 side? You can't see my mike, but I have it like right on  
6 my face like this. If you can pull it right in front of  
7 you and speak right down the tube of that microphone,  
8 we'll be able to hear you much better.

9 MR. SINGH: Okay. Can you hear me now?

10 HEARING OFFICER CELLI: I need more --

11 MR. SINGH: Okay. So you know these are the  
12 experts for land use. I'm trying to determine is there  
13 any compliance, rules, regulations, legislation that  
14 within what radius from the power plant the residential  
15 development should happen?

16 MS. STENNICK: I'm sorry. I'm going to ask you  
17 to repeat that again, please. Are there any applicable  
18 laws, ordinances, regulations, and standards federally,  
19 State, or local which would --

20 MR. SINGH: Which -- which determines like at  
21 what distance from the power plant residential community  
22 can develop. (inaudible) the residential community cannot  
23 develop.

24 MS. STENNICK: The guiding principle for setbacks  
25 in the large parcel agricultural area would be in the

1 zoning code if there are any setbacks. I'm not sure. I'd  
2 have to take a look at Alameda County zoning code for that  
3 particular zone.

4 MR. SINGH: Okay. Did the staff took an expert  
5 on agriculture experts to take their concentration and to  
6 take their advise in determining whether there was a  
7 violation of agriculture plans or not?

8 STAFF COUNSEL WILLIS: Mr. Celli, I'm not hearing  
9 any of Mr. Singh's questions at all. And that was part of  
10 my shaking. I don't know what he's asking.

11 HEARING OFFICER CELLI: Mr. Singh, it is kind of  
12 hard to hear you up here. You're not coming across on  
13 that mike. If you look up here, you see that I have the  
14 line of the mike right runs down the line of my nose on my  
15 face. And I need you to speak right into your mike like  
16 that. Speak loudly. Go ahead.

17 MR. SINGH: Would the agricultural experts were  
18 considered in considering the Mariposa plant, did the  
19 staff consulted agricultural experts?

20 MS. WORRALL: I consulted with the Department of  
21 Conservation.

22 MR. SINGH: So is it the right department to get  
23 the answer that they are the right expert on agricultural  
24 land?

25 MS. WORRALL: I am sorry. What was the question?

1 MR. SINGH: So I'm sorry. You know, English is  
2 not my first language.

3 HEARING OFFICER CELLI: One moment. Are you  
4 asking did they consult with an agricultural expert?

5 MR. SINGH: Right. And if they consulted with  
6 (inaudible).

7 HEARING OFFICER CELLI: So I think you're posing  
8 an objection it was nonresponsive. What I'm going to ask  
9 them is to answer the question did you consult with an  
10 agricultural expert. That's the question.

11 MR. SINGH: Yes or no.

12 MS. WORRALL: Yes.

13 MR. SINGH: And who was it? What was the party  
14 with whom you consulted?

15 MS. WORRALL: Was Brian Leahy of the State  
16 Department of Conservation.

17 MR. SINGH: Is the Department of Conservation the  
18 right party to be consulted for agricultural use?

19 MS. WORRALL: With respect to use of agricultural  
20 land?

21 MR. SINGH: Right. Is it the right party?

22 HEARING OFFICER CELLI: That would be a yes or no  
23 question.

24 MS. STENNICK: It would be one agency that we  
25 would confer with, especially because the land was under

1 Williamson Act contract. And that was the primary --

2 MR. SINGH: And so (inaudible) hypothesis you're  
3 drawing, right, is it the hypothesis you're drawing?

4 MS. STENNICK: I'm saying that was most  
5 obvious -- well, you said agricultural expert is that what  
6 you said.

7 MR. SINGH: Yeah. Right.

8 MS. STENNICK: We already know that the land is  
9 marginally useful. It's not prime agricultural land.  
10 It's not supporting row crops or tree crops or vineyards.  
11 It's used for grazing. If it were agricultural land with  
12 a high value, then we would have done -- we would have  
13 consulted quite a different type of analysis on this  
14 particular land. If they were taking 300 or 500 acres out  
15 of prime agricultural land out of production, the analysis  
16 that we would have performed would have been very  
17 different. However, we're looking at ten acres of  
18 marginally useful land that's currently being used for  
19 grazing.

20 MR. SINGH: But there should be some limitation  
21 that if they use experts (inaudible) of the land then it  
22 violates some of the things. (Inaudible).

23 MS. WORRALL: I'm sorry?

24 MR. SINGH: What is the percentage that  
25 (inaudible) the 158 acres of land and ten acres are being

1 used for the power plant, what percentage (inaudible) it  
2 is in compliance, not in compliance it is violating this  
3 and that?

4 MS. WORRALL: The percentage of use of land in  
5 terms of determining compliance consistency --

6 MR. SINGH: Right.

7 MS. WORRALL: -- with Williamson Act --

8 MR. SINGH: Yes.

9 MS. WORRALL: -- and large parcel as it's zoned  
10 and general plan land use designation, there is no  
11 indication of percentage requirements. There is the floor  
12 area ratio, which Alameda County spoke of earlier.

13 MR. SINGH: Okay. So you're saying there is no  
14 percentage. But how you determine that ten acre is  
15 allowed in 158 acres and 20 acres is not allowed? There  
16 should be some matrix, right?

17 MS. STENNICK: Any kind of threshold for numbers  
18 or acres would be contained in the Alameda County zoning  
19 code. That is what we looked to because the project is  
20 situated in Alameda County. Alameda County's general  
21 plan, their zoning code and any other of their planning  
22 documents would be applicable to this particular site.

23 MR. SINGH: Okay. So let's talk about the zoning  
24 code. So that means you must have (inaudible) Alameda  
25 County zoning codes and said okay they are in compliance.

1 The zoning code they are within -- so trying to determine  
2 like what type of analysis you do with Alameda County's  
3 (inaudible) and say okay here you go and then you did  
4 reviewed the zoning codes. You reviewed the (inaudible)  
5 and methodologies and come to the conclusion that they  
6 comply.

7 MS. WORRALL: I look to the land use designation,  
8 the zoning designation, the ordinances. I looked at the  
9 uses permitted on the zoning code. It's agricultural  
10 district 100. So that's the minimum acreage of 100 acres  
11 is required. I saw that in the ordinances electrical  
12 generation is permitted as long as the findings could be  
13 made -- if Alameda County were the permitting agency,  
14 findings of the conditional use permit could be made.

15 MR. SINGH: So let us say if the power plant  
16 would generate 500 megawatt in the same land of ten acre  
17 with 158 acre complete site would you give them the  
18 permission -- I'm trying to assess the numbers of what  
19 your analysis are based on 200 megawatt plant. Okay. Is  
20 in compliance and 500 megawatt is not in compliance. So I  
21 need to find out if metrics analysis, miss.

22 MS. STENNICK: We would have to take a look at  
23 what the environmental impacts of a 500 megawatt power  
24 plant are or were compared to a 200 megawatt. And we  
25 would do the same analysis that we did -- we meaning all

1 Energy Commission staff would do the same analysis that  
2 they did for a 200 megawatt as we did for a 500 megawatt.  
3 If the analysis for a 500 megawatt, for example, showed  
4 that the noise levels would be in an increase of what the  
5 county allowed, then we would have to either provide  
6 mitigation or we would have an environmental impacts.  
7 That's a hypothetical. We analyzed a 200 megawatt power  
8 plant.

9 MR. SINGH: Miss --

10 HEARING OFFICER CELLI: Mr. Singh, let me ask you  
11 this. How many more questions do you have?

12 MR. SINGH: Sir, I'm trying to provide -- the  
13 answer I'm asking for the land use, but they're giving me  
14 environmental talks on it.

15 HEARING OFFICER CELLI: I'm just asking right now  
16 for time purposes how many more questions do you have to  
17 ask?

18 MR. SINGH: I'm trying to determine how much  
19 analysis to do or just take the file and move the file  
20 from one table to the other and sign it. Because this is  
21 a (inaudible) minority community --

22 HEARING OFFICER CELLI: My question is how many  
23 more questions?

24 MR. SINGH: I have two more questions.

25 HEARING OFFICER CELLI: Two more. Okay. Thank

1 you. Go ahead and ask your questions.

2 MR. SINGH: So let's stick to the land use, not  
3 go to the determination made in the environmental how much  
4 impact (inaudible) and trying to see zoning analysis. If  
5 this plant is 200 megawatt, 100 foot fingerprint  
6 percentage that will go for 200 megawatt which is 158 acre  
7 ten acre parcel, all these things I need those analysis  
8 that you have done, and these should be on your fingertips  
9 since you are experts.

10 MS. WORRALL: The -- as stated in the zoning code  
11 with respect to what the four findings that would be  
12 necessary to be made by the appropriate jurisdiction for  
13 approval of the conditional use permit, none of the four  
14 findings -- one second. None of the four findings have  
15 any kind of qualifications of size. There's no  
16 indication -- you know, this size is okay, larger is not  
17 okay. So there's no size specificity written into the  
18 four findings for conditional use --

19 MR. SIMPSON: What page are you on?

20 MS. WORRALL: Excuse me. What was your question?

21 MR. SIMPSON: What page are you on?

22 MS. WORRALL: 4.12-25.

23 MR. SIMPSON: Thank you.

24 MS. STENNICK: The zoning code -- and  
25 unfortunately we don't have a copy of the Alameda zoning

1 code here, but the zoning code would speak to allowable  
2 uses, uses with a conditional use permit, ancillary uses  
3 and design guidelines would address a particular zoning  
4 code in terms of the setbacks, lighting issues, numerous  
5 issues. If we had the code here, we could probably answer  
6 your question very quickly.

7           The key thing for large parcel agriculture is  
8 that they have a minimum requirement of 100 acres and this  
9 project certainly -- it's on a 158 acre site. So that  
10 right there indicates that the project is compatible with  
11 that aspect of the zoning. Then there's the matter of the  
12 findings that Alameda County would have made were they the  
13 permitting agency, which we consulted with the county and  
14 made part of our analysis here.

15           MR. SINGH: So --

16           HEARING OFFICER CELLI: Mr. Singh, last question,  
17 go ahead.

18           MR. SINGH: Right.

19           So this is my determination again. I would like  
20 to believe -- anyway, I'll -- conditional use permit, can  
21 you explain me some of the things that are written in the  
22 conditional permit by Alameda County?

23           MS. STENNICK: I'm sorry the question --

24           HEARING OFFICER CELLI: Conditionally what is  
25 contained in a conditional use permit by Alameda County?

1           MS. STENNICK: We can only speak to the  
2 particular zone of which the project is situated. The  
3 county has numerous zoning designations. A conditional  
4 use permit would be, for example, conditions of a local  
5 agency would apply to a project to reduce any impacts, any  
6 environmental impacts to a level below significance, which  
7 I believe we have done in this project.

8           MR. SINGH: Can you at least give me three items  
9 which basically require the conditional use permit and if  
10 those are violated then Alameda County will not  
11 (inaudible). This is my last question. Have you rendered  
12 conditional permit of Alameda County?

13           MS. WORRALL: I cannot do that because I did not  
14 analyze -- I only analyzed what would pertain to the  
15 proposed project and proposed zoning. I didn't look at  
16 other uses --

17           MR. SINGH: Is that what it is called a  
18 conditional use permit? That's all, Mr. Celli.

19           HEARING OFFICER CELLI: Thank you, Mr. Singh.  
20           Sierra Club California, any questions of this  
21 panel?

22           MR. CARLTON: Yes. You testified that this is a  
23 public use, the MEP is a public use.

24           MS. WORRALL: Public, quasi public use.

25           MR. CARLTON: What's public about it?

1 MS. WORRALL: The electricity that is generated  
2 would be provided to the public.

3 MR. CARLTON: So the only public thing about it  
4 is the fact that product gets used by the public which is  
5 through (inaudible)?

6 STAFF COUNSEL WILLIS: I'm going to object.  
7 Argumentative. And she's already been asked this question  
8 and answered it in previous cross-examination.

9 HEARING OFFICER CELLI: Overruled. Go ahead and  
10 answer the question, please.

11 MS. WORRALL: The provision of electricity is a  
12 service for the public.

13 MR. CARLTON: So is a provision of groceries.  
14 Are grocery stores a public use?

15 MS. STENNICK: I have to pay for my groceries,  
16 Mr. Carlton. I don't know if you get yours provided to  
17 you, but I have to pay for mine.

18 MR. CARLTON: Do you have to pay for electricity  
19 for PG&E?

20 HEARING OFFICER CELLI: I'm going to interpose my  
21 own objection because this is argumentative. You know,  
22 all of that kind of information will show up in your  
23 brief. Let's get to the facts.

24 MR. CARLTON: Okay. ECAP Policy 13 provides the  
25 county shall not provide nor authorize public facilities

1 or other infrastructure in excess of that needed for  
2 permissible development consistent with the initiative.  
3 How is this MEP not in excess of that needed for  
4 permissible development consistent with the initiative?

5 MS. WORRALL: I look to the PG&E's request for  
6 offers for electrical resources. The Commission's  
7 licensing restricts the operation of the plant to a  
8 specific number of hours. It's a peaker project that is  
9 used in the time -- in times of high electrical demand.  
10 And so -- and the electrical plant would not encourage any  
11 growth inducing repercussions.

12 MR. CARLTON: But did PG&E consider what was  
13 needed in eastern Alameda County?

14 STAFF COUNSEL WILLIS: I'm sorry. Could you  
15 repeat your question? Did PG&E consider --

16 MR. CARLTON: You said you relied on PG&E's need  
17 analysis. Did PG&E's need analysis refer to eastern  
18 Alameda County?

19 MS. WORRALL: I didn't look at a need analysis.  
20 I looked -- I saw that a PG&E had placed a request for  
21 offers for procurement of energy resources -- flexible  
22 energy resources that are able to start up in less than  
23 ten minutes used for peaking demand to meet the high  
24 demand.

25 MR. CARLTON: High demand where? In eastern

1 Alameda County?

2 MS. STENNICK: That's really outside of the area  
3 of our analysis, Mr. Carlton.

4 MR. CARLTON: Well, I'm asking you about ECAP  
5 Policy 13 and why this is not in excess of that needed for  
6 per miss able development consistent with the initiative?

7 STAFF COUNSEL WILLIS: And I'm going to object.  
8 It's been asked and answered twice now.

9 HEARING OFFICER CELLI: Overruled.

10 The question is why is the MEP not in excess -- I  
11 am sorry. Finish the --

12 MR. CARLTON: In excess of that needed for  
13 permissible development consistent with the initiative.

14 HEARING OFFICER CELLI: That's the question.

15 MS. WORRALL: I -- like I said before, I did -- I  
16 looked at the PG&E request for offers for energy  
17 facilities, energy resources. I noted also actually the  
18 applicant's power purchase agreement with PG&E fulfilling  
19 that need. I also noted that Alameda County had stated in  
20 their May 20 letter that even within the growth  
21 constraints of the ECAP that significant energy resources  
22 are needed.

23 MR. CARLTON: Was there any indication that there  
24 were not or inadequate sufficient resources for  
25 development in Alameda County?

1 MS. WORRALL: Not from the evidence that had been  
2 submitted and the information I had gathered.

3 MR. CARLTON: Okay. Thank you.

4 Policy 13 allows infrastructure such as  
5 pipelines, canals and power transmission lines. Is the  
6 peaker plant subjected like a pipeline, canal, or power  
7 transmission line?

8 MR. WHEATLAND: I object. He's reading the  
9 statement incomplete. I think he should read it in its  
10 entire context.

11 MR. CARLTON: You want me to read all of Policy  
12 13?

13 HEARING OFFICER CELLI: Actually, I ask that you  
14 not. And I'm going to sustain the objection. The  
15 objection is based on argumentative. A power plant is a  
16 power plant. It's not a transmission line. It's not a  
17 canal and it's not whatever else you listed. So that  
18 speaks for itself. I understand that.

19 MR. CARLTON: Okay. Thank you.

20 So the pipelines, canals, and power purchase  
21 transmission lines which have no excessive growth inducing  
22 effects in the east county area and have permit conditions  
23 to ensure that no service can be provided beyond that  
24 consistent with development allowed by the initiative, are  
25 there permit conditions to ensure that no service can be

1 provided beyond that consistent with the development  
2 allowed by the initiative?

3 MS. STENNICK: Are you referring to Policy 13?  
4 I'm sorry.

5 MR. CARLTON: This is Policy 13.

6 MS. STENNICK: Okay. May I take a look at what  
7 the wording says?

8 MS. WORRALL: Well, the permit conditions to  
9 ensure that no service can be provided beyond that  
10 consistent with the development allowed by the initiative,  
11 the permit conditions would be the Commission's  
12 restriction in terms of operating hours and Conditions of  
13 Certification that would become part of the project.

14 MR. CARLTON: Thank you.

15 Still on Policy 13. Policy 13 provides  
16 infrastructure shall include public facilities, community  
17 facilities and all structures and development necessary to  
18 the provision of public services and utilities. How is a  
19 peaker plant necessary to the provision of public services  
20 and utilities?

21 STAFF COUNSEL WILLIS: I need to object again.  
22 They've answered this about two or three different -- from  
23 different intervenors. I know this particular intervenor  
24 didn't ask the question, but it's starting to feel  
25 cumulative that they've repeated and repeated why they've

1 created their testimony.

2 HEARING OFFICER CELLI: I think it's a fair  
3 question, but I think if it's been gotten to before, then  
4 the witnesses should be able to rattle it right off. So  
5 let's hear from the witnesses quickly, please, the answer  
6 to the question.

7 MS. WORRALL: Can you repeat the question again,  
8 really briefly? Sorry.

9 MR. CARLTON: Policy 13 provides infrastructure  
10 shall include public facilities, community facilities, and  
11 all structures and development necessary to the provision  
12 of public services and utilities. How is the MEP peaker  
13 plant necessary to the provision of public services and  
14 utilities?

15 MS. WORRALL: Well, I would look to the -- again,  
16 PG&E's request for offers or energy resources. The  
17 electricity provided would go to the public and you know,  
18 consider it is providing public utilities, public services  
19 to the public, provision of electricity.

20 HEARING OFFICER CELLI: How many more, Mr.  
21 Carlton?

22 MR. CARLTON: Two more. And Mr. Mainland has  
23 one. My two are very short.

24 How does the loss of ten acres of grazing land  
25 meet ECAP purposes of preserving agriculture and open

1 space?

2 MS. WORRALL: Are you talking with respect to  
3 policy 52 or --

4 MR. CARLTON: Referring to ECAP purposes of  
5 preserving agriculture and open space.

6 MS. WORRALL: Well, the applicant and actually  
7 the proposed Conditions of Certification that I've  
8 included in my analysis would require that the applicant  
9 reseed the construction lay down area with an improved  
10 seed mix over that is currently provided. Also, the  
11 lifetime long term provision of water for the cattle for  
12 livestock, something that's not currently there that would  
13 also increase the use of the grazing land.

14 MR. CARLTON: Okay. So you're saying that  
15 putting down a few more grass seeds is providing a pipe  
16 for water is sufficient mitigation for permanent loss of  
17 ten acres of valuable grazing land for those corresponding  
18 greenhouse out there?

19 STAFF COUNSEL WILLIS: Objection --

20 HEARING OFFICER CELLI: Objection sustained. I  
21 think Mr. Mainland was one question. Go ahead, Mr.  
22 Mainland.

23 MR. MAINLAND: Am I coming through? Test.

24 HEARING OFFICER CELLI: Stay up really close.

25 MR. MAINLAND: Ms. Worrall, with regard to

1 sources (inaudible) determination of public need, one of  
2 them (inaudible) statement they need more electricity. Do  
3 you know what the basis is for that counter determination  
4 was? Did you require into that?

5 MS. WORRALL: No.

6 MR. MAINLAND: This morning we heard, did you  
7 not, that the planning people from the county said they  
8 need no determination or analysis themselves but made the  
9 determination (inaudible) was outside agencies and  
10 services. Did you know that?

11 MS. WORRALL: I think I remember something to  
12 that effect being --

13 MR. MAINLAND: Would it be incumbent on CEC staff  
14 to inquire further into need if these sources they're  
15 relying on are (inaudible)?

16 HEARING OFFICER CELLI: Mr. Mainland, when you're  
17 speaking, speak directly down the pipe of that microphone.

18 MR. MAINLAND: Testing.

19 HEARING OFFICER CELLI: Perfect. Right there.  
20 Stay right there. That's perfect.

21 MS. STENNICK: Mr. Mainland, can you repeat your  
22 question, please?

23 MR. MAINLAND: Yes. Well, the latest question  
24 was would it not be incumbent for CEC staff to inquire  
25 more deeply into the need when you're relying on

1 derivative sources?

2 MS. STENNICK: Would it not be incumbent upon  
3 staff to -- I am sorry. I'm having a hard time hearing  
4 you.

5 MR. MAINLAND: I'm sorry. Can you hear this?

6 MS. STENNICK: Yes.

7 MR. MAINLAND: My question was given the fact  
8 that the statement of the county was itself derivative and  
9 your determination was based on that derivative statement,  
10 shouldn't you have inquired more deeply into the issue of  
11 need that the county statement (inaudible).

12 MS. STENNICK: I'm not sure which statement  
13 you're suggesting the county is -- which alleged  
14 derivative statement are you referring to?

15 MR. MAINLAND: The county determination that your  
16 witness quoted. Your witnesses quoted it several times.

17 MS. STENNICK: Are you referring to --

18 MR. MAINLAND: She looked at the county's  
19 statement they need more electricity and therefore this  
20 project serves a public need.

21 MS. STENNICK: That statement was from the ECAP  
22 which is the document that we used in addition to PG&E's  
23 request for proposals and the power purchase agreement.  
24 What they're not -- I'm looking for some specific  
25 language. If you can just bide with me, sir.

1           HEARING OFFICER CELLI: Mr. Mainland, let me ask  
2 you this, because we're kind of actually -- Mr. Carlton  
3 said that you have one question. We're about five  
4 questions into your questioning and I'm just wondering if  
5 you can kind of get to the heart of what it is you're  
6 trying to get to and ask that question.

7           MR. MAINLAND: While they're trying to answer the  
8 other question, if I could just pose one more question,  
9 please, Mr. Chairman, and that is did you not consult  
10 other agencies and sources which point to the existence of  
11 the large and growing glut or surplus of generation  
12 capacity in the PG&E area and would that not have been a  
13 relevant item in your trying to determine whether there  
14 was a public need for extra electricity?

15           MR. WHEATLAND: Objection. Facts not in  
16 evidence.

17           HEARING OFFICER CELLI: And compound. It's a lot  
18 of questions in one. See if you can get it down to a  
19 bite-sized piece.

20           MR. MAINLAND: There are other sources and  
21 agencies you might have consulted in determining whether  
22 there is in fact a glut of energy and is growing in the  
23 PG&E area of electricity generation. Would those not have  
24 been legitimate and reasonable things to include when you  
25 consider them for the use of public need or not?

1 STAFF COUNSEL WILLIS: I need to object.

2 HEARING OFFICER CELLI: Overruled. Why did you  
3 do the analysis? Why didn't you do the -- in other words,  
4 he's asking why didn't you ask a bunch of other agencies  
5 that you might have or should have or could have.

6 MS. STENNICK: One of the findings required by  
7 Alameda County for a conditional use permit, one of the  
8 four findings is is the use required by the public need,  
9 which is different from performing a needs analysis which  
10 is done in another section of the document.

11 HEARING OFFICER CELLI: Okay. Is that Mr.  
12 Mainland?

13 MR. MAINLAND: Yes.

14 HEARING OFFICER CELLI: Thank you.

15 Mr. Simpson, go ahead.

16 MR. SIMPSON: Thank you. Maybe we should go  
17 right from that last question is the use required by the  
18 public need. I think the question here is really is this  
19 use in this location required by the public need? Is this  
20 use of this technology in this location required by the  
21 public need?

22 MS. STENNICK: Well, that's -- unfortunately, the  
23 county wasn't as thorough as you are, Mr. Simpson. All it  
24 says is is the use required by the public need, which is  
25 under Section 17.54, which identifies the four findings

1 necessary for approval of a conditional use.

2 MR. SIMPSON: But this conditional use is site  
3 specific. So the question is is this use needed in this  
4 location. It's not a question I need a gas station before  
5 I go home. But I don't need it to be right next door to  
6 here.

7 MR. WHEATLAND: Is there a question?

8 HEARING OFFICER CELLI: My sense is that the  
9 question is: Is there a need to have the power plant  
10 sited exactly where the MEP is sited or proposed to be  
11 sited now?

12 MR. WHEATLAND: If that's the question, I'd  
13 object as irrelevant because that's not what the county  
14 LORS is requiring.

15 STAFF COUNSEL WILLIS: And I'm going to object.  
16 As was stated over and over again, the staff did not do a  
17 needs analysis.

18 HEARING OFFICER CELLI: Which is kind of the  
19 question's answer.

20 STAFF COUNSEL WILLIS: May I finish, please?  
21 They're looking at a conditional use permit that's  
22 outlined by the county and stepping into the shoes of the  
23 county in determining that which is different than the  
24 Energy Commission or PUC looking at a need for a power  
25 plant in a certain location.

1 HEARING OFFICER CELLI: Is -- I think the answer  
2 he's looking for is whether he did the analysis or not.

3 MS. WORRALL: I did not look at the -- any  
4 alternative sites or if the use is better proposed  
5 elsewhere or -- that wasn't part of my analysis was  
6 analyzing the project as proposed.

7 MR. SIMPSON: Thank you. So if -- does the  
8 county have the authority to do a conditional use permit  
9 for this project?

10 MS. WORRALL: Any authority?

11 MR. SIMPSON: Does the county have the authority  
12 to do a conditional use permit for this project?

13 MS. WORRALL: No.

14 MS. STENNICK: The county's authority is  
15 superceded by the California Energy Commission on this  
16 type of a project.

17 MR. SIMPSON: Is that yes or no?

18 MS. STENNICK: That is a -- the county can give  
19 an in lieu of permit. They can advise Energy Commission  
20 staff. There's no requirement in the Warren-Alquist Act  
21 that local jurisdictions issue any permit when the  
22 State -- when basically the Energy Commission staff have  
23 to as our attorney said step into the shoes of the  
24 planning staff and ensure that all Alameda County and this  
25 particular example all Alameda County's laws, ordinances,

1 regulations and standards are (inaudible).

2 MR. SIMPSON: So that's what you do, you ensure  
3 that their laws, ordinances and standards are met in  
4 respect to conditional use permit if that would have been  
5 required by the county?

6 MS. WORRALL: Yes, we look at all the laws,  
7 ordinances, regulations and standards applicable to the  
8 project and any kind of conditional use permits that would  
9 have been issued if the county were permitting the  
10 project. We look to see if the project was consistent  
11 with all these regulations, applicable regulations. And  
12 write up our -- you know, analysis and conclusions and  
13 submit it to the Committee for review and then put it  
14 along in the process.

15 MR. SIMPSON: So the CEC process would be at  
16 least stringent as the conditional use permit process.  
17 And if it weren't, you would do a (inaudible) of the  
18 conditional use permit? Is that correct?

19 MS. WORRALL: One moment for a second.

20 MS. STENNICK: Are you asking -- are you  
21 asking -- I guess I'm unsure, Mr. Simpson, what you're  
22 asking. Are you asking if our process is similar to what  
23 the county would do? Is our site process --

24 MR. SIMPSON: Yeah. Is the CEC process more  
25 stringent than a conditional use permit?

1 MS. STENNICK: I would agree it is more stringent  
2 because we take a look at all kinds of technical areas  
3 beyond land use, including facility design.

4 MR. SIMPSON: So this process wasn't consistent  
5 with the conditional use permit process, would the CEC  
6 have to do an override to (inaudible) the project?

7 MS. STENNICK: The question isn't is it  
8 consistent with the conditional use process. The question  
9 is does the Mariposa Energy Project, is it consistent with  
10 all applicable local, State, and federal laws,  
11 ordinances --

12 HEARING OFFICER CELLI: Actually, the question he  
13 asked was if there was --

14 MR. CARLTON: Regulations and standards.

15 HEARING OFFICER CELLI: The question was whether  
16 there was an override, if there was an override, would --  
17 I want to -- because I'm not sure you got your answer.

18 MR. SIMPSON: If the project was not consistent  
19 with the conditional use permit process of Alameda County,  
20 would it require an override?

21 MR. WHEATLAND: I'm going to object to the  
22 question. He's talking about process. And I'm not sure  
23 whether it's process or the LORS.

24 MR. SIMPSON: LORS.

25 MR. WHEATLAND: And not process?

1 HEARING OFFICER CELLI: Overruled. I'm going to  
2 allow her to answer that question. Go ahead.

3 MR. WHEATLAND: I'm just asking what is the  
4 question? Is it process or LORS?

5 HEARING OFFICER CELLI: The question is whether  
6 if there was a conditional use permit required and -- I am  
7 sorry. Let me step back. If a conditional use permit was  
8 required and there wasn't one issued, would that require  
9 an override? Did I faithfully --

10 MR. SIMPSON: That will work.

11 HEARING OFFICER CELLI: Let's try that. That's a  
12 simple yes or no question. If there was a requirement for  
13 conditional use permit and the requirements for the  
14 conditional use permit were not met, would it require an  
15 override by the Energy Commission?

16 MS. STENNICK: The Committee would have to make  
17 that decision.

18 MR. SIMPSON: Really?

19 HEARING OFFICER CELLI: Well, let's move on, Mr.  
20 Simpson.

21 MR. SIMPSON: Okay. In your opinion, is this a  
22 small facility?

23 MR. WHEATLAND: Objection. Vague.

24 HEARING OFFICER CELLI: Overruled.

25 MS. WORRALL: I'm sorry. Might I answer it, the

1 question?

2 HEARING OFFICER CELLI: The question was is this  
3 a small facility. And I imagine you would say small  
4 compared to what. And Mr. Simpson is going to say what,  
5 Mr. Simpson? Go ahead.

6 MR. SIMPSON: Was there a response?

7 MS. STENNICK: Is this a small facility?

8 MR. SIMPSON: In your opinion is this a small  
9 facility?

10 MS. STENNICK: Compared to what?

11 MR. SIMPSON: You might have been coached on that  
12 one. Let me skip that for a minute. Is the RFO on the  
13 record, PG&E's request for offers?

14 MS. WORRALL: I know included in my list of  
15 references. I don't know if it has been disconnected. I  
16 can't remember.

17 HEARING OFFICER CELLI: That's something you can  
18 look on the evidence itself, Mr. Simpson.

19 MR. SIMPSON: Okay. Are power plants an  
20 industrial use?

21 MS. STENNICK: That question depends upon which  
22 jurisdiction it and which zone they are proposed in. They  
23 can be a conditional use as we have seen in several  
24 counties. They can be an industrial use as we have seen  
25 in urbanized industrial situations.

1 MR. SIMPSON: Is it a manufacturing facility?

2 MS. WORRALL: No. Not to my knowledge, no.

3 MR. SIMPSON: Okay. Do you know the percentage  
4 of land that will be covered?

5 STAFF COUNSEL WILLIS: I've going to object.  
6 That question has been asked quite a few times.

7 HEARING OFFICER CELLI: It has been asked. And I  
8 don't think we got an answer to it. It may be in the  
9 record. Oh, Mr. Wheatland.

10 MR. WHEATLAND: You asked us to look it up for  
11 you. And what we were able to find is that is a table  
12 that is in the AFC, which is Exhibit 1. This is Table  
13 5.13-1. And that provides the width and length of each of  
14 the structures on the site. So one is 50 by 30 and one is  
15 20 by 10. Now, unfortunately, that table does not give a  
16 grand total if you added them all up. But Mr. Curry here  
17 is very diligent and he's done that exercise. And the  
18 total combined four area of all the structures that are  
19 reflected in Table 5.13-1 is 7,280 square feet.

20 HEARING OFFICER CELLI: But we didn't take it to  
21 the level of what percentage that is?

22 MR. WHEATLAND: Well, as a percentage of the  
23 entire parcel, that is substantially less than .01 percent  
24 of the parcel.

25 HEARING OFFICER CELLI: And if we were all good

1 in math, we all would have divided the bigger number into  
2 the smaller number and that sort of thing. But there you  
3 have it.

4 MR. WHEATLAND: That's about the equivalent of  
5 three Mountain House homes.

6 HEARING OFFICER CELLI: 480, did you say?

7 MR. WHEATLAND: 7,280 square feet. It's about  
8 three residential homes.

9 HEARING OFFICER CELLI: Mr. Simpson, go ahead,  
10 please. And how many more questions do you have, Mr.  
11 Simpson, just so I can gauge the time?

12 MR. SIMPSON: About six-ish.

13 HEARING OFFICER CELLI: Let's see if we can move  
14 with alacrity.

15 MR. SIMPSON: Does the county have a noise  
16 ordinance?

17 MS. WORRALL: I am sorry. What did you say?

18 MR. SIMPSON: Does the county of Alameda have a  
19 noise ordinance?

20 MS. WORRALL: I would suspect it does, but I did  
21 not look at the noise ordinance.

22 MR. SIMPSON: I see. Did you do any soils  
23 reports to determine that this was not the primary  
24 agriculture land? (inaudible) or review soil report?

25 MS. WORRALL: I went to the Farmland Mapping and

1 Monitoring Program and --

2 MR. SIMPSON: The what?

3 MS. WORRALL: The Farmland Mapping and Monitoring  
4 Program, FMMP and I looked at the soil classification and  
5 I know there was a resource. I can't recollect at this  
6 point that talks about -- I have it bookmarked. And that  
7 talks about the types of land that is considered -- soils  
8 that are considered prime and I remember that the Mariposa  
9 project -- the parcel was not considered prime as I  
10 checked that out. Also as far as any kind of more  
11 discussions about soil would be in the technical study for  
12 the soil analysis.

13 MR. SIMPSON: I see. You mentioned that you  
14 reviewed the Department of Conservation's letter regarding  
15 the Williamson Act, the July 6th, 2009, letter that you  
16 mentioned earlier.

17 MS. WORRALL: Yes.

18 MR. SIMPSON: And is this the Department of  
19 Conservation's determination of consistency?

20 MS. WORRALL: (inaudible) their reasonings why  
21 they would consider the project consistent, but they did  
22 defer the more -- the final decision -- they deferred also  
23 to Alameda County because the contract -- Williamson Act  
24 contract is between Alameda County and the private  
25 property owner.

1           MR. SIMPSON: I see. So the Williamson Act  
2 consideration is a county determination or a CEC  
3 determination? Who makes that ruling?

4           MS. WORRALL: As far as any actions to be taken  
5 on the contract, it's the county's.

6           MR. SIMPSON: So it's not -- the CEC doesn't have  
7 authority over the Williamson Act?

8           MS. WORRALL: The Williamson Act or the  
9 Williamson Act contract?

10          MR. SIMPSON: Well, the determination of whether  
11 this project is consistent with the Williamson Act. Who  
12 has that authority?

13          MS. STENNICK: I am sorry. Could you repeat  
14 yourself, please?

15          HEARING OFFICER CELLI: Who has the authority  
16 over the determination of whether this project complies  
17 with the Williamson Act?

18          MR. SIMPSON: Thank you.

19          MS. STENNICK: Well, since the contract is with  
20 the county, the county is the one who can make or break  
21 the contract, along with the land owner if they submit a  
22 notice of non-renewal. We cannot force Alameda County  
23 to -- we have no jurisdiction over Alameda County's  
24 contract with the current land owner. That's clearly  
25 outside of our authority and purview.

1           MR. SIMPSON: Did you make a determination if  
2 this is consistent with the Williamson Act?

3           MS. WORRALL: With the Williamson Act, yes.

4           MR. SIMPSON: Okay. Almost done here.

5           HEARING OFFICER CELLI: Thank you. And we would  
6 appreciate if you wrap it up because we have to get some  
7 other business done before we break.

8           MR. SIMPSON: Can you still build a house on this  
9 parcel?

10          MS. STENNICK: Again, the large parcel  
11 agriculture zoning designation would I believe the county  
12 addressed that earlier. I think it's -- one house per 100  
13 acres.

14          MS. WORRALL: However, would probably be the  
15 county's determination based on the existing conditions.

16          MR. SIMPSON: I see.

17          Do you believe that this project would discourage  
18 residential development (inaudible) area?

19          MS. WORRALL: I'm sorry. I didn't hear your  
20 question.

21          MR. SIMPSON: Do you believe that the project  
22 would discourage residential development in the immediate  
23 area?

24          STAFF COUNSEL WILLIS: Objection. Calls for  
25 speculation.

1 HEARING OFFICER CELLI: Overruled.

2 MS. WORRALL: Well, the zoning would prohibit it  
3 from -- land use designation would prohibit, you know,  
4 multiple houses of multiple residents. It's based on  
5 property size and zoning.

6 MR. SIMPSON: That wasn't really my question. I  
7 asked if the zoning is 100 acres per house (inaudible)  
8 houses per (inaudible) sort of thing were available. But  
9 my question is do you believe that this project may  
10 actually discourage new residential housing in the  
11 immediate area whether it be one house or four?

12 MS. STENNICK: I think in order to answer that I  
13 would be speculating on -- that sounds like an opinion.

14 MR. SIMPSON: Well, I think it's a land use  
15 question.

16 MS. STENNICK: In order for there to be housing  
17 development or residential development in proximity to the  
18 project, the county would have to change their general  
19 plan in their zoning code.

20 MR. SIMPSON: Well, I think we already  
21 established that you can build one house on 100 acres.  
22 Does this discourage that?

23 HEARING OFFICER CELLI: I think it's clear that  
24 if you build a power plant there, you're not going to  
25 build a house on the same spot. It's going to be one or

1 the other; right?

2 MR. SIMPSON: Is there a limit to how many power  
3 plants you can build on those parcels?

4 MS. STENNICK: I believe the county answered that  
5 earlier.

6 MR. SIMPSON: Does staff have an opinion of if  
7 there is a threshold of how many plants could be built on  
8 this facility before it impedes on the Williamson Act or  
9 other LORS?

10 MS. STENNICK: Again, could you please repeat  
11 your question?

12 MR. SIMPSON: I'll give it a try. Okay. The  
13 concept that ten acres of this 158 acre parcel doesn't  
14 appear to significantly compromise long term productive  
15 agricultural capability, is there a threshold? Can we  
16 build two plants there? Can we use 20 acres? Can we use  
17 40 acres? Where is the limit that it impedes on  
18 agricultural use or other LORS?

19 MS. STENNICK: Are you referring to the  
20 cumulative -- potential cumulative effect of developing  
21 agricultural lands? Is that what you're referring to?

22 HEARING OFFICER CELLI: If I may, it sounds to me  
23 like what you're asking is is there a limit on how many  
24 power plants you can put on this particular parcel?

25 MR. SIMPSON: That's what I'm trying to ask.

1 HEARING OFFICER CELLI: That's the question.

2 Let's see if we can get the answer.

3 MR. SIMPSON: I'll be about done then.

4 HEARING OFFICER CELLI: Is there a limit on how  
5 many power plants could be built on this parcel?

6 MS. WORRALL: Well, again, I would of course look  
7 to the zoning and the land use designation. Land use  
8 designation refers to the floor to area ratio. So that  
9 would limit the amount of built out area.

10 MR. SIMPSON: I see. So it would be limited by  
11 that .01 percent of 150 acres?

12 MS. WORRALL: Right. That's the zoning area I  
13 saw with --

14 MR. SIMPSON: So they used 7,000 square feet .01  
15 of -- (inaudible).

16 Last question I think. When PG&E's contract  
17 expires in ten years, would this still be considered a  
18 public facility?

19 MS. STENNICK: I can't answer that question.

20 MR. SIMPSON: Thank you.

21 HEARING OFFICER CELLI: Thank you, Mr. Simpson.  
22 I appreciate your being on your game today.

23 Ladies and gentlemen, before we proceed -- oh,  
24 I'm sorry. Mr. Wheatland, did you have any questions? I  
25 didn't mean to ignore you over there.

1           MR. WHEATLAND: No, you were quite right in  
2 ignoring me. And the reason that is is that Rule 1212 in  
3 the Commission's rules of practice and procedure provides  
4 that parties have the right to cross-examine opposing  
5 witnesses. And since we have no position adverse to the  
6 staff in this proceeding, these witnesses are not opposing  
7 witnesses. It would be inappropriate for me to ask any  
8 cross. So I have no questions.

9           HEARING OFFICER CELLI: Touche, sir.

10           So with that, these witnesses are excused. And  
11 at this time I'm going to ask whether before we get to the  
12 intervenor's witnesses because I know Mr. Sarvey, I  
13 believe you're going to testify on land use.

14           MR. SARVEY: (Inaudible).

15           HEARING OFFICER CELLI: He's present. He's not  
16 on the phone.

17           MR. SARVEY: He's here today.

18           HEARING OFFICER CELLI: That's right. Before you  
19 do, I want to -- yes, we have to get to public comment in  
20 seven minutes. So in the next seven minutes what I'd like  
21 to do is take in evidence. I neglected to ask applicant  
22 first if there was a motion with regard to land use.

23           MR. WHEATLAND: Yes. I would like to move into  
24 evidence the land use exhibits that were described in the  
25 applicant's exhibit list that was previously distributed

1 to the parties. Those are the land use portions of  
2 Exhibit 1, 4, 5, 6, 9, 11, 12, 13, 19, 20, 32, 38, 41, 42,  
3 43, 45, 49, 54, 61 and 67.

4 HEARING OFFICER CELLI: Thank you. Any objection  
5 to the admission of Exhibits 1, 4, 5, 6, 9, 11, 12, 13,  
6 19, 20, 32, 38, 41, 42, 43, 45, 49, 54, 61 and 67 from  
7 staff?

8 STAFF COUNSEL WILLIS: No.

9 HEARING OFFICER CELLI: Mr. Sarvey, any  
10 objection?

11 MR. SARVEY: No.

12 HEARING OFFICER CELLI: Mountain House, Mr.  
13 Groover?

14 MR. GROOVER: No.

15 HEARING OFFICER CELLI: Thank you.

16 Mr. Dighe?

17 MR. DIGHE: No.

18 HEARING OFFICER CELLI: Mr. Andy Wilson?

19 MR. WILSON: No objection.

20 HEARING OFFICER CELLI: Mr. Jass Singh?

21 MR. SINGH: No objection.

22 HEARING OFFICER CELLI: Sierra Club, California?

23 MR. CARLTON: No.

24 HEARING OFFICER CELLI: Mr. Simpson?

25 MR. SIMPSON: No objection.

1 HEARING OFFICER CELLI: Thank you.

2 At this time, land use exhibits applicant's 1, 4,  
3 5, 6, 9, 11, 12, 13, 19, 20, 32, 38, 41, 42, 43, 45, 49,  
4 54, 61, 67 are admitted into the record.

5 (Whereupon the above-referenced exhibits  
6 were admitted into evidence by the  
7 Hearing Officer.)

8 HEARING OFFICER CELLI: And staff, did you have  
9 any additional exhibits to move into evidence?

10 STAFF COUNSEL WILLIS: I would like to move at  
11 this time the land use section in Exhibit 301, the  
12 supplemental staff assessment.

13 HEARING OFFICER CELLI: 301 only essentially?

14 STAFF COUNSEL WILLIS: Yes. Only 301. The rest  
15 of the exhibits would be part of the supplemental staff  
16 assess.

17 HEARING OFFICER CELLI: Folks, what I'm going to  
18 do is admit the staff assessment and the supplemental  
19 staff assessment, because we can't really operate without  
20 that. So 301 is received in its entirety as was 300 and  
21 301. So we won't have to go through that each time.

22 (Whereupon the above-referenced exhibits  
23 were admitted into evidence by the  
24 Hearing Officer.)

25 HEARING OFFICER CELLI: Now, you've all been

1 troopers. There's a lot of parties here. This is going  
2 to be a long day, a little longer than I wanted it to go  
3 I'm afraid. We should be doing air quality now. What  
4 we're going to do at 5:00, in four minutes according to my  
5 computer, is take public comment. Let me just see a show  
6 of hands. How many people are here to make a public  
7 comment? Keep your hands up. Eight. How many on the  
8 phone? So five and eight. That's great. That's a very  
9 manageable number of people.

10           This gentleman here who stated -- I should say  
11 for the record since you're not on the microphone, a  
12 member of the public said more people are coming from the  
13 town of Mountain House. Do you have any sense of how many  
14 people?

15           UNIDENTIFIED SPEAKER: (Inaudible.)

16           HEARING OFFICER CELLI: So two dozen is about 24.  
17 So it looks like we've got quite a few people and we have  
18 some limited time to do this. And we're going to -- I  
19 actually brought from home my egg timer because I'm going  
20 to have to limit how much time. I'll have to do the math  
21 and figure out how much time people can have to speak.  
22 But I'm going to ask members of the public whether you're  
23 on the phone or here in person. If somebody said  
24 something that you wanted to say rather than going through  
25 the whole thing, you can say, "What that person said I

1 stand behind and I agree with," because we need to get  
2 everybody in here and get as many comments as we can.

3 Mr. Lamb, did you have a question?

4 MR. LAMB: On the public comment I know a lot of  
5 people in Mountain House the majority of the town is a  
6 commuter town. So I know getting here at 5:00 is going to  
7 be difficult. And there's very little parking out. I  
8 don't know if parking is illegal out on that area or not.  
9 So I know that's a complication.

10 HEARING OFFICER CELLI: We have a couple officers  
11 here. Maybe --

12 UNIDENTIFIED SPEAKER: (Inaudible).

13 HEARING OFFICER CELLI: Thank you, officer.

14 MR. CARLTON: When is the land use hearing going  
15 to resume?

16 HEARING OFFICER CELLI: After public comment.

17 Now, I'm trying to get public comment done --  
18 isn't there food outside?

19 MR. SIMPSON: I'd like to make a motion that we  
20 adjourn after public comment.

21 HEARING OFFICER CELLI: We don't have the time  
22 for that. We have to keep moving on I'm sorry to say.  
23 Need to get to air quality. We should have been in the  
24 middle of air quality by now. So I've been awfully  
25 generous with the amount of time people have been cross

1 examining, and I guess I'm going to have to pull out my  
2 egg timer now.

3           So with that, let me just go off the record for  
4 one moment.

5           (Off record.)

6           HEARING OFFICER CELLI: Is Dr. Leo Huang here?  
7 Hi. Come on up to the podium.

8           Yes, we're on the record. This is the time for  
9 public comment. I'm going to ask people to limit your  
10 comments to about -- I'm going to ask you to keep it down  
11 to about three minutes because we want to make sure we can  
12 hear from everybody.

13           Go ahead, Dr. Huang.

14           MR. HUANG: My name is Leo Huang. H-u-a-n-g,  
15 last name. I'm Mountain House resident two and a half  
16 years. I love Mountain House. I'm here specifically to  
17 oppose this project. I am a chemist, a scientist. I have  
18 a doctor's degree. I know the gas energy is a (inaudible)  
19 energy. We can do better other than gas. To me, use gas  
20 to convert to energy is (inaudible). I say we should look  
21 at better energy, like solar energy (inaudible) in this  
22 nation or in this world. Okay. That's my point. I'm  
23 highly oppose this project.

24           HEARING OFFICER CELLI: Thank you, Dr. Huang, for  
25 coming and for your comments.

1 Susan Sarvey was here earlier. Hi. We've  
2 already heard from Susan Sarvey. And thank you. Thank  
3 you for your comments earlier if I didn't say that. I was  
4 trying to get you back to work. Welcome back.

5 MS. SARVEY: I'm here for air quality.

6 HEARING OFFICER CELLI: I have Dr. Celeste  
7 Farron.

8 MS. FARRON: Correction. That's Director Celeste  
9 Farron.

10 And I would like to clarify though I am a  
11 director in Mountain House Community Service District, I  
12 am here as a resident. We have our intervenors on behalf  
13 of Mountain House that are here, Mr. Groover and Mr. Lamb,  
14 that represent Mountain House. I, like the other  
15 residents here as intervenors and the other residents  
16 here, represent myself.

17 That being said, I have a statement from our  
18 general manager that I'd like to read by proxy. If that's  
19 not allowed, I'll read it as my comment since I share the  
20 same sentiment. He was here earlier. He is actually the  
21 one that had the -- I was the one that had the statement  
22 for when Ms. Sarvey came up. There was a mix up.

23 HEARING OFFICER CELLI: Do you want to read it  
24 into the record?

25 MS. FARRON: Yes, please.

1 HEARING OFFICER CELLI: It will be part of the  
2 comment.

3 MS. FARRON: Thank you. And then I have a  
4 comment of my own as well.

5 HEARING OFFICER CELLI: Please.

6 MS. JENNINGS: Speak more into the microphone.

7 HEARING OFFICER CELLI: Speak directly into the  
8 mike. Right into that microphone.

9 MS. FARRON: Is that better?

10 HEARING OFFICER CELLI: Not really. You need to  
11 really boom out there.

12 MS. FARRON: A statement from the Mountain House  
13 Community Service District General Manager or me if you  
14 don't allow by proxy. Fire response. The Mountain House  
15 Community Service District contracts with the Tracy Fire  
16 for fire and emergency services. The fire station located  
17 in Mountain House is the closest station to the Mariposa  
18 Energy Project.

19 As stated by the Mountain House Community Service  
20 District intervenors earlier, the response time from  
21 Mountain House is about 20 minutes faster than the next  
22 closest station in Alameda County. The greatest number of  
23 calls are for personal medical emergency which affect  
24 worker safety. Fire and Hazmat calls will also require  
25 quick response times. Although the Mariposa Energy

1 Project is talking to the Tracy Fire on this issue, the  
2 Mountain House Community Service District would like to  
3 make sure that the CEC staff and Board will make sure that  
4 our resources are fairly compensated for our new  
5 responsibilities due to the Mariposa Energy Project.

6 We made the same management for the East Altamont  
7 Energy Project, CalPine, several years ago and the CEC  
8 conditioned their license to provide Tracy Fire mitigation  
9 money for the extra services. Although the two projects  
10 are different and make arguments for not mitigating the  
11 cost, the Mountain House Community Service District  
12 resources are in reality -- the reality is we are the  
13 first responders. The Mountain House Community Service  
14 District General Manager requests that the CEC make the  
15 Mariposa Energy Project compensate Tracy Fire for their  
16 projected costs.

17 Thank you.

18 I would like to also --

19 HEARING OFFICER CELLI: Director Farron, was that  
20 from --

21 MS. FARRON: Paul Semsibaugh.

22 HEARING OFFICER CELLI: That was Mr. Semsibaugh's  
23 comment?

24 MS. FARRON: Right. Also he called Tracy Fire  
25 today and they will -- I wanted to point out that the

1 agreement between the two counties to provide service one  
2 to another is not a contractual agreement. And Tracy Fire  
3 will be here tomorrow to testify at 2:00 during the public  
4 safety portion of the comment part of the meeting. So  
5 that will be Chief Brammel that will be here tomorrow at  
6 2:00.

7 HEARING OFFICER CELLI: Boy, wouldn't it be great  
8 if we're actually talking about worker safety by then. Go  
9 ahead with your own statement.

10 MS. FARRON: And my comment today is I wanted to  
11 comment that the Alameda County officials opened their  
12 prepared statement with we have been working with the  
13 Mariposa Energy Project for said amount of time. Although  
14 they are here at the request of the CEC, so say they are  
15 not anyone's witnesses is contrary to statements in  
16 their -- comments in their opening statements we have been  
17 working with the MEP as well as statements identifying  
18 themselves as the host county and the host community. I  
19 would like to ask the CEC to take these statements into  
20 consideration and acknowledge that the Alameda County  
21 officials -- acknowledge them to actually having a leaning  
22 toward being a specific party's witness, at least to a  
23 degree as they themselves have testified to an ongoing  
24 working relationship.

25 And those are my comments. Thank you for your

1 time, Mr. Chairman.

2 HEARING OFFICER CELLI: Thank you. And thank you  
3 very much for coming down. Thank you for reading Mr.  
4 Semsibaugh's statement. I really do appreciate your  
5 comments. So thank you. Look forward to hearing from  
6 fire people as well.

7 Next I have Catherine Kutsuris.

8 I am sorry if I mispronounce people's names, by  
9 the way. People do it to me all the time. Being Italian  
10 is not easy.

11 MS. KUTSURIS: That's okay. You did very well.

12 Catherine Kutsuris, and I'm the Director of the  
13 Contra Costa County Department of Conservation and  
14 Development.

15 The County Board of Supervisors in -- the Contra  
16 Costa County Board of Supervisors in October took a  
17 position in support of the Mariposa Energy Project for a  
18 number of reasons. Their letter is dated October 4th,  
19 2010. It has been provided to you.

20 Again, they did take that position for a number  
21 of reasons, but two particular items I'd like to call to  
22 your attention as part of the Board's decision, they both  
23 found that the project is consistent with the county  
24 general plan as well as found it was consistent with the  
25 Byron Airport Master Plan. As you may know, Contra Costa

1 County is both the owner and the operator of the Byron  
2 Airport. So it is the Contra Costa County Board of  
3 Supervisors a decision in that matter is very important  
4 and that was articulated in their letter to you.

5           On behalf of both the County Department of  
6 Conservation and the staff for Contra Costa County, I just  
7 want to ensure that we are available to answer any  
8 questions that you may have either by myself or if I can't  
9 answer it, any members of our staff we will ensure that  
10 you get answers to your questions.

11           And finally since I think I have one minute left,  
12 I would like to say from one public agency to another,  
13 I've been in this business for unfortunately when I say  
14 decades now, it's over two decades. And I do want to give  
15 a compliment to the Energy Commission specifically your  
16 staff. I think I have worked on a variety of projects or  
17 had an occasion to interrelate to your staff a number of  
18 times over the past 15 years. And without exception, they  
19 have always been professional, competent, and always at  
20 the other end of the telephone. I'm not quite sure how  
21 they pull that off. But as one public agency, I very,  
22 very much appreciate their efforts. Thank you.

23           HEARING OFFICER CELLI: Thank you. And I want to  
24 thank you for those comments, particularly because when  
25 you read a letter as you mentioned in the record, it makes

1 so much of a difference to have somebody come in, a human  
2 being, come and say we stand by that letter.

3 MS. KUTSURIS: Happy to do so. Thank you.

4 HEARING OFFICER CELLI: Next I have Brian Stotz.  
5 Is Brian Stotz here? Hi.

6 MR. STOTZ: Hello. I'm a Mountain House resident  
7 and I oppose this plan, because -- I'm speaking into it.

8 HEARING OFFICER CELLI: Much better.

9 MR. STOTZ: I'll start over. I'm Brian Stotz.  
10 I'm a Mountain House resident, and I oppose this plan,  
11 because every time I investigate dangerous toxic  
12 chemicals, I find that it becomes a parts per million  
13 basis. And some agency says a thousand parts per million  
14 or ten parts per million is dangerous. And every time I  
15 read these articles, the number goes down. There's less  
16 parts per million that are dangerous. And we have a lot  
17 of children that will be growing up in Mountain House that  
18 will be exposed to some parts per million from this plant.  
19 And I just ask anyone in here if you have a child, do you  
20 want them exposed to additional parts per million?

21 Thank you.

22 HEARING OFFICER CELLI: Thank you. And I do have  
23 a child and I don't want her exposed to more parts per  
24 million. Go ahead.

25 I have Mary Piepho from the Contra Costa Board of

1 Supervisors.

2 MS. PIEPHO: Good afternoon -- or good evening.

3 My name is Mary Piepho. I'm a Contra Costa County  
4 Supervisor representing District 3 on the Board of  
5 Supervisors. District 3 does include the Byron Airport.  
6 And welcome. In fact, you are in District 3 today.

7 Our county has worked many years to plan and  
8 implement expanded uses of the Byron Airport. We do see  
9 great potential for the facility both through additional  
10 general aviation as well as potential cargo uses in other  
11 economic opportunities. It is one of Contra Costa's most  
12 important resources and we are most protective of and also  
13 excited about. We're proud of the airport as exists today  
14 and are optimistic about its future.

15 For more than a year, we have reviewed the  
16 proposed Mariposa Energy Project with a focus on its  
17 interrelationship with the Byron Airport. Through  
18 numerous meetings, public hearings and exchange of  
19 information we've become very familiar with this proposal.  
20 I was fortunate to have the opportunity to work with local  
21 pilots and fly over the site carefully and considering the  
22 potential impacts and benefits of Mariposa on Byron and  
23 Contra Costa County.

24 Earlier in 2010, as Catherine indicated earlier,  
25 we did write the applicant with a list of specific issues

1 and areas of potential concern for us. In response, the  
2 applicant provided us with significant information --  
3 voluminous I think is a better description. Our  
4 professional staff made a thorough review of all the  
5 materials, including the FAA's determination of no hazard  
6 to air navigation for the project structures, stocks, and  
7 thermal plumes.

8           Based on that process, the county is very  
9 satisfied that the project is compatible with the Byron's  
10 airport operations and master plan and will not adversely  
11 affect airport operations. Prior to the Board of  
12 Supervisors' consideration of the project, the County's  
13 Planning Commission and the county's Byron Municipal  
14 Advisory Council independently reviewed the project and  
15 supported it as well.

16           Given that the project applicant has safely  
17 addressed our concerns regarding potential impacts to the  
18 Byron Airport and given that the area will receive  
19 economic benefits from the project in terms of local  
20 spending and local high wage jobs, the Board of  
21 Supervisors has voted -- again Catherine indicated their  
22 unanimous support of the Mariposa Energy Project on  
23 September 28th.

24           Contra Costa County is respectfully asking the  
25 CEC to approve the Mariposa project and allow its many

1 benefits to be realized by the people of our county.

2 Thank you.

3 HEARING OFFICER CELLI: And thank you, Supervisor  
4 Piepho. Thank you for coming down.

5 MS. PIEPHO: I put a phonetic spelling in there  
6 to make it easy.

7 HEARING OFFICER CELLI: I saw that. Made all the  
8 difference. That's great. Thanks for being here.

9 Are we out of blue cards? Got it. Is Jason Yao  
10 here? Hello. Come on up. I'm going to ask everyone  
11 really -- shoot your voice right down into the microphone.

12 MR. YAO: My name is Jason Yao. I'm a resident  
13 from Mountain House. I totally object this project. And  
14 the reason for that -- first of all, I did some research  
15 myself. Mountain House master plan was approved 1994. I  
16 just wonder where is the Mariposa project at that time.

17 Secondly, and (inaudible) there are key dates  
18 with the project for the Mariposa project and I don't know  
19 (inaudible) with the certificate does that date stop  
20 (inaudible) for that or they approve for that. That's  
21 what 2009 -- June 15, 2009, which was Mountain House is  
22 already exists and August of 26th, 2009, and the  
23 Commission accept the AFC. I don't know what the AFC is.

24 HEARING OFFICER CELLI: The AFC is the  
25 application for certification.

1           MR. YAO: Okay. So in other words, it's that air  
2 document was adequate?

3           HEARING OFFICER CELLI: Deemed adequate.

4           MR. YAO: So my question for that, okay, to build  
5 a power plant to a community of 44,000 in two-and-a-half  
6 miles did they include that plan in their application?  
7 And also last year I received an e-mail for calling. So I  
8 called it and I actually there were doing some walk  
9 through -- I think internal walk through. They talk about  
10 the lizards across the street. So they care about the  
11 lizards.

12           So my question in two and half miles waste,  
13 emission, pollutant and what is the impact to the people  
14 who live in Mountain House? I own house in Mountain  
15 House. I intend to retire here, enjoy my life. And also  
16 there are three elementary schools, now they are full with  
17 kids. So what is the impact for pollutant to the kids?

18           And also (inaudible) and I came here I listen to  
19 the hearing, okay. So I hope the CEC will give the  
20 represent from Mountain House a fair (inaudible) express  
21 himself and also because many people live in Mountain  
22 House they are professionals. They work during the day  
23 and many of them there are minorities. And they have a  
24 problem to read English. So I would also suggest the CEC  
25 will give them the fair opportunity to have document

1 translated into the different language. I understand  
2 English is the main language in the United States, but I  
3 think in California the minority, they got to have the  
4 privilege to have their native language to be translated  
5 and give to those people. Thank you.

6 HEARING OFFICER CELLI: Thank you, Mr. Yao.

7 I wanted you to know the whole reason we're  
8 having these hearings is to answer your questions. We  
9 don't know what the impacts are. When we get all the  
10 evidence in, we will know and then we'll make a  
11 determination based on what the facts are.

12 MR. YAO: Thank you.

13 HEARING OFFICER CELLI: Thank you.

14 Ms. Avery, did you want to make a comment?

15 MS. HAVENER: Havener. Yes, I do. Thank you.

16 My name is Katherine Havener. I'm a Mountain House  
17 resident. I'm so honored to be able to talk to you for a  
18 minute.

19 I brought my three children and I think you've  
20 definitely heard from a number of us that is something to  
21 be concerned about. And it is.

22 Before I moved to Mountain House, I led a group  
23 called the Holistic Moms' Network in the Tri Valley. So  
24 something that's very important to me as a parent is to  
25 protect my children from chemicals and toxins. And I feed

1 them organic food and we don't use household chemicals.  
2 And I do everything I possibly can to keep them healthy  
3 and whole and safe.

4 I have no control over whether this power plant  
5 is built. But you guys have control over whether this  
6 power plant is built. You have control over whether my  
7 children are going to be poisoned by tons and tons of  
8 chemicals. And that scares the living hell out of me.

9 I live two and a half miles away from this power  
10 plant, and I do not want my children poisoned.

11 And I please beg of you to look at the evidence.  
12 If there is going to be this horrendous toxic load to  
13 please stop this from happening. It effects real numbers.  
14 We're not just talking numbers. You're going to hear a  
15 lot of numbers. It affects real people, real lives. I  
16 don't want my children to have asthma or lung cancer or  
17 what have you. And I don't want that for myself.

18 So thank you for the opportunity to speak.

19 HEARING OFFICER CELLI: Thank you. We don't want  
20 that for you either.

21 Irene Sundberg. Is Irene Sundberg here? Hi.  
22 I'm sorry. There is a lot more information here. It says  
23 former Tracy City Council member. So please go ahead.

24 MS. SUNDBERG: Thank you. I am Irene Sundberg,  
25 former City Council member.

1 HEARING OFFICER CELLI: I need you to speak right  
2 into the microphone.

3 MS. SUNDBERG: Okay. I'm here today because I'm  
4 not very happy with some of the conditions that are  
5 happening here. As a council member and a previous  
6 council member, some of the things that happened here  
7 earlier I was also a member of the intervenors when they  
8 placed the Tracy Peaker Plant. And in doing so, I learned  
9 how the things run and how the squeaky wheel works and how  
10 the Commission works a little bit. And I was very  
11 disappointed today when you treated the intervenors and  
12 told them they could not re-examine. Recross-examine.  
13 They were told they could not do that. In every hearing  
14 that I have been involved in from the Tracy peaker plant,  
15 the Tesla plant, the east Altamont plant, they have always  
16 been allowed, absolutely allowed to intervene and to  
17 recross-examine. I don't know what's going on here today,  
18 but I don't like it.

19 I commend the gentleman here from Mountain House  
20 to have the nerve to come to a hearing as an intervenor  
21 and English as a second language. You were very rude to  
22 him and unkind.

23 I just got off the phone not long ago with one of  
24 the aides from the Governor's office. I told them that I  
25 felt you were ram-rodging this hearing through and I do.

1 I believe there's what you're doing. The applicant has  
2 all the rights and the rest of us have none. That's  
3 wrong. And it's been wrong for years and it's still going  
4 to be wrong today, tomorrow, or any day in the future.

5 I'm ashamed of the Commissioners that I see up  
6 there today. And I know your job is to make this run  
7 fairly and to represent everyone here. And you need to  
8 remember that.

9 I'm also here to talk a little bit about mutual  
10 aid. It was mentioned earlier and I believe that we do  
11 not have a mutual aid between Alameda County and Mountain  
12 House and Tracy. Our mutual aid contract does not cover  
13 reimbursement for the gas that our trucks spend. It  
14 doesn't reimburse us for paint when we get called out on a  
15 job. And it also doesn't reimburse us for the manpower  
16 and the hours that are spent.

17 We need a Hazmat truck here in the area. We keep  
18 putting in these plants, the peaker plants, east Altamont,  
19 here today Mariposa, and we want approval for that, but  
20 yet we don't want to fork out any dollars. They don't  
21 want to fork out any dollars. It's approximately \$550,000  
22 to put a Hazmat truck on the ground. Gee, east Altamont  
23 would pay half. Mariposa would pay half. Mariposa fronts  
24 the money up front. And east Altamont when it comes on  
25 (inaudible) can fork the other half over. I know you can

1 handle that.

2           Our city just recently in November approved a  
3 quarter-cent sales tax because, guess what? We don't have  
4 enough money to pay our firemen and for police protection.  
5 We understand in Tracy what it is to protect our people.  
6 What we were hired for, what we do there is to protect our  
7 residents. The residents of Mountain House I believe were  
8 never told, many of them, that they wind up with east  
9 Altamont or this project, Mariposa, in their backyard.  
10 Let alone their children be raised with PM2.5 and we all  
11 know that's a disaster to have happen.

12           I spent six months just recently living in  
13 Mountain House. What a peaceful community. Yes, it is  
14 highly, highly integrated with all kinds of different  
15 people and I have to tell you it is one of the nicest  
16 communities I have ever lived in. And I appreciate these  
17 people coming out today and standing up for their rights  
18 of what they think is right for them and their community.

19           As I said, I really do hope that you think about  
20 the fact that this area needs a Hazmat truck. This is not  
21 the first time I've asked for a Hazmat truck. And I'll be  
22 back probably tomorrow to listen to see what our chief of  
23 the fire department has to say. But I know that it's  
24 impossible to have a Hazmat truck put on the ground and we  
25 need that. Thank you.

1 HEARING OFFICER CELLI: Thank you, Ms. Sundberg.

2 People who are standing or sitting if you wanted  
3 to make a public comment, I need you to fill out one of  
4 these blue cards that's available from the public advisor  
5 who's not currently in the room, but when she comes in,  
6 I'll point out who she is. But if you want us to call  
7 your name, we need the blue card.

8 Next I have Jeremiah Bodnar. Is Jeremiah Bodnar  
9 here. Mr. Bodnar? Let him know I'm going to call someone  
10 else. Tell him to come in and I'll call him next.

11 Kishor Batt? Kishor Batt. I'm going to let Mr.  
12 Batt speak and then you'll be next. Mr. Batt, speak  
13 directly into the microphone so we can hear you.

14 MR. BATT: Okay. Good evening. I live in  
15 Mountain House. And couple of weeks ago we are going  
16 around the community spreading the awareness about the  
17 plant because a lot of people don't know about the plant.  
18 There is nothing in the news media about the plant. So  
19 people don't know. And one thing we came across was lot  
20 of empty houses like in foreclosure. And we notice that.  
21 And actually they have a number of -- there are a lot of  
22 empty houses in Mountain House. Those are in  
23 foreclosures. And they have a number of new stories in  
24 the media (inaudible) about Mountain House being the  
25 epicenter of the foreclosure crisis in the country.

1 Actually, originally Mountain House was planned to be a  
2 community of 40- to 50,000 people. And it has only 10,000  
3 residents right now.

4 HEARING OFFICER CELLI: How many?

5 MR. BATT: About 10K. Since it is not fully  
6 developed, current residents are paying for the debt to  
7 develop the community as well as the utilities. So we  
8 have usually high utility bills and property taxes.  
9 Because it's not developed. Now my fear is if the power  
10 plant comes, the community will never develop into a full  
11 community. And current residents will not be able to rent  
12 their houses or not sell their houses and they have the  
13 pay higher rents, higher utility bills. So -- and  
14 property taxes. This will cost the community as a whole  
15 millions of dollars. So I don't think it's a good idea to  
16 look at a plant 2.5 miles from a community that was  
17 planned few years back before the power plant was even  
18 proposed.

19 Thank you.

20 HEARING OFFICER CELLI: Thank you, Mr. Batt.

21 Thank you for coming in.

22 And now Jeremiah Bodnar was here earlier. There  
23 you are. Go ahead.

24 MR. BODNAR: I want to --

25 HEARING OFFICER CELLI: Please speak right into

1 the microphone so we can hear you.

2           MR. BODNAR: I want to speak specifically to a  
3 few aspects of the supplemental staff assessment. So  
4 these things you heard before. But you're familiar with  
5 the Berkeley study that's been brought up here and entered  
6 into evidence. Looking at the staff response to that, I  
7 was particularly disheartened by the way in which it was  
8 treated. Of course, the worry for us as Mountain House  
9 residents is that a degree to which our housing value is  
10 going to be affected. As you know the result of the  
11 Berkeley study was that between an area of zero to four  
12 miles you have with some diminishing effects as the  
13 distance from the power plant increases. But up to a  
14 distance of about four miles that you have between the six  
15 to diminishing at past four miles a zero percentage loss  
16 equity values for houses. This was addressed briefly in  
17 the supplemental staff assessment.

18           But the evidence was brought forward some studies  
19 from I think '93, 2004, all of them were earlier studies  
20 than the one that was done at Berkeley just recently. One  
21 of them was actually a reference to just a specific power  
22 plant and the effect it had on local community. So I  
23 think we really need to challenge the staff assessment as  
24 it's been put forward because given the results of the  
25 Berkeley study, which you can look at the science yourself

1 is much more of a scientific study than the ones that have  
2 been done previous to it in 2010. We would predict given  
3 the location of our community something like if you're  
4 going to be considered a four percent loss in housing  
5 values for the Mountain House community on average given  
6 that we have something like, let's say -- Jim, how many  
7 homes? About 3,000, let's say they're worth about 300,000  
8 a piece, you're looking at maybe around \$12,000 per home.  
9 Multiply that if you get into 30 or \$40 million.

10 We can expect given the best scientific findings  
11 to be sucked out of our community with nothing coming back  
12 to us. That's very worrisome. The responses that were  
13 given in the supplemental assessment are just not  
14 satisfactory. The reports that were sited were actually  
15 on power lines. Studies on the effects of power lines and  
16 also from very less scientific organized studies.

17 One of their suggestions in the supplemental  
18 assessment was that within five years these effects go  
19 away. For us, that might matter. But the average  
20 American sells a house every five to seven years. So if  
21 you're thinking about a turnover rate, that's literally  
22 like 30 or 40 million pulled out of our pockets and not  
23 just our equity. I think this really needs to be  
24 re-looked at. The supplemental assessment isn't  
25 satisfactory.

1 I guess when it comes to the Measure D study you  
2 guys have been doing this a lot and I probably used my  
3 three minutes. But thank you for your time.

4 HEARING OFFICER CELLI: And thank you very much  
5 for your comments.

6 And I did read that study. So just so you know.

7 MR. BODNAR: And please take a look at the  
8 supplemental studies that are used by staff to try to  
9 counter this because they're not nearly as satisfactory.

10 HEARING OFFICER CELLI: Is Richard Clark here  
11 from the Contra Costa Planning Commission?

12 Come on down, Mr. Clark.

13 MR. CLARK: Good evening. My name is Richard  
14 Clark. I'm the Contra Costa Planning Commission. I'm in  
15 my 23rd year. When this project first came to our  
16 attention, we were concerned about its impact on the  
17 airport and on other issues. So we asked the applicant to  
18 bring a presentation to us and have our staff review it.  
19 After reviewing a great deal of material that was provided  
20 to us and which we then forwarded onto the Board of  
21 Supervisors, we voted unanimously in support of the  
22 project. Obviously, there are concerns about the  
23 availability of energy. We like the fact that this  
24 project will be available to supplement the renewable  
25 energy sources that may from time to time not fully be

1 (inaudible).

2           We looked very hard at the issues raised by the  
3 proximity of the project to the airport, even assuming  
4 that the runways of the airport were some day going to be  
5 extended. And even with the extended runways, we were  
6 totally convinced that there would be no incompatibility  
7 between the project and the airport. The airport is  
8 something that's very -- resource there's very important  
9 to us in Contra Costa County. We do everything we can to  
10 nurture it and expect it in the future to play an even  
11 larger and more important role.

12           Subsequent to our findings, we notice that the  
13 FAA made findings that were the same as ours. We believe  
14 that the project is going to be appropriate because it's  
15 near the source from natural gas resources and that it's  
16 going to be a safe distance from people and from commerce  
17 and specifically from the airport.

18           So I thank you for the opportunity to bring this  
19 information to you. Thank you.

20           HEARING OFFICER CELLI: Thank you very much. And  
21 we appreciate hearing from the Planning Commission. And,  
22 folks, this woman who's coming up now with the blue cards  
23 is Jennifer Jennings, our public advisor. And if you wish  
24 to make comment -- see how she's handing me these blue  
25 cards? They have your names on them and we call you in

1 the order that we receive them so that we can hear your  
2 comments. If you want to make a comment, we need to know  
3 who you are. So please see Ms. Jennings and fill out a  
4 card for her. Thank you.

5 Next, I have Peter Lieu. Is Peter Lieu here?  
6 Peter Lieu. I'll call on you.

7 Hui Chen. H-u-i Chen. I'll call you again.

8 Bing Zhang, B-i-n-g, Zhang. I'm sorry if I'm  
9 mispronouncing people's names. I'm doing my best.

10 How about Tina Zihui? Oh, good. Thank you.  
11 Come on forward. Please speak loudly into the microphone,  
12 please.

13 MS. ZIHUI: I'm resident of the Mountain House.

14 HEARING OFFICER CELLI: I need you to bring it  
15 down. Bend it down to your mouth

16 MS. ZIHUI: I'm a resident of Mountain House.  
17 And (inaudible). I and my friend have a power plant here  
18 so we (inaudible) because we think the power plant will  
19 effect our health probably because of the air pollution.  
20 Also it effect our house value. So we don't like this  
21 plant. That's it.

22 HEARING OFFICER CELLI: Thank you. Appreciate  
23 your comments.

24 Hui Chen, did you come back? Hello.

25 MS. CHEN: Hello. My name is Hui Chen. I live

1 in Mountain House for three and a half years. I know this  
2 is a community. Most family, they have young kids. And  
3 so my main concern about how this is going to put our  
4 kids' health at big risk and also decrease house value.  
5 It's going to ruin our community. That's the reason. I'm  
6 against this power plant.

7 HEARING OFFICER CELLI: Thank you for your  
8 comments.

9 Did Peter Lieu come back? Or Bing Zhang? Oh,  
10 come on up. Again, I am sorry if I don't pronounce your  
11 name right.

12 MS. ZHANG: My name is Bing Zhang. I live in  
13 Mountain House for four years. Before four years ago,  
14 nobody tell me there near Mountain House they built power  
15 plant. So when I heard somebody were being built power  
16 plant near by my house, I am very, very strong against it  
17 because it's not good.

18 HEARING OFFICER CELLI: Thank you. Understood.

19 Did Peter Lieu come back?

20 How about Melissa Machado? Is Melissa Machado  
21 here? Please step forward and speak loudly into the  
22 microphone. Everything you're saying is being transcribed  
23 into the record. There's going to be transcribed so we  
24 need to be able to clearly hear you, so speak directly  
25 into the microphone.

1           MS. MACHADO: Hi. My name is Melissa Machado. I  
2 was a member of the originally lottery process in  
3 purchasing my home in Mountain House in 2003. Before  
4 purchasing my home, I did a great deal of research into  
5 the community and in making the decision for my first  
6 major investment. I had my dream come true when I moved  
7 here in finding the community that it has become since and  
8 my experience is with it in the past eight years and in  
9 growing my family and having two children in the mean  
10 time.

11           I would like to voice my concern today and my  
12 disapproval of the power plant placement. This project is  
13 a concern for me because of the quality of air and the  
14 loss of property value that we may obtain considering that  
15 our value my current value is under \$300,000 from what I  
16 currently purchased my home. I could not -- could not  
17 deal with any more of a loss. And I would not have an  
18 option to do anything like sell my house and move  
19 somewhere else in case this project were to go through. I  
20 feel as though our community is at a great loss with the  
21 approval of this project and that I hope that our voices  
22 can be heard and that's it. Thank you.

23           HEARING OFFICER CELLI: Thank you very much. We  
24 heard your voice. And if you want to stick around, we're  
25 going to be hearing air quality in a little while as a

1 topic area. So thanks for your comments.

2 Did Ken Tan -- Ken Tan?

3 MR. TAN: Good evening. My name is Ken Tan.

4 Last name is T-a-n, Tan. I'm a resident of Mountain

5 House. I've been living here for about four years now and

6 I came up here to strongly oppose the Mariposa project.

7 And the primary reason being that I questioned the

8 hearings being in Contra Costa County where -- while the

9 people of living in San Joaquin and Alameda County are the

10 ones who are most effected by this. So that's my primary

11 concern. And I strongly, strongly object to it.

12 HEARING OFFICER CELLI: Thank you for voicing

13 that. Appreciate your appearance. Is Matt Mullen here?

14 Did you used to play for the Oakland Raiders or is that

15 Miller? Something like that. Matt Mullen, come on up.

16 MR. MULLEN: Lots of Bay Area sports stars. We

17 got Chris Mullen. I spell it differently. I'm Matt

18 Mullen. I'm a Mountain House resident. I'm here to

19 oppose this construction of this power plant. My question

20 is in the Questa Village of Mountain House across the

21 street from Questa School where my kids go. And --

22 HEARING OFFICER CELLI: I need you to speak a

23 little louder and speak right into that microphone,

24 please.

25 MR. MULLEN: So I'm Matt Mullen. I live in the

1 Questa Village, which is the closest village to where this  
2 power plant is being constructed, and my kids go to school  
3 there, too. So we're pretty close to that two and a half  
4 mile.

5 I'm here to oppose the power plant construction.  
6 I'm concerned about air pollution where my kids play and  
7 go to school. I, myself, do my running and biking and  
8 stuff right out here on Bruns Road and Kelso Road. And  
9 I'm concerned about air quality and pollution when I'm out  
10 doing my activities with my friends. I've looked it up  
11 and I understand that 200 megawatts is a relatively small  
12 plant on a scale compared to most of the plants in the  
13 state. But I'm not sure I trust it will stay that way.  
14 Maybe there will be an upgrade and expansion. And that  
15 small 200 megawatt plant we built maybe turns into a  
16 gigawatt plant and starts encroaching on our town. So I'm  
17 here to oppose the project and I hope you take my comments  
18 into consideration.

19 HEARING OFFICER CELLI: Thank you. Thank you for  
20 making your voice heard and participating in this public  
21 forum.

22 Is Chandra Paladugula -- I'm sorry if I  
23 mispronounce your name.

24 MS. PALADUGULA: You did good.

25 HEARING OFFICER CELLI: Please speak right into

1 that microphone very loudly.

2 MS. PALADUGULA: Thank you for the opportunity.

3 Actually I'm from Mountain House community. I was

4 (inaudible) here. The main thing here is when any

5 business comes it's mutual benefit. But economy is going

6 down. (Inaudible). And now putting a power plant in the

7 backyard now is one of the worst (inaudible) I see.

8 Because here if you're putting something here like the

9 community which was planned for (inaudible) homes I think

10 but it's a great community. (Inaudible) in the Bay Area

11 many people cannot afford the homes. (Inaudible) they

12 make good money. And that money is really coming through

13 the (inaudible) Mountain House, which is part of San

14 Joaquin and Alameda County. I (inaudible) and make

15 payments so giving money to community like ours

16 (inaudible). Putting this in the backyard of someone

17 (inaudible) businessman it looks like you're (inaudible)

18 but it's not like that here. One thing is it's not open

19 land because it is bad for the community one thing.

20 Second thing is the money. Like I was trying to

21 make a point here you don't lose and we don't lose our

22 money and our values here. And that's the main thing I

23 was concerned about. (Inaudible) going again the plan

24 good -- for the power plant I really request one thing

25 from you guys. (Inaudible) San Joaquin County and Alameda

1 County (inaudible) six feet, six feet wide which makes the  
2 great wall of Mountain House. Thank you.

3 HEARING OFFICER CELLI: Thank you for your  
4 comments.

5 Is Jon Rubin here? Come on up, Mr. Rubin.

6 MR. RUBIN: Good evening.

7 HEARING OFFICER CELLI: Thank you for speaking  
8 into the microphone. I can hear you very clearly when you  
9 do that.

10 MR. RUBIN: I've been a resident of Mountain  
11 House for almost seven years. And I am worried about the  
12 image that people would have if there was a power plant  
13 put so close to Mountain House. Whether it's (inaudible)  
14 or based on rational reasons, people don't like the idea  
15 of living near a fossil fueled plant. I like to think of  
16 the comparison to a graveyard. If a developer was to come  
17 in and say they're going to build a graveyard near  
18 Mountain House, I guarantee a lot of people would be  
19 opposed to that, would be turned off to the idea of living  
20 in a town that has a graveyard on the border. And there's  
21 no scientific rational for that. You can't have a  
22 scientific study that says, well, there's no such things  
23 as ghosts or homes are not going to be haunted because  
24 there is a graveyard.

25 But still, people there is an emotional and a

1 scientific side. And emotional side is going to say,  
2 well, I don't want to move to that town. And that's going  
3 to bring the home values down. And that's the worry I  
4 have with this power plant. You can present all the  
5 scientific evidence supporting the safety of this plant,  
6 but still people are going to have an image that it's  
7 dangerous to their health and they're not going to want to  
8 live here.

9           We're moving into an age where we're developing  
10 more green energy. I've heard a proposal to put a solar  
11 farm Mountain House. I think that would have a lot better  
12 image for people. Not the same dangerous pollution image  
13 that people have with fossil fuel plant. I think people  
14 would support that. And if a plant like Mariposa needs to  
15 be built somewhere in this location, at least put it  
16 outside a four to six mile radius where it's going to  
17 effect our home values.

18           The other position I take on this is I'm not a  
19 current pilot but I formerly took flying lessons. And  
20 when I did move to Mountain House I liked the idea there  
21 was an airport about five miles away that I might  
22 potentially use some day. And my worry -- I agree with  
23 the CalPilots said, it's scarey, the idea of having a  
24 power plant which is going to have a super hot plume of  
25 air coming up to I think it was about 800 feet and as a

1 former student pilot, there's a lot of things you have to  
2 worry about on both take off and landing. And that's an  
3 additional worry that any pilot really doesn't need near  
4 the approach path.

5           And I see the blinking red lights out in the  
6 hills where the plant is going to -- if it gets approved  
7 where it will be built and those blinking lights very  
8 close to where that plume would be. So that's going to be  
9 a potential hazard. And what I've seen in a lot of areas  
10 where airports were built a long time ago and then  
11 neighbors or something walls were built around them,  
12 actually people forget which came first, the airport or  
13 the neighborhood. And then opposition gets built up  
14 against the airport. It's like why is there an airport in  
15 such a dangerous location either for the residents or the  
16 pilots. And then the movement builds up to close the  
17 airport.

18           So my fear is putting this power plant in that  
19 location will eventually lead to the closure of Byron  
20 Airport and same thing I said about the solar farm. I  
21 think people would prefer to have an airport five miles  
22 away from Mountain House than a power plant only two and a  
23 half miles away. That's my statement.

24           HEARING OFFICER CELLI: Thank you very much, Mr.  
25 Rubin, for your statement.

1           Is Aaron Pennington here? Come on down. You're  
2 a Giants fan. People ask me how I do this work and I tell  
3 them I'm a Giants fan. I can handle torture.

4           Mr. Pennington.

5           MR. PENNINGTON: My name is Aaron Pennington.  
6 I'm a resident of Mountain House, California, and I'm here  
7 to oppose the Mariposa power plant. Part of my concerns,  
8 obviously, are health concerns for my family. Raising a  
9 family of four children. And it doesn't seem that we  
10 exactly know what sort of hazards that this plant is going  
11 to produce. So my question is how is the information  
12 being compiled and how is it being presented to the people  
13 of Mountain House?

14           HEARING OFFICER CELLI: That's a great question.  
15 Thank you for the question. Thank you for being here.  
16 And the answer to your question is there is going to be  
17 -- and everybody should know this. The reason we're  
18 doing this is because we're taking in evidence and we're  
19 building a record. And in the record will be all of the  
20 evidence. The applicant, Mariposa Energy Project, has the  
21 burden of proving that this project is safe, it has no  
22 environmental impacts, it has no public health impacts.  
23 Staff's job and the California Energy Commission staff  
24 verifies that information. Somebody I think -- I don't  
25 remember what it was. It might have been Mr. Wong talked

1 about the data adequacy process.

2           But at some point staff determined that there was  
3 enough information that they could actually go off now and  
4 do their analysis. When we get what's called the FSA,  
5 that's Exhibit 300 and the supplemental staff assessment,  
6 that's their analysis of all of the proposed features of  
7 this power plant.

8           Okay. Now we take this evidence in and at the  
9 close of the hearings, what will happen is the Committee  
10 will hunker down, go through the evidence and write what's  
11 called a PMPD, which stands for the Presiding Member's  
12 Proposed Decision. That comes out -- let's say in about a  
13 month and a half or two months or something like that from  
14 now and the notice goes out that says the PMPD is  
15 available. And if you want notice of all, all you need to  
16 do is go on the Internet and there is a little spot and  
17 you go to the Mariposa website that says do you want us to  
18 e-mail to you notices having to do with anything to do  
19 with this power plant and you'll get e-mails when  
20 something is posted having to do with the Mariposa Energy  
21 Power Plant.

22           Then there is a 30-day period for the public to  
23 comment on the PMPD. And after that, the PMPD, the  
24 proposed decision, goes before the full Commission of five  
25 Commissioners and they will make a determination whether

1 to adopt the proposed decision or not to. And the  
2 decision will either recommend in favor or against  
3 licensing this power plant. And that's our process. So  
4 that's why we're doing what we're doing.

5           And you are an integral part to this. I want you  
6 to understand, members of the public, that when you write  
7 these PMPDs, when I write these PMPDs, we actually put  
8 in -- we have to by law address and consider your  
9 comments. So they will be addressed and considered in the  
10 PMPD. So that's the flow. So thank you.

11           MR. PENNINGTON: Thank you for your answer.

12           HEARING OFFICER CELLI: Is Chris Gray here? Mr.  
13 Gray.

14           MR. GRAY: Good evening.

15           HEARING OFFICER CELLI: Go Bears.

16           MR. GRAY: My name is Chris Gray. I'm Chief of  
17 Staff for Supervisor Scott Haggerty for Alameda County.  
18 I've been his Chief of Staff for this district for the  
19 last 26 years. Supervisor Haggerty wants to thank you for  
20 having these public hearings. It's okay you're in Contra  
21 Costa County. You're very close to the three county  
22 border and you have good facilities here. So I understand  
23 that.

24           Supervisor Haggerty not only represents this  
25 district where the plant will be located if it's approved,

1 he represents Livermore and Pleasanton and the Tri Valley  
2 area.

3 I'm also here tonight speaking on behalf of the  
4 Alameda County Fire Chief, who is responsible for  
5 providing fire protection and some of the services that  
6 have been addressed by other speakers here tonight. Both  
7 of these will be supported by letters that I will be  
8 getting you shortly. I had a dental appointment this  
9 afternoon so I wasn't able to bring them with me today.  
10 But you should have them tomorrow. So I do need to find  
11 out how to get those to you and get them into the proper  
12 record.

13 HEARING OFFICER CELLI: I can tell you that you  
14 can either bring them in or you can submit them at any  
15 time between now and whenever the PMPD is published.

16 MR. GRAY: Thank you. First of all, I'd like to  
17 say Supervisor Haggerty when he first heard a peaker plant  
18 was being proposed for an area in his district had a lot  
19 of questions. We've had several meetings with the  
20 proponents of the plant. We've made sure that  
21 environmental health in our area of public works, the  
22 planning department, the fire department were very  
23 involved and satisfied and do their due diligence to make  
24 sure that the safety and the other concerns that they need  
25 to regulate and be prepared for in Alameda County are

1 taken care of. Supervisor Haggerty is also the past  
2 Chairman and a current member of the Bay Area Air Quality  
3 District. So he had a number of air quality health  
4 questions that needed to be addressed.

5           Saying that and doing our due diligence over a  
6 long period of time, we have become very satisfied with  
7 the plant. We feel this is the best type of peaker plant  
8 safety wise, health wise for this area that they are  
9 addressing the impacts in Alameda County. And we  
10 appreciate that. So we are speaking in favor of approving  
11 the plant at this time.

12           It's a very difficult economic times and I think  
13 it not only provides jobs for the people in this area, but  
14 they do it providing an environmentally safe project.  
15 Alameda County, as you probably know, has won many  
16 national and State awards for being probably the greenest  
17 county in the United States. We've not only recycling  
18 wise but green building ordinance wise, solar power wise.  
19 We have the largest wind power, windmills in the  
20 United States in Alameda County. We're very proud of our  
21 record on these issues and we take them very seriously.  
22 And our Board has many policies supporting green power and  
23 balance and energy. So we try to bring balance to Alameda  
24 County on that. There are more solar plants that are  
25 being proposed and other plants repowering in Alameda

1 County and we're going to continue down that road.

2 I just want to say this part of our country also  
3 has unparallel infrastructure to provide these plants, not  
4 only the water but the PG&E substation, et cetera. So  
5 it's a logical place for this project to go. And I have  
6 to say the Mariposa worked very closely with the  
7 community, with the regulated agencies to try to make sure  
8 that all of their concerns have been addressed. So if you  
9 have any questions of our office, we would be happy to try  
10 to answer those as well.

11 HEARING OFFICER CELLI: Thank you very much.  
12 Greatly appreciate it. Thank you to the Supervisor for  
13 comments. We do appreciate that.

14 MR. GRAY: Thank you. And I'll be submitting  
15 letters on behalf of the fire chief as well as the  
16 supervisor.

17 HEARING OFFICER CELLI: Thank you.

18 Did Peter come back? Peter Lieu? I'm trying.

19 Is Steve Ormonde?

20 MR. ORMONDE: Hi. Good afternoon. Can you hear  
21 me okay?

22 HEARING OFFICER CELLI: Try to speak right into  
23 the microphone.

24 MR. ORMONDE: Is this better?

25 HEARING OFFICER CELLI: Perfect.

1           MR. ORMONDE: My name is Steve Ormonde. I'm a  
2 third year Mountain House resident, fourth generation  
3 Tracy resident. I'm also an underground subcontractor.  
4 We put in sewer and water lines. So I know a couple  
5 things. I know sewer flows downhill. And in this windy  
6 part of Tracy, Mountain House, everything flows  
7 downstream.

8           I don't know -- I, like other residents of  
9 Mountain House, have just discovered this Mariposa  
10 proposal very recently. So I haven't had much time to  
11 listen or research. But I'm just here to voice my  
12 opposition to the Mariposa project. And sitting here  
13 listening to the proponents, obviously they're all from  
14 Contra Costa County, Alameda County. But over on the  
15 other side, the quick ten minute bike ride, the ones  
16 brunting all the side-effects -- I don't want to repeat --  
17 air pollution, declining property values, I just couldn't  
18 sit here and not say anything. So I just thought I would  
19 turn in my blue card and speak my mind.

20           Because I couldn't go on another day, you know,  
21 as this plant gets built that I didn't get up and speak  
22 and say something about it to oppose it.

23           You know, with the economy and everything hitting  
24 the houses, killing our schools, I just want the  
25 Commission to consider Mountain House as it's going to be

1 built into its fullest, hopefully 45-, 50,000 people with  
2 all the schools. There's already three. Hopefully four,  
3 one in my village, Altamont pretty soon, and a proposed  
4 high school in the next two years. I hope the Commission  
5 considers the schools, the children, the downstream. I  
6 know it's 2.5 miles is really close. But everyone who  
7 lives in this area knows June, July, August you know we  
8 have five seasons in Tracy, winter, summer, spring, and  
9 then there is a windy season. It's going to flow down  
10 stream and I just don't want to open up my windows and  
11 have a nice breath of pollutant air.

12           Thanks for listening.

13           HEARING OFFICER CELLI: Thank you. Thanks for  
14 participating.

15           Did Mathew Van Der Voort come in?

16           MR. VAN DER VOORT: Good evening. I represent  
17 myself, my family, good citizens of Mountain House.

18 And --

19           HEARING OFFICER CELLI: Can I ask you to speak  
20 really loudly into the microphone so we can hear you  
21 better?

22           MR. VAN DER VOORT: So I'm representing myself,  
23 my family, good citizens of Mountain House and any other  
24 local community members that oppose the Mariposa project.

25           My main grounds for that is that even though in

1 this great society with all of our modern technology, we  
2 have to weigh the risks against the negative consequences  
3 of progress. I think there is a long trend where the  
4 benefits and the risks need to be shared by the  
5 recipients. The Alameda County might employ people at  
6 this point and the electricity generated will be to  
7 Alameda residents, but all the negative consequences are  
8 going to effect Mountain House and the surrounding  
9 community. The decline in property values, the pollution,  
10 and we share none of the benefits but we take on all of  
11 the negative consequences. And I strongly urge you to  
12 consider that that disproportionality and reject the  
13 proposal.

14 Thank you.

15 HEARING OFFICER CELLI: Thank you, Mr. Van Der  
16 Voort. Thank you for coming.

17 Is Naresh Singh -- please come forward.

18 MS. SINGH: I just moved to Mountain House three  
19 months ago.

20 HEARING OFFICER CELLI: Ms. Singh, I need you to  
21 speak loudly and speak right into the microphone, please.

22 MS. SINGH: Hi. Like I just moved into Mountain  
23 House three months back. And for me it was really tough  
24 to decide whether I should buy a home here or not because  
25 I have to make -- pay for everything (inaudible) I have to

1 drive four hours every day. And considering the taxes are  
2 here, considering the water bills here and (inaudible).  
3 Even then (inaudible) because it was a nice community.  
4 When we consider this power plant (inaudible) probably we  
5 already have so factors to consider for buying here  
6 (inaudible) buying home there. What I'm trying to say is  
7 (inaudible) people see there are (inaudible) the power  
8 plant is (inaudible) in light of the homes right but here  
9 it look likes the Mountain House homes (inaudible). What  
10 I'm saying is (inaudible) it should be Mountain House  
11 (inaudible) so they don't feel like they are left behind.  
12 That's what I have to say. Thank you.

13 HEARING OFFICER CELLI: Thank you, Ms. Singh.  
14 Thanks for being here.

15 I have a Travis Miller. Is there a Travis Miller  
16 in the room? But you're not the same Travis Miller as  
17 Travis Miller who's representing the Sierra Club?

18 MR. MILLER: Not the Sierra Club, no.

19 HEARING OFFICER CELLI: Okay. It just so happens  
20 we have an attorney named Travis Miller who's on the  
21 phone.

22 MR. MILLER: They pulled me in just recently.  
23 I'm one the and same.

24 HEARING OFFICER CELLI: Oh, Singh's attorney.

25 MR. MILLER: I'm not really serving as his

1 attorney. I'm actually a Mountain House resident myself.  
2 They pulled me in here just at the last minute.

3 HEARING OFFICER CELLI: I'm sorry. But you are  
4 the Mr. Travis Miller?

5 MR. MILLER: I am the Mr. Travis Miller.

6 HEARING OFFICER CELLI: Good. I just wanted to  
7 get clear on that. Go ahead.

8 MR. MILLER: Recent resident. I just moved out  
9 to Mountain House here in September. I'm an environmental  
10 attorney as you mentioned. Also an environmental  
11 scientist by training and trade and asthmatic which is all  
12 the reasons why I relocated out here. Cleaner air, a  
13 place to get outside the city, some of the effluent  
14 discharges, I specialize in Clean Air Act permitting. So  
15 I know what happens when these facilities come into town.

16 I think probably the most notable thing I'd  
17 mention is as you look around here, you're going to see a  
18 lot of folks from Mountain House. It's a very close  
19 community to where the power plant is anticipated to be.  
20 And it's also the community where most of the basically  
21 the burden is going to be placed. You're going to have  
22 Alameda County who's going to have potentially a nice  
23 source of power if the plant is used to its capacity it's  
24 going to be located right on their border probably within  
25 a couple feet and all of the emissions discharges are

1 going to flow right into Mountain House, which already has  
2 some Clean Air Act issues as is.

3           The reason why it's concerning is that it's a  
4 beautiful community. We moved out here. It's one of the  
5 most diverse communities I've ever seen. The people from  
6 all ethnic backgrounds living in an area where established  
7 school is their top priority. The people out here live  
8 for their children. They don't even have a grocery store  
9 yet. But we have some of the best schools in the state.

10           And the people out here are dedicated to building  
11 the community. It's only been in existence since 2006.  
12 We weren't even on the 2000 Census. These people are new.  
13 They're pioneers. It's one of the newest cities in  
14 America. And we're really trying to make a go of it. So  
15 when you see something like this that can honestly kill a  
16 brand-new city, it's concerning. And I think that's why  
17 you see such a strong showing here from the Mountain House  
18 residents. This is our livelihood. This is what we dream  
19 of. This is our American dream. And we'd just like the  
20 opportunity to make it a reality.

21           HEARING OFFICER CELLI: Thank you. And I wanted  
22 to ask you, you're going to stay with us for the remainder  
23 of the hearing representing Mr. Singh; is that correct?

24           MR. MILLER: I will indeed.

25           MR. WHEATLAND: Can I just ask so I'm clear? I'm

1 Greg Wheatland. I'm an attorney for the applicant. Are  
2 you an attorney licensed to practice in California?

3 MR. MILLER: No. I'm an attorney licensed to  
4 practice in Wisconsin. I serve in the corporate respect  
5 here. I moved out just in September. I was called in  
6 mostly to serve as an expert regarding the Clean Air Act.

7 MR. WHEATLAND: That's the other question I have.  
8 Are you here to represent Mr. Singh or just to be a  
9 resource on his behalf?

10 MR. MILLER: Mostly a resource on his behalf.

11 HEARING OFFICER CELLI: I think that's  
12 acceptable.

13 MR. WHEATLAND: That's fine. It's acceptable to  
14 me. I just needed to understand the relationship.

15 HEARING OFFICER CELLI: Very good. Thanks for  
16 the clarification.

17 Thank you again for being here.

18 And Teresa Nava-Anderson, are you present? Thank  
19 you for being here. And please speak loudly into the  
20 microphone.

21 MS. NAVA-ANDERSON: I am Teresa Nava-Anderson. I  
22 am also a resident of Mountain House. And I think the  
23 former speaker said everything that I wanted to say.

24 I wanted to also encourage you when you look over  
25 the economic report that everyone keeps talking about, to

1 look very carefully at the home values in that report,  
2 because there's not much to lose in those homes, which is  
3 not the same as Mountain House. And I know in the last  
4 couple of years many of us have lost significant amount to  
5 our homes. So another 12,000 is a lot added onto say  
6 perhaps half a million or more that some people have lost.  
7 It just keeps adding up as do all of the pollutants and  
8 other things that tell me that this project so close to my  
9 home is not a fabulous idea.

10 HEARING OFFICER CELLI: Can we get rid of that  
11 telephone? Okay. Thanks. Go ahead. I'm sorry.

12 MS. NAVA-ANDERSON: I know from Alameda County's  
13 perspective and from Contra Costa County's perspective  
14 it's not that significant. There aren't that many people  
15 that live near the plant. I feel like there is a baby  
16 crying near me.

17 San Joaquin doesn't seem to have much of a voice  
18 in the way that the counties work as far as California and  
19 power plants go. But our people do have a voice and we  
20 have real lives and we have real children. And you know  
21 please consider the fact that the heavy toxins fall first  
22 and they'll fall right on our neighborhood. And on windy  
23 season they'll certainly fall right on our schools. Thank  
24 you for your consideration.

25 HEARING OFFICER CELLI: And thank you for coming

1 and making your comments.

2 Is David Ang -- David Ang? David Ang, A-n-g.

3 Okay.

4 How about Jerry Yuki? Is Jerry Yuki here?

5 Peter Lieu? Are you Peter Lieu?

6 MR. LIEU: Yes.

7 HEARING OFFICER CELLI: Come on down, please.

8 MR. LIEU: Sorry. Good evening. My name is

9 Peter Lieu, L-i-e-u.

10 I just (inaudible) I am Mountain House -- I live  
11 in Mountain House almost a full years. So I like Mountain  
12 House. Mountain House is so beautiful and new house. But  
13 I have (inaudible) one, I don't like the power plant close  
14 by Mountain House, one. Two, I like my family is lucky.  
15 I like my children is healthy. Right now it's not health  
16 and not lucky. So I don't like it, the power plant.

17 Number three, nobody told me where you can build  
18 power plant and the plant for everybody. So I cannot  
19 agree (inaudible). Thank you.

20 HEARING OFFICER CELLI: Thank you. Thank you for  
21 your comments, Mr. Lieu.

22 Now, ladies and gentlemen, I just have a few more  
23 of these left and then I'm going to take people on the  
24 phone. If you're here and you wanted to make a comment,  
25 I'm going to ask that you fill out a blue card and see

1 Ms. Sadler here will take your card and she'll hand it to  
2 me. And then I'll get to call you up to make your  
3 comments. So please -- these are in addition to -- okay.  
4 Thank you.

5 So if you did want to make a public comment,  
6 please fill out a blue card, as did Ron Gawer. He's a  
7 pilot. I'm sorry -- is it Roy? Roy or Ron?

8 MR. GAWER: Ron.

9 HEARING OFFICER CELLI: Ron. Is it Gawer?

10 MR. GAWER: Gawer. Ron Gawer.

11 HEARING OFFICER CELLI: My apologies.

12 MR. GAWER: It's okay. My handwriting is bad.  
13 Sorry.

14 I just want to say that I am a pilot. I have an  
15 airplane at Byron Airport. I have a plane based out of  
16 there. I'm opposed to the facilities both of them  
17 being -- both of the facilities being built in the flight  
18 path to the airport. More specifically, you know, I find  
19 that if we're on approach to facility and there is  
20 multiple traffic like, for instance, gliders coming in and  
21 I have to give way to them, turn to the right to do a 360,  
22 I can end up being over one of those facilities. And I  
23 would be concerned about, one, flying over them if it  
24 actually becomes prohibited, and two, the uplifting plume.  
25 So I'm opposed to it.

1           HEARING OFFICER CELLI: Thank you. Thank you for  
2 your information. Let me ask you this, Mr. Gawer. Do you  
3 ever fly gliders or are you just an engine plane?

4           MR. GAWER: Engine pilot. I'm not a glider  
5 pilot.

6           HEARING OFFICER CELLI: Thank you.  
7           Is Dan Costin here? Come on up, please. Mr.  
8 Costin, I'm going to ask you to speak right into that mike  
9 very loudly so we can all hear you.

10          MR. COSTIN: I think I can do that.

11          My name is Dan Costin. I'm representing myself  
12 and my family. I'm no expert. I don't claim to be a  
13 scientist. Everything that I've read and have researched  
14 in my limited ability in doing that I definitely oppose  
15 this. I am probably not somebody who's going to be here  
16 for the next 20 years. I've been (inaudible) for  
17 two years. I'm in a job that will eventually move me  
18 around in the next five to ten.

19          This is a great community. They've got something  
20 they're building here that will -- that is surviving the  
21 current economic problems that we're facing globally,  
22 within the nation, however you want to look at it. But  
23 this community is rallying together and it's survived  
24 that. It's struggling, yes, but as a community I think  
25 that we will pull through.

1           I think if we put this plant here, it's going to  
2 be difficult for this community to become what it should  
3 be, what it wants to be, what it can be. And I really do  
4 believe that this is potentially a community killing  
5 project.

6           Again, with my limited scientist side of thing, I  
7 guess, looking at cap and trade and different things, this  
8 plant goes in, it's already planning on going into the  
9 trade with other plants further west and looking at that.  
10 In the area we're in with the wind we have, with the  
11 pollution that's already in the area, we are starting out  
12 at the point where we're saying this plant is going to put  
13 out more particulates, pollutants, whatever you want to  
14 call it than what is ideal for any plant. That's why  
15 we're doing the trade. That's great for people west.  
16 That's great for Alameda which is again where the power is  
17 going to. But it's not great for us. And I really have  
18 nothing new to add because it's been said several times  
19 for sure.

20           But again we are struggling. We are going to  
21 struggle with all the negative effects of this plant while  
22 everybody else shares the benefits. Again, I probably  
23 won't be here, but this is a community that I would love  
24 to stay and raise my kids in, I would love to see survive.  
25 If this plants comes, it's going to be tough. It's

1 already tough. It's going to make it that much more tough  
2 for this great community for these great people here to  
3 survive the area they're in. So that's all I have. Again  
4 I express my opposition to the plant.

5 Thank you.

6 HEARING OFFICER CELLI: Thank you very much.

7 Now, folks, in order for us to resume pretty  
8 quickly I'm going to need people to speak quickly and  
9 efficiently so I can get all of your comments in before we  
10 resume taking testimony.

11 Is Ravikiam Kertsidi here? I'm sorry if I'm  
12 saying it wrong. Forgive my mispronunciation.

13 MR. KERTSIDI: I am Ravikiam Kertsidi. I am  
14 representing for myself and my family. I live in Mountain  
15 House community. This is a great community. I love it.  
16 I (inaudible) two years back. I work in Pleasanton. I  
17 have several opportunities to buy homes in Pleasanton. I  
18 like the communities. Very beautiful. I don't want to  
19 see this kind of activity nearby in my community. This is  
20 going to be an (inaudible) effect on my families.

21 Just an example. When I moved next door, my next  
22 door neighbor said like after three months he put his  
23 house on sale. I asked what the reason. And he said I  
24 heard there is a plants coming in Mariposa. He has five  
25 kids. And I said "Oh, you're scaring me." I said,

1 "You're moving?" He said, "Yes, I'm moving if I get" --  
2 so that's what the effect of our communities. Please try  
3 to help us. I strongly oppose this project.

4 Thank you very much.

5 HEARING OFFICER CELLI: Thank you. You're  
6 opposed to the project. We hear you.

7 Shirley Yao. Shirley Yao.

8 Again, folks, if you're just coming in for the  
9 first time, I'm going to ask that you can quickly get to  
10 the point so we can hear the rest of the testimony. Go  
11 ahead.

12 MS. YAO: I'll try. If you'll allow me to speak  
13 Chinese, maybe I can do better.

14 HEARING OFFICER CELLI: You need to change the  
15 microphone and put it right into your mouth and speak  
16 loudly.

17 MS. YAO: Is this better?

18 HEARING OFFICER CELLI: I still can't hear you.

19 MS. YAO: How's that?

20 HEARING OFFICER CELLI: That's better.

21 MS. YAO: My name is Shirley Yao. I'm a resident  
22 of Mountain House. I consider myself as pretty new here  
23 and we move here about a year ago. And when we move here,  
24 we were told also do some research and saw website where  
25 Mountain House has been established couple years ago and

1 this town has the potential to become a city of tomorrow.  
2 Okay. I don't know what all the power plant, the risk of  
3 the power plants to the peaking on the residents. I  
4 believe that this power plant has been built here and this  
5 town will become -- I can envision that this town will  
6 become -- will become a ghost town from the city of  
7 tomorrow become a ghost town. So I totally against this.  
8 Let alone the risk applied to other residents here.

9           And also I heard that Alameda County when they  
10 decided for this project, they said they don't need the  
11 consensus of the adjacent county. Is that correct?  
12 That's my question. I'm not clear about that.

13           HEARING OFFICER CELLI: Excuse me one minute.  
14 Mr. Singh, Mr. Singh, what is that? Oh, that's your  
15 computer. I just want to mess up our microphones.

16           I'm sorry. Go ahead.

17           MS. YAO: Okay. Did you hear my question?

18           HEARING OFFICER CELLI: No. Go ahead.

19           MS. YAO: I heard that when they have this kind  
20 of project whatever potential location, they say they  
21 don't need the consensus of the adjacent county. Is that  
22 correct? Because this is so close to the San Joaquin  
23 County, I don't -- I don't think it -- they should have at  
24 least courtesy to have the consensus from the county.

25           HEARING OFFICER CELLI: We're going to hear that.

1 We're going to find out what's in the record and it will  
2 be up to the attorneys and the parties to tell us.

3 MS. YAO: I appreciate that.

4 HEARING OFFICER CELLI: Thank you.

5 That was Ms. Yao.

6 Mike Klinkner, are you here?

7 MR. KLINKNER: Yes.

8 HEARING OFFICER CELLI: Come on up, please.

9 Speak loudly into the microphone.

10 MR. KLINKNER: My name is Mike Klinkner. I'm a  
11 resident of Mountain House. I've lived there for seven  
12 years and a former Board member of Mountain House. Also a  
13 former Board member of the East Bay Clean Cities  
14 Coalition, Alameda County. And I'm not going to go over  
15 all the things that everybody else has gone over, but I do  
16 agree with all them. I think we're definitely getting the  
17 short end of the stick. I am against the power plant.

18 HEARING OFFICER CELLI: I hear you loud and  
19 clear. And I want to just say that one of the things that  
20 really resonates up here that we're really clear about is  
21 that this is a very close knit community. People love  
22 living in Mountain House and people are close to this  
23 potential power plant. And people are very concerned  
24 about this and they are opposed to it. And they are  
25 concerned and fearful really of whatever impacts it may

1 have and that's what we're going to find out. So but I  
2 want you to know that's very loud and clear up here. So I  
3 appreciate your input. Thank you.

4 Is David Ang here? Mr. Ang? A-n-g, Ang. David  
5 Ang?

6 Okay. How about Jerry Yuki. Did Jerry Yuki come  
7 back? Y-u-k-i.

8 Okay. Hari Dara, come on down.

9 MR. DARA: My name is Hari Dara. I live in  
10 Mountain House. I'm representing family of four. We all  
11 living in Mountain House.

12 HEARING OFFICER CELLI: Please speak loudly into  
13 the microphone.

14 MR. DARA: We love living in Mountain House and  
15 we strongly believe that the power plant is going to make  
16 it -- make living here very bad experience, because we all  
17 suffer allergies and my son has asthma, and I think this  
18 is only going to make it worse for all of us.

19 And our community is already suffering with  
20 foreclosures and (inaudible). And this is going to make  
21 it really bad for the whole town. So we strongly oppose  
22 the power plant.

23 HEARING OFFICER CELLI: I heard you. Thank you  
24 very much.

25 Is Jonathan Ridpath --

1 MR. RIDPATH: That's me.

2 HEARING OFFICER CELLI: Hello, Mr. Ridpath.

3 MR. RIDPATH: I'll be short. I'll be succinct.

4 I'm Jonathan Ridpath, Mountain House resident.

5 We don't want a power plant here. I don't want a power

6 plant here. It will ruin our community. Thank you.

7 HEARING OFFICER CELLI: Thank you for your very

8 succinct delivery.

9 Is Judi Ridpath here? I have a feeling we're  
10 going to hear something similar to Jonathan Ridpath.

11 MS. RIDPATH: Yes. My name is Judy Ridpath,  
12 resident of Mountain House. My husband.

13 And I agree with all the other things this people  
14 had said. I'm totally opposed of this in every way that's  
15 possible. We just want to thank you.

16 HEARING OFFICER CELLI: You were completely  
17 opposed. Thank you. I got it.

18 Is Xin Wang here?

19 MS. WANG: My name is Xin Wang. I am Mountain  
20 House resident.

21 HEARING OFFICER CELLI: One moment, please.

22 We're having some technical difficulty here.

23 Do we have a clue what that source of that is?

24 One moment. Ms. Wang, we're getting -- oh, wait.

25 Did it go away? It went away. Whoever did whatever they

1 just did, keep doing that because or don't do it. Now the  
2 echo has gone away. If you hold the microphone really  
3 close and speak very loudly, please

4 MS. WANG: Can you hear me?

5 HEARING OFFICER CELLI: Yes.

6 MS. WANG: My name is Xin Wang. I'm Mountain  
7 House resident. (inaudible) Mountain House three years.  
8 I love my community. So (inaudible) because I don't want  
9 any pollution or (inaudible) really close to our community  
10 and (inaudible) I don't want my kids get any (inaudible).  
11 So totally I object. Thank you.

12 HEARING OFFICER CELLI: Thank you. Is Weikun Guo  
13 here? I am sorry again if I mispronounce the names. I'm  
14 doing my best.

15 MR. GOU: You're almost right. My name is Weikun  
16 Gou. I'm a resident of Mountain House.

17 Today, I'm here because I object this power plant  
18 to be here. We all love our community. We don't want our  
19 community to be polluted and (inaudible) all of the world  
20 many cities because of the pollution many people get many  
21 cancer and everything. We don't want to be one of them.  
22 So I totally against of this project.

23 Thank you.

24 HEARING OFFICER CELLI: Thank you.

25 Is Wentao Li here? Please speak into the

1 microphone very loudly.

2 MR. LI: Hello. I'm Wentao Li. I'm Mountain  
3 House resident. I've been here about four years.

4 Please stop power plant. Please save our  
5 childrens. Please save our counties. Because we love  
6 here. Stop pollution.

7 HEARING OFFICER CELLI: Thank you for your  
8 comments.

9 Now I'm going to couple more here and then we'll  
10 go to the phones. People on the phone, thank you for  
11 hanging in there. We're getting to you.

12 Venkata Mylavarapy. Is Venkata here? Please  
13 come forward. I'm sorry. If you can pronounce your name  
14 for me --

15 MR. MYLAVARAPY: It's Venkata Mylavarapy.

16 HEARING OFFICER CELLI: Say again.

17 MR. MYLAVARAPY: Venkata Mylavarapy.

18 HEARING OFFICER CELLI: And could you speak  
19 really loudly into the microphone?

20 MR. MYLAVARAPY: Yeah. Is that better?

21 HEARING OFFICER CELLI: Come close to the  
22 microphone.

23 MR. MYLAVARAPY: Better now?

24 HEARING OFFICER CELLI: Much better. Thank you.

25 MR. MYLAVARAPY: Okay.

1 HEARING OFFICER CELLI: Go ahead.

2 MR. MYLAVARAPY: So we definitely want to oppose  
3 the Mariposa plant because of its close proximity to the  
4 Mountain House residential community and very concerned  
5 about the pollution it will have in the area. I don't  
6 want to have to raise my kids in a polluted environment.  
7 That's my main concern.

8 HEARING OFFICER CELLI: Got it. Thank you, sir.

9 MR. MYLAVARAPY: That's all I have to say.

10 HEARING OFFICER CELLI: This next one, is  
11 Yegneswara here? Yegneswara, please come forward. And if  
12 you could help us with the pronunciation of your name.

13 MR. UPADHYUALA: Yegneswara Somayajulo  
14 Upadhyayula. You can call me Somo. I have a short name  
15 too.

16 HEARING OFFICER CELLI: Please go ahead.

17 MR. UPADHYUALA: Thank you. This proposed  
18 project is very near to my residence, just three miles  
19 away. And the pollution it could have -- I don't want to  
20 be near to there. And we already have some problem in the  
21 water at this point in time in the area and I don't want  
22 to add any more to that list. So I oppose this project.

23 HEARING OFFICER CELLI: Thank you for your  
24 comments.

25 Now, ladies and gentlemen, we're going to turn to

1 the telephone people. I'm going to first ask for Jason  
2 Gonce, G-o-n-c-e. He's no longer here.

3 Is Jeff Iam on the phone? Please, go ahead.

4 MR. GONCE: I'm Mr. Gonce.

5 HEARING OFFICER CELLI: Oh, Mr. Gonce, good.

6 MR. GONCE: I'm a Mountain House resident. I've  
7 been here for three plus years. I've listened to most of  
8 this webcast, and I simply just want to reiterate  
9 everything that I've heard that we are not looking forward  
10 to the pollutants for our children. And we're very  
11 concerned about a power plant that is potentially not  
12 green and on the border of our civilization. So that's  
13 what I would like to put forth. Thanks.

14 HEARING OFFICER CELLI: Thank you. Thank you for  
15 your comments.

16 Is it Jeff Iam or Jeff Lamb? Jeff Lamb. Okay.  
17 Jeff Lamb, are you on the phone? Jeff Lamb?

18 I have a Matt, like Matthew. Matt with no last  
19 name. Are you on the phone? Matt is gone.

20 How about JHD?

21 Patrick?

22 MR. COLLINS: I'm Patrick Collins.

23 HEARING OFFICER CELLI: Patrick, what was your  
24 last name, please?

25 MR. COLLINS: Collins, C-o-l-l-i-n-s.

1 HEARING OFFICER CELLI: Did you get that, Mr.  
2 Petty? Okay. Good. Go ahead.

3 MR. COLLINS: I would just like to (inaudible) I  
4 believe the residents of Mountain House believe  
5 (inaudible) particularly the property values (inaudible).  
6 That's all I wanted to say.

7 HEARING OFFICER CELLI: Okay. Thank you,  
8 Patrick, for your comments.

9 I believe we have taken all the public comment.  
10 If I'm wrong about that and you're on the phone, I'd like  
11 to hear who's on the phone and who wishes to make a public  
12 comment.

13 MR. ANDERSON: My name is Robert Anderson.

14 HEARING OFFICER CELLI: Mr. Anderson, please, you  
15 have the floor. Go ahead.

16 MR. ANDERSON: Okay. I just called in so I don't  
17 know what's been said so let me just make one more  
18 comment. I'm the one who submitted the economic report  
19 that went into the record regarding the study on power  
20 plant siting and home values. I think there's been a lot  
21 of confusion about what that study does and doesn't say.  
22 Can you hear me okay?

23 HEARING OFFICER CELLI: I hear you fine. You're  
24 the author of that study?

25 MR. ANDERSON: I'm not the author of the study.

1 I'm the one who found it and submitted it to the  
2 Committee.

3 HEARING OFFICER CELLI: I see. Okay.

4 MR. ANDERSON: Although I did speak with the  
5 author of the study. So some people have been looking at  
6 that data and coming to conclusions which I think are  
7 indefensible, but let's just do a quick  
8 back-of-the-envelope calculation. I think you can get the  
9 basic point that I was trying to make by submitting that  
10 document. I don't know if you have that in front of you.  
11 Do you?

12 HEARING OFFICER CELLI: No, sir. We're a long  
13 ways from getting to that document.

14 MR. ANDERSON: Well, on page 3, actually it's  
15 Figure 3. I don't know what page it's on there is a chart  
16 that shows the expected loss in housing value based on  
17 this national comprehensive data that's a function of  
18 distance from the plant, right. So if you look at that  
19 and just as an approximately number the two and a half  
20 mile mark, which is I hear the number you've batted  
21 around. And you look at the average expected loss of  
22 housing value, you'd see about six percent. And if the  
23 median home value of Mountain House is something like  
24 \$300,000, now, you can quibble over that to some plus or  
25 minus small percentage, but it's about that. That's

1 \$18,000 per homeowner in the development of Mountain  
2 House. There's about 3200 homes out there. Again, that  
3 may be off by a small number but that's about it.

4           And some people are trying to look at that and  
5 say that \$18,000 per person is not a significant loss of  
6 welfare to live out there. I just find that  
7 incomprehensible to suggest that the loss of \$18,000 per  
8 home out there times 3200 is over \$50 million to our  
9 community.

10           Now, people can say that, well, there's some  
11 uncertainty about that, and that's fine. I accept that.  
12 But when it comes to the economic welfare of the  
13 citizenry, don't we typically make conservative  
14 assumptions when it comes to, say, air quality and  
15 biological resources and all these other factors that go  
16 into the siting of a plant and make the conservative  
17 assumptions (inaudible) stewards of the community. So  
18 that's my basic comment.

19           If you look at what that data says, I don't see  
20 how anybody can say it's insignificant. And, in fact, if  
21 people want to say it's insignificant, my response to that  
22 is that's fine. \$50 million is insignificant amount of  
23 money or \$18,000 per household, then those people who  
24 claim that should have no problem writing a check for that  
25 amount if it's insignificant. So I don't think -- the

1 people that say it's insignificant can have it both ways.  
2 Either it is significant and that should be taken into  
3 account. And if it's not, then it should be mitigated  
4 financially.

5 So that's my comment.

6 HEARING OFFICER CELLI: Thank you very much for  
7 your comment. Now I believe we have completed the public  
8 comments. I'm looking over --

9 MR. KUMAN: My name is Anil Kuman.

10 HEARING OFFICER CELLI: Go ahead. State your  
11 name on the phone. Could you spell your name?

12 MR. KUMAN: A-n-i-l.

13 HEARING OFFICER CELLI: Anil. Hello. What is  
14 your last name?

15 MR. KUMAN: Kuman.

16 HEARING OFFICER CELLI: K-o-h-r?

17 MR. KUMAN: K-u-m-a-r.

18 HEARING OFFICER CELLI: Kumar, K-u-m-a-r. Okay.  
19 Go ahead. You have the floor.

20 MR. KUMAN: Thanks for the opportunity to make  
21 point. (inaudible) and I just want to support all of the  
22 opposing the power plant near our community here in  
23 Mountain House.

24 HEARING OFFICER CELLI: Thank you. Is there  
25 anything further?

1 MS. DEL ROSARIO: Hello.

2 HEARING OFFICER CELLI: Hello. Who am I speaking  
3 with?

4 MS. DEL ROSARIO: Hello?

5 HEARING OFFICER CELLI: Yes, hi. Please state  
6 your name.

7 MS. DEL ROSARIO: Yes. My name is Receliza Del  
8 Rosario.

9 HEARING OFFICER CELLI: Can you spell that,  
10 please.

11 MS. DEL ROSARIO: My last name is Del Rosario,  
12 D-e-l, R-o-s-a-r-i-o.

13 HEARING OFFICER CELLI: Del Rosario. I didn't  
14 get your first name.

15 MS. DEL ROSARIO: Receliza, R-e-c-e-l-i-z-a.

16 HEARING OFFICER CELLI: How do you pronounce your  
17 first name?

18 MS. DEL ROSARIO: Receliza.

19 HEARING OFFICER CELLI: Thank you. Go ahead.

20 MS. DEL ROSARIO: Okay. I currently live in New  
21 Jersey and am planning to relocate to Mountain House. As  
22 a matter of fact, we found a house in late January. And  
23 just put money into escrow yesterday. The house was  
24 (inaudible) and I am very, very concerned about the power  
25 plant.

1           I have a two-year-old and four-year-old, and I  
2 was looking online about the information about this power  
3 plant and it really makes me reconsider moving out there.  
4 So I'm following this very closely and I'm sure I'm not  
5 the only one who would think about not moving to Mountain  
6 House if this power plant goes up.

7           HEARING OFFICER CELLI: Thank you. Anything  
8 further?

9           MS. DEL ROSARIO: Just that I think Mountain  
10 House is a beautiful community and why don't they build  
11 this power plant somewhere else? (inaudible) that are  
12 good in size in this power plant goes up. (inaudible)  
13 seen the schools and seen the children? That's why I want  
14 to move there. But if the power plant goes up, I don't  
15 think I want to move to the county there and I don't want  
16 to live in the same county (inaudible) this power plant.

17           HEARING OFFICER CELLI: Okay. Well, thank you  
18 for your comments.

19           Is there anyone else on the phone line who wishes  
20 to make public comment at this time?

21           MS. OWENS: Yes.

22           HEARING OFFICER CELLI: What's your name?

23           MS. OWENS: Irene Owens.

24           HEARING OFFICER CELLI: I'm sorry. I need the  
25 door to be closed back there. I did not hear your name.

1 MS. OWENS: I-r-e-n-e?

2 HEARING OFFICER CELLI: Irene.

3 MS. OWENS: Yes. Last name, Owens, O-w-e-n-s.

4 HEARING OFFICER CELLI: Okay. Ms. Owens, go  
5 ahead.

6 MS. OWENS: So we're from (inaudible) moved to  
7 Mountain House about two years ago. Our family opposes  
8 the power plant. We hope and pray this doesn't pass. And  
9 I hope and pray also the people who are going to make the  
10 choice think about ourselves and the family and think  
11 about what if they lived 2.5 miles away from (inaudible).  
12 I hope they take that into account (inaudible) if that  
13 were to happen to them, how would that feel? (inaudible)  
14 what kind of impact would that have on their choice. And  
15 that's my comment.

16 HEARING OFFICER CELLI: Well, thank you for those  
17 comments. Is there anyone else on the telephone who would  
18 like to make a comment at this time?

19 Hearing none, I have Satya Sinha. Is Satya Sinha  
20 here? Come forward. And I'm going to ask you to speak  
21 very loudly into the microphone, please.

22 MS. SINHA: Good evening. And thank you for  
23 giving me a chance to put my point across. Many, many  
24 people have -- I don't really have any more to add to what  
25 already has been said and I would like for my name to be

1 included in the list of people who are opposing the power  
2 plant here.

3 HEARING OFFICER CELLI: And it will be. So thank  
4 you for your comments.

5 MS. SINHA: Thank you.

6 HEARING OFFICER CELLI: Thank you for  
7 participating. And I want to thank all of you from  
8 Mountain House and the surrounding communities, people  
9 from Contra Costa, and Alameda we've heard from. Everyone  
10 who participates in this process helps us understand a  
11 little more what this is about. We appreciate that.

12 With that, I'm going to conclude the public  
13 comment segment of our day. I'm going to ask Mr. Sarvey  
14 if Mr. Sarvey is around -- Mr. Schneider, you might as  
15 well come on up and get comfortable up here. And I'm  
16 going to have to get your lawyer. And everyone else. If  
17 anyone can pop their head out the door, we need all of the  
18 intervenors to come forward now. We're taking testimony.  
19 We need the Mountain House people. I need Rajshe. I need  
20 Randy Wilson. I need Sierra Club folks. I need Rob  
21 Simpson. Come on in.

22 MS. SARVEY: Excuse me. If you speak in public  
23 comment, are you ever allowed to speak in public comment  
24 again? Just the one time? Because I spoke on land use  
25 and I didn't know we were going to talk about the airport

1 issue. And I put in a public comment card and I was never  
2 called.

3 HEARING OFFICER CELLI: Let me speak to that. We  
4 actually broke from our taking testimony to let you speak  
5 this afternoon.

6 MS. SARVEY: I understand that.

7 HEARING OFFICER CELLI: Which we were not  
8 inclined to do.

9 MS. SARVEY: And I appreciate that you did that  
10 so I could go back to work.

11 HEARING OFFICER CELLI: And that's why we took  
12 you early.

13 I did see your name, but since we gave you so  
14 much time already and I thought you made your point very  
15 clearly --

16 MS. SARVEY: I appreciate that.

17 HEARING OFFICER CELLI: -- I didn't think we  
18 really needed to hear more. I'm going to request that if  
19 you wish to make another public comment that you hold off.  
20 We have to go all day tomorrow, too.

21 MS. SARVEY: I understand that.

22 HEARING OFFICER CELLI: And it would make most  
23 sense -- see, we just don't have the time right now to  
24 take a comment after every section. So it would be better  
25 to give us your entire comments in one comment if you will

1 than piecemealing it out because --

2 MS. SARVEY: This is the first proceeding I've  
3 ever been involved in that had this problem. We always  
4 spoke in each section in every other one. I wish you  
5 would have told me that you wanted to hear my air  
6 quality --

7 HEARING OFFICER CELLI: Actually, our public  
8 advisor told you that on the phone as I was informed and  
9 you had a conversation with her on the phone asking --

10 MS. SARVEY: I did not understand when I spoke  
11 earlier. So I will not be allowed to speak any more  
12 tonight; correct?

13 HEARING OFFICER CELLI: I would rather -- if you  
14 wouldn't mind, I'm not going to have any more public  
15 comment today. We are going to have public comment  
16 tomorrow.

17 MS. SARVEY: At 5:00 o'clock?

18 HEARING OFFICER CELLI: Yes. Tomorrow at 5:00  
19 o'clock.

20 MS. SARVEY: So everything that gets discussed  
21 today and tomorrow you want all the public comment then  
22 and you will not cut people off because they have to go  
23 through each section in that one public comment?

24 HEARING OFFICER CELLI: Well, I will cut people  
25 off if they go too long. So I'm going to ask that you

1 make your comments very efficiently.

2 MS. SARVEY: So how long are you going to give  
3 people to speak approximately? For how many seconds?

4 HEARING OFFICER CELLI: Did you see tonight how  
5 it sort of went? I actually didn't have to cut anybody  
6 off.

7 MS. SARVEY: But we only had one section tonight,  
8 land use.

9 HEARING OFFICER CELLI: No, actually people were  
10 here to comment on everything because obviously people  
11 were talking about things like their --

12 MS. SARVEY: Public health and safety.

13 HEARING OFFICER CELLI: So the point I want to  
14 make is this: I will set times as needed. People did a  
15 great job tonight. I want to thank everybody for --

16 MS. SARVEY: I agree.

17 HEARING OFFICER CELLI: -- for self-regulating  
18 really coming from a place of being concerned in terms of  
19 getting everybody's comments in. People were very good  
20 about that.

21 MS. SARVEY: I just was going to ask is there a  
22 map of the thermal plumes for all the plants that have  
23 been approved already that we could look at and maybe  
24 alleviate some of this concern? That's what I was going  
25 to ask.

1 HEARING OFFICER CELLI: Not that I've seen.

2 MS. SARVEY: Well, I think staff should prepare a  
3 thermal plume map that shows (inaudible) that planes will  
4 take. Thank you.

5 HEARING OFFICER CELLI: Thank you for your  
6 patience, Ms. Sarvey. Because you know, really what we  
7 want to do is we want everybody to comment. But I also  
8 have to balance that with getting the evidence. So that's  
9 what I'm trying to do.

10 MS. SARVEY: I understand.

11 HEARING OFFICER CELLI: Thank you.

12 Yes, Mr. Carlton. They've left.

13 MS. JENNINGS: Hearing Officer Celli?

14 HEARING OFFICER CELLI: Yes, Ms. Jennings, go  
15 ahead.

16 MS. JENNINGS: We still have one more person.

17 HEARING OFFICER CELLI: Please, our last  
18 commenter, go ahead.

19 MR. YE: My name is Frank Ye. I just come back  
20 from my --

21 HEARING OFFICER CELLI: Could you spell your last  
22 name, please?

23 MR. YE: Yeah, Y-e. Just come back from my work.  
24 Take two hours to come back. You know what? Why I  
25 commute four hours a day for the work I live in Mountain

1 House. This is a nice community. But put a power plant  
2 here just destroyed our homes, destroyed our whole  
3 community. I think this -- I think from the point of view  
4 of the resident of the (inaudible) this is not a  
5 responsive action. So I strongly oppose this power plant.  
6 And just protect our (inaudible) protect our homes,  
7 protect our environment.

8 HEARING OFFICER CELLI: You're opposed. Thank  
9 you. Thank you for your comments. Thank you all for your  
10 comments.

11 MS. JENNINGS: We do have a couple more.

12 HEARING OFFICER CELLI: Can you bring forward the  
13 blue cards so we can call them?

14 Please state your name, sir.

15 MR. SHAB: My name is Pramid Shab. I live in  
16 Mountain House. Pramid is P-r-a-m-i-d. And last name is  
17 S-h-a-b.

18 HEARING OFFICER CELLI: Did you get that, Mr.  
19 Petty? Good.

20 Go ahead.

21 MR. SHAB: So as a citizen concerned for Mountain  
22 House, I wanted to express that we as citizen I've been  
23 living in Mountain House since seven years, and if the  
24 power plant comes in, then I have to make my exit plans.  
25 I don't want to breathe any more carbon dioxide, any more

1 gases that emit out from this place. And just want to  
2 make sure that the citizens can mitigation and provide --  
3 ordinate measures or ordinate locations outside Mountain  
4 House that would be appreciated.

5 HEARING OFFICER CELLI: Thank you. Thank you for  
6 coming.

7 Was there anyone else? Is Smitha here? Is  
8 Smitha you? Please come forward and make your comments.  
9 We need you to speak directly into the microphone very  
10 loudly, okay? Thank you.

11 MS. UNNIKRISHNAM: Hi. My name is Smitha  
12 Unnikrishnam. I'm a Mountain House resident. I have been  
13 in Mountain House for more than four-and-a-half years. We  
14 came into Mountain House right about the time real estate  
15 had started crashing. And we saw the worst. It was so  
16 bad. We were depressed so badly that we had to go through  
17 some stuff personal times too. We saw all our neighbors  
18 leave. They literally just left. Streets were empty.  
19 And I even talked to some newspaper reporters who came and  
20 told us that do you know that this is the epicenter of  
21 foreclosure and that's when we came to realize that, oh,  
22 my God, this is probably the worst place to be in  
23 United States at the moment. But we decided to ride it  
24 and stay put, because we love this community. It's just  
25 the best. We could have left, but we chose to stay

1 because we see good future here.

2           People are nice. Everybody came together and we  
3 made our schools some place that we are proud of, you  
4 know. Teachers and the community folks, everybody came  
5 together.

6           So I don't want -- I don't want anything to  
7 cripple the little progress we have seen here. It's very  
8 important that we are at least able to stand on our feet  
9 and after that we can (inaudible). But at this point in  
10 time, it will be quite crippling if we see another  
11 downturn. And we don't want to go through that stress  
12 again. As a mom and as a wife and as a resident,  
13 everything, it's too much to deal with, the past three  
14 years have been quite bad. That's all I want. And I hope  
15 that you consider this when you make your decision.

16           HEARING OFFICER CELLI: We will. And thank you  
17 for your comments. And let's all hope that the worst is  
18 over.

19           At this point now, I see that we're ready to go  
20 forward. Ms. Willis, you had a question.

21           STAFF COUNSEL WILLIS: Yes, Mr. Celli. Before we  
22 move forward, I have staff here for both socioeconomics  
23 and (inaudible) given the amount of time it's been taking  
24 for land use, do you anticipate we will actually get to  
25 those topics (inaudible)?

1 HEARING OFFICER CELLI: Let's let socioeconomics  
2 go, but we'll keep traffic here.

3 STAFF COUNSEL WILLIS: Thank you.

4 HEARING OFFICER CELLI: Now, let's get our  
5 witnesses sworn. If you would do the honor, Mr. Petty.

6 (Whereupon the witnesses were sworn.)

7 MR. SCHNEIDER: Yes, I do.

8 MR. PETTY: If you have not already done so,  
9 please state and spell your name for the record.

10 MR. SCHNEIDER: My name is Dick, D-i-c-k,  
11 S-c-h-n-e-i-d-e-r.

12 MR. SARVEY: And my name is Robert Sarvey, last  
13 name is S-a-r-v-e-y.

14 HEARING OFFICER CELLI: Thank you.

15 MR. SIMPSON: I'd like to object to the public  
16 comment opportunity.

17 HEARING OFFICER CELLI: I'm sorry?

18 MR. SIMPSON: I need to make an objection to the  
19 public comment opportunity that the CEC brings forward in  
20 these proceedings, particularly this one tonight. When  
21 the public comes in and there is no information about the  
22 project, there's no AFC, there's nothing for them to  
23 derive any basis for their comments.

24 HEARING OFFICER CELLI: What's your objection?

25 MR. SIMPSON: My objection is there's no

1 presentation to the public what this is about, to tell  
2 them what's going on, to demonstrate the value or  
3 liability of this project. There should be a presentation  
4 to the public. There should be at least a copy of the AFC  
5 or some diagram, some image of what we're proposing, what  
6 the impacts are. The speaker cards don't have a spot for  
7 somebody to put their address on.

8 HEARING OFFICER CELLI: So your objection is that  
9 there is an inadequate presentation for the people to be  
10 able to comment?

11 MR. SIMPSON: And there's no opportunity for you  
12 to respond to these comments because there is no address  
13 on the public comment cards.

14 HEARING OFFICER CELLI: All right. Objection is  
15 noted.

16 Now, Mr. Sarvey, how did you want to proceed  
17 since you're both a witness and a party?

18 MR. SARVEY: Well, in this case, the witness is  
19 right here. But I took the time to swear myself in  
20 because later on I'll be a witness. So I figured I'd save  
21 a little time.

22 HEARING OFFICER CELLI: Now, you've already  
23 submitted your testimony, Mr. Sarvey. So we really don't  
24 need to rehash that. You're just making yourself  
25 available for cross; is that right?

1           MR. SARVEY: Well, I actually don't have any  
2 testimony on land use. It's Mr. Schneider's testimony  
3 I'll be presenting right now.

4           HEARING OFFICER CELLI: Very good. Why don't you  
5 go ahead then. Proceed.

6                                 DIRECT EXAMINATION

7           MR. SARVEY: Mr. Schneider, would you state your  
8 name and your qualifications for the record, please.

9           MR. SCHNEIDER: My name is Dick Schneider. I was  
10 conceivably author of Measure D. I was one of the  
11 architects of the measure. Measure D is the voter  
12 initiative that amended the East County Area Plan of  
13 Alameda County. And it's the East County Area Plan is the  
14 component of the general plan that governs this area.

15           HEARING OFFICER CELLI: Did we receive your  
16 resume or CV?

17           MR. SCHNEIDER: Yes.

18           HEARING OFFICER CELLI: Are the parties willing  
19 to stipulate to this -- Dr. or Mr. Schneider?

20           MR. SCHNEIDER: Mr. Schneider.

21           HEARING OFFICER CELLI: Mr. Schneider's expertise  
22 with regard to land use?

23           STAFF COUNSEL WILLIS: Yes, we would.

24           HEARING OFFICER CELLI: Applicant?

25           MR. WHEATLAND: Yes.

1 HEARING OFFICER CELLI: You are an expert. We  
2 can move on to the next question. We don't need to take  
3 up any time because we've now got you're an expert. And  
4 you know what, Mr. Sarvey has provided us testimony and  
5 your CV or your resume. And therefore that's going to go  
6 into the record. So we don't need to spend time on that.  
7 Let's go ahead.

8 MR. SARVEY: Mr. Schneider, since you submitted  
9 your testimony, has there been any developments that you  
10 need to make the Committee aware of?

11 MR. SCHNEIDER: Well, I want to make one comment  
12 and then I'll mention the other developments. I think in  
13 general great deference is given to the county for  
14 interpreting its own policies and plans. But such  
15 deference is far less appropriate here when the policies  
16 were enacted by a voter initiative and in reaction against  
17 prior policies. So I hope that you'll give me the  
18 opportunity to explain the origin of the key policy that  
19 has been mentioned many, many times during the day.

20 The new development I was made aware of last  
21 week, I got a call from Alameda County Planning Director  
22 Albert Lopez who told me that the county has received  
23 quiries if not applications for two large solar power  
24 plants in the same vicinity, 100 acre plant and the  
25 thousand acre plant. So there are many new power projects

1 being proposed in this area. That's something that I was  
2 not aware of up until about a week ago.

3 MR. SARVEY: There's been a lot of discussion  
4 tonight about Policy 13 and as one of the conceivable  
5 authors, could you please provide us with the actual  
6 intent of the drafters of this policy, please?

7 MR. WHEATLAND: Hearing Officer Celli, I'm going  
8 to object to additional direct testimony of this witness.  
9 He has submitted his written testimony. They had an  
10 opportunity to provide rebuttal testimony and did not.  
11 But I would object to further additional direct testimony  
12 at this time. They are not following the rules that were  
13 set forth by the Committee.

14 HEARING OFFICER CELLI: Let me ask if I may  
15 inquire, Mr. Sarvey, how many questions of direct  
16 testimony do you have for Dr. Schneider?

17 MR. SARVEY: I had two.

18 HEARING OFFICER CELLI: Okay. I'm going to let  
19 him get his two questions in and then we'll move on. Go  
20 ahead, please. Mr. Schneider. I'm sorry.

21 MR. SCHNEIDER: Thank you.

22 Policy 13 is the policy governing infrastructure.  
23 And I think it was Mr. Dighe earlier today asked Mr.  
24 Martinelli how do you reconcile the policies in the East  
25 County Area Plan to protect agriculture with developmental

1 needs, needs to serve development. And Mr. Martinelli  
2 replied, well, it's a balancing act.

3           The designers of Measure D wrote Policy 13 from  
4 scratch to accomplish just that goal. And the policy has  
5 several components. The guiding components, the first  
6 sentence, the county shall not provide nor authorize  
7 public facilities or other infrastructure in excess of  
8 that needed for permissible development consistent with  
9 the initiative.

10           That means consistent with development in eastern  
11 Alameda County, which is the area governed by the  
12 initiative. It means not capacity to serve PG&E service  
13 territory, all of Alameda County, northern California or  
14 the state as a whole. And the reason for this restriction  
15 was to balance the needs to provide infrastructure for the  
16 residents of eastern Alameda County with the need to  
17 preserve land for agriculture because excess capacity,  
18 excess infrastructure has forecloses the protection of the  
19 agricultural and open space resources.

20           Now, in a different section of that Policy 13, we  
21 said --

22           MR. WHEATLAND: Hearing Officer Celli, excuse me,  
23 Mr. Schneider. I'm going to raise my objection again. It  
24 may be two questions, but this is an extended lecture.  
25 And this is additional material that should have been

1 provided in his direct or rebuttal testimony. And I would  
2 object to him introducing new arguments and information at  
3 this late stage.

4 HEARING OFFICER CELLI: Well, what I was asking  
5 for the parties was surrebuttal. How is this surrebuttal,  
6 Mr. Sarvey?

7 MR. SARVEY: We're not providing surrebuttal.  
8 We're just providing background to Mr. Schneider's  
9 expertise and the intent of the voters who voted for this  
10 initiative overwhelmingly. And I heard staff introduce  
11 their land use witnesses earlier and we had some testimony  
12 from them that wasn't surrebuttal testimony. So I assumed  
13 it was appropriate. But if it's not, we can cut it off  
14 right now, Mr. Celli.

15 HEARING OFFICER CELLI: What I'd like to do is  
16 get -- first of all, you have a motion with regard to the  
17 testimony you've already supplied. Let me get your  
18 exhibits for land use. Do you remember what exhibit  
19 numbers those are?

20 MR. SIMPSON: I am sorry. I can't hear.

21 MR. SARVEY: 402 and 414.

22 HEARING OFFICER CELLI: Is there any objection to  
23 402 and 414 from staff being admitted?

24 MR. WHEATLAND: No objection.

25 HEARING OFFICER CELLI: That was no objection

1 from applicant?

2 MR. WHEATLAND: Yes.

3 HEARING OFFICER CELLI: Any objection from staff?

4 STAFF COUNSEL WILLIS: No objection.

5 HEARING OFFICER CELLI: No objection?

6 Okay. That was 408 and --

7 MR. SARVEY: 402 and 414, Mr. Celli.

8 HEARING OFFICER CELLI: 402 and 414. Sorry.

9 There is a big echo here.

10 There being no objection, Exhibits 402 and 414  
11 are admitted into the record.

12 (Whereupon, the above-referenced exhibits  
13 were admitted into evidence by the  
14 Hearing Officer.)

15 HEARING OFFICER CELLI: Now, my recollection is  
16 that's Mr. Schneider's testimony.

17 MR. SARVEY: That's Mr. Schneider's testimony and  
18 East County Area Plan is Exhibit Number 414.

19 HEARING OFFICER CELLI: That's the actual --

20 MR. SARVEY: That's the actual text of the plan.

21 HEARING OFFICER CELLI: Okay. If there's nothing  
22 further I would allow the two parties to cross.

23 MR. SARVEY: The witness is available.

24 HEARING OFFICER CELLI: Thank you. First  
25 applicant. Or actually, no. I'm going to start with

1 staff. Any cross-examination of these witnesses by staff?

2 CROSS-EXAMINATION

3 STAFF COUNSEL WILLIS: May I ask a quick  
4 clarifying question? You testified that there are two  
5 large solar plants on 100 acres and 1,000 acres. Could  
6 you please tell me what the megawatts of each of those  
7 plants are that are proposed?

8 MR. SCHNEIDER: I am sorry. I couldn't  
9 understand what the actual question was.

10 STAFF COUNSEL WILLIS: I am sorry. You just  
11 testified that there are two large solar plants being  
12 proposed on 100 acres and 1,000 acres. Could you tell me  
13 what each plant what the megawattage of each plant is  
14 proposed?

15 MR. SCHNEIDER: I can't because the phone call  
16 from county planning department only mentioned the acreage  
17 that would be covered but not the capacity of those  
18 plants.

19 STAFF COUNSEL WILLIS: But they would be under  
20 the county's jurisdiction?

21 MR. SCHNEIDER: Correct. In eastern Alameda  
22 County.

23 STAFF COUNSEL WILLIS: Okay. Thank you.

24 HEARING OFFICER CELLI: Anything further from  
25 staff?

1 STAFF COUNSEL WILLIS: No. Thank you.

2 HEARING OFFICER CELLI: Cross by applicant.

3 MR. WHEATLAND: I have no questions on the  
4 written testimony that was submitted. I do have one area  
5 of question regarding the testimony that was provided this  
6 evening.

7 Mr. Schneider, you mentioned several potential  
8 new solar projects in the county. Are you aware also that  
9 the county approved on January 13, 2011, a three megawatt  
10 solar project?

11 MR. SCHNEIDER: Yes, I am.

12 MR. WHEATLAND: I have a document I'd like to  
13 distribute.

14 HEARING OFFICER CELLI: Is this an exhibit that  
15 we --

16 MR. WHEATLAND: Yes. This would be -- this would  
17 be cross-examination exhibit. It would be the applicant's  
18 next exhibit in order, which I believe will be Exhibit  
19 Number 69. We reserve 68 for our rebuttal testimony on  
20 the pipeline issue. So I'd ask that be marked for  
21 identification as Exhibit Number 69.

22 HEARING OFFICER CELLI: So marked.

23 MR. SARVEY: Is there any reason why you couldn't  
24 have submitted this in advance, Mr. Wheatland? Is this  
25 new? Recent?

1           MR. WHEATLAND: Yes. Because until tonight, you  
2 haven't mentioned any additional projects. If we're going  
3 to talk about additional projects in the area, I'd like to  
4 be sure that all of them are included.

5           MR. SARVEY: Because this was dated January 13th  
6 and today is February 25th. So I'm wondering --

7           HEARING OFFICER CELLI: It was not until tonight  
8 that Mr. Schneider mentioned that there would be  
9 additional projects. And if we're going to talk about  
10 additional projects, I'd like to be sure they're all  
11 included.

12          MR. SARVEY: And you just to happened to have  
13 anticipated he was going to raise this? Is that why you  
14 had this all prepared, sir?

15          MR. WHEATLAND: I anticipated Mr. Schneider --

16          HEARING OFFICER CELLI: So let me stop this right  
17 now. All communications from all of the parties go to the  
18 Committee only and then when we give you permission you  
19 ask questions of witnesses. There is no cross talk. So  
20 let me make this clear. I'm going to assume, Mr. Sarvey,  
21 that you object to Exhibit 69.

22          MR. SARVEY: Only because -- yes, I object.

23          HEARING OFFICER CELLI: Okay. And the basis of  
24 your objection is its untimeliness?

25          MR. SARVEY: It's untimely. This document says

1 January 13th on it, and the applicant had plenty of time  
2 to introduce this. And he's actually got it titled  
3 applicant's cross-examination. So he was aware this was a  
4 document that the Committee should be aware. He should  
5 have introduced it. He had plenty of time to do it.

6 HEARING OFFICER CELLI: So all of that goes to  
7 the timeliness of the submission of the evidence. Now  
8 offer of proof, Mr. Wheatland.

9 MR. WHEATLAND: Well, Mr. Schneider has mentioned  
10 that there is additional solar projects that are being  
11 considered in Alameda County. And we would like to be  
12 sure that there is a complete record both of the projects  
13 that are being proposed and the manner in which the county  
14 approves those projects.

15 And the next question that I would be asking Mr.  
16 Schneider is whether he's seen this document before.

17 HEARING OFFICER CELLI: I'm going to allow it.  
18 Objection is overruled.

19 Go ahead, Mr. Schneider.

20 MR. SCHNEIDER: No, I have not.

21 MR. WHEATLAND: I have no further questions.

22 MR. SARVEY: Can I have a moment to review the  
23 document if we're going to be cross-examined on it?

24 HEARING OFFICER CELLI: Please take a moment.  
25 And that was a little garbled and I wanted to make it

1 clear that the record was there was a question by Mr.  
2 Wheatland as to whether Mr. Schneider has ever seen  
3 Exhibit 69 before. And the answer was no, he has not. Do  
4 I have that correct, Mr. Schneider?

5 MR. SCHNEIDER: I actually would need to read  
6 through it to see. But at first I didn't recognize it.  
7 But I'll read through it if you'd like.

8 HEARING OFFICER CELLI: Please take a moment.

9 I just wanted to be clear, because everybody was  
10 talking over each other at the same time. So I want to  
11 reiterate that we need to speak one at a time. Let the  
12 parties take a look at this. And there was no further  
13 cross from applicant; is that correct?

14 MR. WHEATLAND: That's correct. If he has not  
15 seen this document before, then I have no further  
16 questions of Mr. Schneider.

17 HEARING OFFICER CELLI: I will allow some limited  
18 redirect, Mr. Sarvey, redirect based on this exhibit.

19 MR. SCHNEIDER: Let me amend my --

20 HEARING OFFICER CELLI: Wait a second. There's  
21 no question pending.

22 MR. SCHNEIDER: Let me clarify. I was present at  
23 this Zoning Board hearing. But I don't recall seeing this  
24 resolution before.

25 HEARING OFFICER CELLI: Very good. So now the

1 record is clear on that. Thank you for the clarification.

2 MR. SIMPSON: Can I make a motion? Mr. Wheatland  
3 indicated it was important to have a complete record of  
4 the projects that are approved and proposed. We don't  
5 appear to have a complete record of the ten acre and 100  
6 acre plans. Can we continue this until we have better  
7 information on this 100 acre and 10 acre plan consistent  
8 with Mr. Wheatland?

9 HEARING OFFICER CELLI: When we get to you, Mr.  
10 Simpson, I'm going to ask that you hold your -- I'm sorry.  
11 Hold your motion until we get around to you on this round.  
12 Just hold onto that motion.

13 MR. SIMPSON: Thank you.

14 HEARING OFFICER CELLI: What happened is -- we're  
15 off the record for a moment.

16 (Off record.)

17 MR. SARVEY: We don't have any questions.

18 HEARING OFFICER CELLI: Thank you. Then at this  
19 time these witnesses are excused. Thank you, Mr.  
20 Schneider. Thank you, Mr. Sarvey. Take your seat again.

21 Next?

22 MR. SIMPSON: Excuse me. Cross?

23 HEARING OFFICER CELLI: No, we're not going to do  
24 friendly cross. I thought we made that clear.

25 MR. SIMPSON: They were asked by staff and

1 applicant that I have questions about.

2 HEARING OFFICER CELLI: No. This is a friendly  
3 witness, so we're not going to allow that.

4 MR. SINGH: But we need the information from the  
5 witness.

6 HEARING OFFICER CELLI: The witness's testimony  
7 is in the record. We received his evidence.

8 MR. SINGH: But we need the additional  
9 information related to that. And we should have the  
10 opportunity.

11 HEARING OFFICER CELLI: We're going to go off the  
12 record for a moment.

13 (Off record.)

14 HEARING OFFICER CELLI: Okay.

15 MR. GROOVER: Mr. Celli, I have an objection.  
16 The last statement before you went off the record assuming  
17 all the intervenors this was a friendly cross while you're  
18 assuming that the staff and applicants aren't and I think  
19 that's disrespectful to my position. I never joined any  
20 of the other intervenors in any joint effort.

21 HEARING OFFICER CELLI: That's a point well  
22 taken. The situation with the Mountain House Community  
23 Service District show is that they had submitted a  
24 prehearing conference statement that said they wanted to  
25 make no direct and no cross-examination.

1           MR. GROOVER: Reserving right to question any  
2 verbal testimony that was given at the hearing. I believe  
3 that was clearly stated in what I asserted to the staff.

4           HEARING OFFICER CELLI: So is it your position  
5 then are you declaring that Mountain House is supportive  
6 of the project as a community service district?

7           MR. GROOVER: I'm just (inaudible) with your  
8 statement. I object to -- I'm not stating whether I'm for  
9 it or against it. But your assumption did not give me the  
10 right to make a statement.

11          HEARING OFFICER CELLI: I hear you.

12          Do you have a position that's contrary to Mr.  
13 Sarvey or what Mr. Schneider testified to?

14          MR. GROOVER: I no questions. I just have an  
15 objection.

16          HEARING OFFICER CELLI: Sustained. Thank you for  
17 pointing that out.

18          Let me read 1212 of our rules of evidence which  
19 essentially Subsection C says, "Subject to the exercise of  
20 lawful discretion of the Presiding Committee Member as set  
21 forth in 1203 Sub C, each party shall have the right to  
22 call and examine witnesses which we've allowed to  
23 introduce exhibits, to cross-examine opposing witnesses on  
24 any matters relevant to the issues in the proceeding and  
25 to rebut evidence against such party and questions of

1 relevance shall be decided by the Presiding Committee  
2 member."

3           Opposing -- we read this opposing language where  
4 it says to consider examining opposing witness is a party  
5 against whom you have an adverse position. In other  
6 words, you're opposed to their position. My -- all the  
7 indications have been up until now and with my regrets and  
8 apologies to Mountain House Community Service District for  
9 lumping you in with everyone else was that the intervenors  
10 were pretty much opposed to the project and that was the  
11 assumption that I operated under.

12           So I really in the interest of time and our  
13 intent is to allow only adverse witnesses. And this could  
14 be issue by issue. In other words, that we're not just  
15 saying you -- we're not going to slot you and say you're  
16 opposed to the project and you're against. We're really  
17 going to deal with this on an issue by issue basis. And  
18 that's the inquiry.

19           So with that, I see Ms. Jennings you wanted to  
20 make -- did you need to see something from the public  
21 advisor's perspective?

22           MS. JENNINGS: Just briefly. I've been in many  
23 hearings where the staff was not in opposition to the  
24 project where staff cross-examined the applicant's witness  
25 and vice versa. So I don't know that there has been a

1 consistent interpretation of that section as being  
2 exclusive.

3 HEARING OFFICER CELLI: As it related to staff?

4 MS. JENNINGS: As it relates to staff and  
5 applicant especially and I've seen intervenors also  
6 examined friendly witnesses in the past I believe,  
7 witnesses of other intervenors.

8 COMMISSIONER DOUGLAS: I think that the fact that  
9 staff might have a document that analyzes the project  
10 (inaudible) is possible. Doesn't mean their interests  
11 might not be adverse to the applicant's (inaudible)  
12 section of mitigation that they're trying to obtain and so  
13 on. So I haven't seen staff cross-examine the applicant  
14 where there wasn't an issue in dispute. I think that's  
15 the question here: Is the cross-examination an attempt to  
16 elicit more supporting information of both parties. I  
17 believe the position or the cross-examination intended to  
18 illustrate an issue there's in dispute for the benefit of  
19 the Committee. And so that's the question I would have.

20 HEARING OFFICER CELLI: So with that, I guess --  
21 let's go off the record for a moment.

22 (Off record.)

23 HEARING OFFICER CELLI: The ruling is this: The  
24 Section 1212 of Title 20 of the California Code of  
25 Regulations says that cross-examination is permitted

1 against opposing witnesses. There's been a question  
2 raised by the parties that there is a request to  
3 cross-examine witnesses that have been described by the  
4 applicant as friendly witnesses. The Committee has  
5 decided that there will be no friendly cross. If there is  
6 any cross to be had, then the requester needs to establish  
7 that the witness is an opposing witness. And we will do  
8 that as needed, issue by issue.

9 Now, with that, Mr. Lamb, you have a question.

10 MR. LAMB: I do. Throughout the proceedings  
11 today earlier, it seems to me this is a question of what  
12 does the word is mean in that we've had questions about  
13 the word infrastructure and public. And we've heard from  
14 the other witnesses to that effect. And we have a witness  
15 here who is involved in crafting the specific language in  
16 that intent, and what I've been trying to get at all day  
17 is what does infrastructure mean to the people who crafted  
18 the intent of that resolution. And consistently we've  
19 been told we should rely on Alameda's County  
20 interpretation. And with the evidence that we were just  
21 given, that resolution, Measure D, was passed in  
22 opposition to what the county had wanted. So the county  
23 is hostile to Measure D.

24 So I've been wanting to know all day from an  
25 expert who we happen to have here, what does

1 infrastructure mean to the people who crafted Measure D.  
2 What does public mean to the people who have crafted  
3 Measure D. And how is that weighed? And we've heard  
4 testimony all day -- so that's my concern. I would like  
5 to hear that.

6 HEARING OFFICER CELLI: I understand. The  
7 Committee will ask the question of Mr. Schneider to please  
8 state for the record your definition of public and  
9 infrastructure as it relates to Measure D.

10 MR. SCHNEIDER: Well, public facilities, the  
11 drafters of Measure D meant those owned by the public and  
12 paid for by tax revenues or assessments. Infrastructure  
13 could be not public. It could be private to serve the  
14 needs of residents. And that would not be a public  
15 facility. But it could be private infrastructure needed  
16 to serve adequately the residents of the area.

17 And the policy -- in Policy 13 has a definition  
18 of what infrastructure is. It has public facilities,  
19 community facilities, and structures and development  
20 necessary to the provision of public services and  
21 utilities. But that's embedded -- that definition is  
22 embedded in an express limitation on the scale needed to  
23 serve the development allowed by the initiative.

24 If I could add one more clarification, because  
25 there was a lot of talk about it not being growth inducing

1 that was mentioned countless times earlier today. The  
2 issue of growth inducing had to do with these linear  
3 conveyance systems, canals, transmission lines --

4 MR. WHEATLAND: Excuse me. I object. That goes  
5 beyond the scope of the question you asked.

6 HEARING OFFICER CELLI: Sustained.

7 Mr. Dighe, go ahead. What was your question?

8 MR. DIGHE: Yes, I want to understand the growth  
9 inducing part.

10 MR. WHEATLAND: Excuse me. May I object here?

11 Mr. Dighe listed Mr. Schneider as his witness on his  
12 prehearing conference statement. I can't see how he can  
13 list him as his witness and now assert he has an adverse  
14 position.

15 HEARING OFFICER CELLI: That's correct. I have  
16 Mr. Schneider as the witness of Mr. Dighe, Sierra Club, I  
17 guess, Bob Sarvey and Jass Singh all are calling Dick  
18 Schneider. They're all sponsoring his testimony which we  
19 received into evidence. That was Exhibit 402 and 414;  
20 right?

21 MR. SARVEY: Well, actually, I'm the only one  
22 that sponsored Mr. Schneider and I submitted his  
23 testimony, his resume and declaration.

24 HEARING OFFICER CELLI: But in their prehearing  
25 conference statements, those other parties also stated

1 that Mr. Schneider was their --

2 MR. SARVEY: Well, I think they probably  
3 misunderstood the procedure. And I think that's easily  
4 understandable since they haven't done it before.

5 MR. SCHNEIDER: I've never met these gentlemen  
6 before. So I'm surprised to hear that I was called as  
7 their witnesses.

8 HEARING OFFICER CELLI: It seems that you ought  
9 to be able to bill them.

10 (Laughter)

11 MR. SIMPSON: I'm sorry. Before we go too far  
12 down this road, I need to lodge an objection to your  
13 interpretation of your rule 1212. While 1212 ensures that  
14 right to cross-examine opposing witnesses, it doesn't  
15 preclude, it doesn't say only.

16 HEARING OFFICER CELLI: No, it doesn't. But what  
17 it does say is that these proceedings are conducted under  
18 the rules as decided by the presiding member and by the  
19 Committee. And the Committee has decided that there will  
20 only be cross-examination of opposing witnesses and that's  
21 the interpretation of this Committee.

22 MR. SIMPSON: So my objection is overruled?

23 HEARING OFFICER CELLI: Overruled.

24 MR. SIMPSON: Thank you.

25 HEARING OFFICER CELLI: But noted and preserved.

1           Mr. Dighe, we want to know what your question  
2 was.

3           MR. DIGHE: So can I for the record and for  
4 clarification (inaudible) the author, co-author, the  
5 growth inducing effect which is what the (inaudible) --  
6 applicant is objecting. It's for me as well as for the  
7 public, too. The residents who are here, because that's  
8 the only time they can understand how --

9           HEARING OFFICER CELLI: Okay. What is the  
10 definition of growth inducing impacts to you, Mr.  
11 Schneider?

12           MR. SCHNEIDER: The point about the restriction  
13 on growth inducing infrastructure is the drafters of  
14 Measure D knew there would be transmission lines, canals,  
15 gas pipelines, traversing Alameda County to serve the  
16 urban area, San Francisco, San Mateo County, et cetera.  
17 We knew those transmission facilities would be larger than  
18 the capacity needed to serve the east county area. So we  
19 put in the provision that those were permissible, provided  
20 there were conditions -- permit conditions attached so  
21 that the area could not be -- the facilities could not be  
22 growth inducing in the sense that the east county area  
23 could tap into the excess capacity of those transmission  
24 lines. It had nothing to do with the size of, for  
25 example, a power plant. Those kinds of infrastructure

1 would be scaled only for the needs of the growth allowed  
2 under the initiative.

3 MR. SINGH: So I have a few questions.

4 HEARING OFFICER CELLI: Go ahead, Mr. Singh. I  
5 need you to really speak up into that microphone, please.

6 MR. WHEATLAND: Again, Hearing Officer Celli, Mr.  
7 Singh listed Exhibits 402 as one of the exhibits that Mr.  
8 Singh would be sponsoring in this proceeding.

9 HEARING OFFICER CELLI: He has a question. I  
10 just want to hear what his question is and then I'll know  
11 what he wants to speak to. Go ahead, Mr. Singh.

12 MR. SINGH: Yeah, so we saw today when we asked  
13 questions from staff experts and you have been the witness  
14 we didn't get any clarity what are the analysis  
15 (inaudible) look at the paper. Alameda County says, yeah,  
16 X, Y, Z, they accept it.

17 So my question is it's very important that  
18 whatever testimony has been submitted that staff  
19 understands those because what if what staff understand  
20 and what Mr. Expert want to say (inaudible) for Measure D  
21 they should be aligned. If the interpretation and their  
22 understanding is different and what the other expert has  
23 to say, so I would like to say let him speak about the  
24 Measure D, and I want to hear from the staff do they agree  
25 with what our expert says.

1 HEARING OFFICER CELLI: Now --

2 MR. SINGH: That's information we want to  
3 explore.

4 HEARING OFFICER CELLI: I understand. Here's the  
5 situation. Staff was given an opportunity to  
6 cross-examine. They asked their one question. We can't  
7 do the thinking for them. So they ask the question on  
8 cross-examination they wanted to ask. So I'm not sure  
9 what else we can do for you there.

10 MR. SINGH: So let us say for example I do not  
11 have (inaudible) the Measure D.

12 HEARING OFFICER CELLI: You don't have --

13 MR. SINGH: I do not understand Measure D intent  
14 and many other Mountain House residents that do not  
15 understand what Measure D is. So isn't that opportunity  
16 that we can ask him explain in depth and how does the  
17 things are being evolved. Otherwise --

18 HEARING OFFICER CELLI: This is actually -- let  
19 me make something really clear. This isn't a class in  
20 land use. This isn't really at all an educational or  
21 informational hearing. We've had informational hearings  
22 here before. All of the evidence is presumably in the  
23 docket. People can get it. The purpose of today is to  
24 take testimony and put it in your record. And that's what  
25 we're trying to do.

1           So I'm not really interested in having a  
2   dissertation on Measure D today. We already received  
3   that. That's what the testimony -- that's why we have  
4   people (inaudible) and submit their testimony early so we  
5   know what the testimony is. We've received the testimony  
6   and we're including it in the record.

7           MR. SINGH: Mr. Celli, for you 15 minutes and  
8   that is (inaudible) a lifetime burden these minorities  
9   will be getting until death. Is your 15 minutes important  
10  is the staff Commission 15 minutes are important then  
11  having minority getting this burden for until death. So  
12  we need to have more information of Measure D for 15  
13  minutes. I'm not asking for hours and hours.

14           HEARING OFFICER CELLI: My suggestion is this:  
15  My suggestion is maybe since Mr. Schneider was a witness  
16  that you listed as your witness, you have a private  
17  conversation with Mr. Schneider. And so we're not going  
18  to take the time to do that today.

19           MR. SINGH: So if there is a -- I made a mistake  
20  basically and that mistake should be recognized and if you  
21  can add let me ask some of the questions --

22           HEARING OFFICER CELLI: What would be your  
23  question?

24           MR. SINGH: My question would be can you please  
25  explain --

1 (Interruption in the proceedings.)

2 HEARING OFFICER CELLI: We're going to go off the  
3 record for a moment.

4 (Off record.)

5 HEARING OFFICER CELLI: So I finished with you,  
6 Mr. Singh? The Measure D is moved in -- is Exhibit 414 in  
7 its entirety; isn't that correct?

8 MR. SARVEY: No. 414 is the ECAP. It's not  
9 Measure D.

10 HEARING OFFICER CELLI: It's the ECAP.

11 MR. SARVEY: Although we could certainly offer  
12 that as an exhibit. We have a copy here and we would be  
13 glad to introduce it into the record.

14 HEARING OFFICER CELLI: That's fine. We can take  
15 official notice. I really don't need it. I wanted to --  
16 I thought it was for Mr. Singh's benefit that it were an  
17 exhibit he'd be able to look at. But the determination is  
18 if it's inappropriate for the Committee to stop and  
19 educate anybody on what the law is in any regard that's an  
20 issue.

21 So the other thing is you have a lawyer, Mr.  
22 Travis Miller. And you can discuss Measure D with Travis  
23 Miller and he can explain to you his interpretation of  
24 Measure D. And that's the best we can do for you today.

25 MR. SINGH: It is not only about me, but it is

1 about the residents as we mentioned. And in a moment --

2 HEARING OFFICER CELLI: Mr. Miller as your  
3 neighbor might be willing to help some other residents out  
4 too, help them understand and explain it. But this is not  
5 the purpose today. This isn't an educational thing. We  
6 are here to take in the evidence.

7 MR. SINGH: By the time that your decision will  
8 come. I want to make a statement here that are we in --  
9 (inaudible) I accept this testimony now are they totally  
10 100 percent agree what is in the testimony. It's a paper  
11 right. So you say I (inaudible) and that gives leverage  
12 to all of you guys to bypass everything. So now the  
13 question is do they (inaudible) and you say how people  
14 have been prepared here and we are asking the question.  
15 We are not getting the answers from them. And it is  
16 basically --

17 HEARING OFFICER CELLI: And that's litigation.  
18 You know, you get the answers you get and you do your  
19 best. And people object and you don't get the answer and  
20 we overrule or we sustain the objection. The record is  
21 always a little bit of a crazy quilt. So we're doing our  
22 best. We're not going to take this time now. And we've  
23 taken enough as it is.

24 MR. SINGH: This is the last thing I want to say.  
25 As you know you that you haven't (inaudible) our community

1 is minority or not and the translation of those documents  
2 into the native language will happen or not happen. But  
3 this is the right time that we should ask the communities  
4 and the community will we translate the documents for the  
5 Measure D. Mr. Miller cannot do that. And we are in a  
6 position until you determine we're minority or not --

7 HEARING OFFICER CELLI: We have so much  
8 opportunity before filing your prehearing statements to  
9 determine what you wanted to put into evidence, who you  
10 were going to call. You, yourself, said you were calling  
11 Mr. Schneider as your witness. So you knew of his  
12 existence. You had the opportunity to speak to him, call  
13 him. This was months ago. So we need to move on. And  
14 the ruling -- so your request is denied.

15 I'm going to go to Mr. Simpson.

16 MR. SINGH: So I would like to make a motion to  
17 adjourn for this hearing.

18 HEARING OFFICER CELLI: So your motion is denied.  
19 We're not going to adjourn.

20 MR. SINGH: And it is the motion from  
21 (inaudible).

22 HEARING OFFICER CELLI: Mr. Simpson.

23 MR. SIMPSON: I'm with the motion.

24 HEARING OFFICER CELLI: Mr. Simpson, I wanted to  
25 ask, did you have your hand raised because you wanted to

1 weigh in on this opposing witness question?

2 MR. SIMPSON: I have questions for the witness.

3 Does that answer your question?

4 HEARING OFFICER CELLI: Yeah. What are your  
5 questions for this witness?

6 MR. SIMPSON: I'd like to know if the witness  
7 agrees with Mr. Wheatland's contention that in order to  
8 have a complete record we need more information on other  
9 approved and proposed projects like the two you referenced  
10 and the one he brought on the record.

11 HEARING OFFICER CELLI: That's not an appropriate  
12 question. We don't really care whether he agrees with Mr.  
13 Wheatland or not. His testimony is in.

14 MR. SIMPSON: It's redirect, sir.

15 HEARING OFFICER CELLI: Okay. But we didn't have  
16 redirect because when I asked Mr. Sarvey if he wanted to  
17 redirect he said no. So we're done with this witness.

18 But the Committee wanted to give the opportunity to the  
19 intervenors to raise any questions if it was like a simple  
20 question like (inaudible) or what have you.

21 MR. SIMPSON: Well, sir, the Committee took more  
22 time preventing the intervenors from asking questions than  
23 it would have took to ask them.

24 HEARING OFFICER CELLI: Isn't that the way it  
25 goes. Yes. So with that, we're going to excuse this

1 witness.

2 MR. SARVEY: Mr. Celli, we'd like the opportunity  
3 to hold the record open to make a complete record and get  
4 whatever information we have on these other solar projects  
5 and enter them into the record because there was Mr.  
6 Wheatland's purpose was a complete record. So we would  
7 like that opportunity, if possible.

8 HEARING OFFICER CELLI: Okay. So you put on --  
9 let's be clear. Your testimony has now been received into  
10 evidence. I have Exhibit 402 and 414.

11 MR. SARVEY: Yes, sir.

12 HEARING OFFICER CELLI: Okay. And then there was  
13 some direct that we started and we said you didn't need to  
14 go there because basically everything we had was already  
15 in writing. Gave the parties an opportunity to cross.  
16 One of the cross-examination questions had to do with this  
17 new or the only thing really came in on cross was this  
18 exhibit 69, which is draft resolution Z-11-XX of the East  
19 County Board zoning adjustments adopted at the hearing on  
20 January 13th, 2011, concerning plan 2010-00126. And  
21 frankly, since this is the first I've seen, I have no idea  
22 what its use is in the record.

23 MR. SARVEY: Neither do I.

24 HEARING OFFICER CELLI: And we gave him a moment  
25 to take a look at it. I don't know what it means. If you

1 didn't have any further questions about this, then if you  
2 don't redirect, then we close the record on it.

3 MR. SARVEY: No. I'm not asking redirect. I'm  
4 just asking if we get the rest of the information. Mr.  
5 Wheatland wanted a complete record whether we could submit  
6 it. That's all.

7 HEARING OFFICER CELLI: I don't understand  
8 what -- is there something missing? This is a parcel  
9 document that there's more of this document?

10 MR. SARVEY: Of course, it's a parcel document.  
11 There's a lot of document that go with this. But we're  
12 interested on providing the information on a thousand  
13 megawatts solar farm -- thousand acre -- excuse me --  
14 solar farm and the 100 acre solar farm. Just so the  
15 Committee understands how much conversion of agricultural  
16 lands is happening up here.

17 HEARING OFFICER CELLI: Yeah, we welcome that.  
18 So what I want to know is do you have a document in mind  
19 right now?

20 MR. SARVEY: No. We'll be contacting Alameda  
21 County tomorrow to see what we have available and we'll  
22 introduce it. And if anybody has objections, of course,  
23 we'll submit it and you'll rule on it.

24 HEARING OFFICER CELLI: So I want to be clear  
25 what we're accepting would be a document that establishes

1 or purports to establish that there is a 1,000 acre solar  
2 farm going in what county? Alameda?

3 MR. SARVEY: It's in Alameda County, yes, sir.  
4 It's in eastern Alameda County.

5 HEARING OFFICER CELLI: In eastern Alameda.  
6 Okay. So that's acceptable.

7 MR. SARVEY: Thank you, sir.

8 HEARING OFFICER CELLI: Thank you. And thank you  
9 for coming in Mr. Schneider. Sorry to keep you so late.

10 The land use testimony and witnesses according to  
11 what I received from everybody's prehearing conference  
12 statement was Mr. Sarvey, the Sierra Club and Jass Singh  
13 CalPilots and -- CalPilots, you had a land use expert.  
14 You are the land use expert, okay. So Rajesh Dighe had  
15 Dick Schneider written down as your witness. But we  
16 received his testimony already; correct? And the same  
17 with Sierra Club, Robert Sarvey, Jass Singh.

18 CalPilots, your witness is just yourself on land  
19 use? Do you want to come forward -- or actually sit where  
20 you are and be sworn. Please stand actually and be sworn.

21 (Whereupon the witness was sworn.)

22 MR. WILSON: I do.

23 MR. PETTY: Please state your name for the  
24 record.

25 MR. WILSON: Andy Wilson, California Pilots.

1 DIRECT EXAMINATION

2 HEARING OFFICER CELLI: Mr. Wilson, what were  
3 your exhibits that you wanted to put in with regard to  
4 land use?

5 MR. WILSON: Exhibit 704.

6 HEARING OFFICER CELLI: Only?

7 MR. WILSON: Yes, 704 has two parts to it.  
8 There's the land use and there's the aviation part of it.  
9 So the land use --

10 HEARING OFFICER CELLI: Is there any objection  
11 from applicant to the admission of Exhibit 704?

12 MR. WHEATLAND: No objection.

13 HEARING OFFICER CELLI: Is there any objection by  
14 staff to the admission of Exhibit 704 for identification?

15 STAFF COUNSEL WILLIS: We don't have a 704 on our  
16 list. Is there another number?

17 HEARING OFFICER CELLI: 704 on the tentative  
18 list --

19 MR. WILSON: Because 704 was asked by CalPilots  
20 of the applicant.

21 HEARING OFFICER CELLI: That's right. I'm sorry.  
22 I remember --

23 MR. WILSON: And he asked if I wanted to enter  
24 that as evidence.

25 HEARING OFFICER CELLI: 704 is the rebuttal

1 testimony. Do I have that right?

2 MR. WILSON: Yes, Mr. Celli.

3 STAFF COUNSEL WILLIS: And we have no objection.

4 HEARING OFFICER CELLI: No objection. So with  
5 that, Exhibit 704 will be received into evidence as  
6 Exhibit 704.

7 Mr. Wilson, do you have any testimony other than  
8 what you put in as rebuttal?

9 MR. WILSON: No, I don't. But I would like to  
10 emphasize that the same subject was covered in land use by  
11 the staff. And this is the issue that came up with -- we  
12 have a ruling by the Contra Costa County Airport Land Use  
13 Commission. And this ruling has just disappeared. So  
14 what California Pilots is saying is that we feel that  
15 Caltrans Aeronautics has to be notified if there's any  
16 override. Contra Costa Airport Land Use Commission has to  
17 be notified and any letters or rules or laws that they  
18 felt didn't apply in this ruling, they have to be  
19 notified. And they haven't. And that's the key issue.

20 HEARING OFFICER CELLI: Okay. The evidence is  
21 in. Is there anything further?

22 MR. WILSON: No, Mr. Celli. Thank you.

23 HEARING OFFICER CELLI: Thank you.

24 So with that, I'm about to close the record on  
25 land use. Any comment on that, staff?

1 STAFF COUNSEL WILLIS: No comment.

2 HEARING OFFICER CELLI: Sarvey?

3 MR. SARVEY: Just that we're going to be allowed  
4 to (inaudible) document on the solar.

5 HEARING OFFICER CELLI: Thank you. That's  
6 correct. We're going to close the record but allowing in  
7 that additional exhibit having to do with the thousand  
8 acres of proposed solar.

9 Morgan Groover.

10 MR. GROOVER: None.

11 HEARING OFFICER CELLI: Mr. Dighe, any comments  
12 further on land?

13 MR. DIGHE: No.

14 HEARING OFFICER CELLI: Mr. Wilson?

15 MR. WILSON: No.

16 HEARING OFFICER CELLI: Mr. Singh?

17 MR. SINGH: I just want to make a -- for example,  
18 staff haven't seen the exhibit, right? They haven't read  
19 it. And --

20 HEARING OFFICER CELLI: That's not really true.  
21 Staff has received the rebuttal testimony. They didn't  
22 know if it was Exhibit 704.

23 MR. SINGH: So staff have seen that and they have  
24 read it, right?

25 HEARING OFFICER CELLI: I imagine so. I don't

1 really care if they have or not.

2 MR. SINGH: Can you please ask them if they have  
3 read that.

4 HEARING OFFICER CELLI: Staff, did you read  
5 Exhibit 704 the rebuttal testimony?

6 STAFF COUNSEL WILLIS: I can only say for myself,  
7 and I did. I can only say for myself, and I did. I did  
8 not testify for my other staff. But I personally read it.

9 HEARING OFFICER CELLI: Okay. Ms. Willis has  
10 read it and I see Mr. Hoffman is nodding his head as well.

11 MR. SINGH: So they have read it.

12 HEARING OFFICER CELLI: Apparently so.

13 MR. HOFFMAN: Yes, I have read it.

14 HEARING OFFICER CELLI: There you go.

15 MR. SINGH: Okay. And do you have any objection  
16 on that? Or you have objection? No. You are accepting  
17 as it is? I want to make a record on that.

18 HEARING OFFICER CELLI: Yeah. It's just evidence  
19 coming in, Mr. Singh. It doesn't matter whether you agree  
20 with it or not agree with it. They don't object to its  
21 introduction into the record.

22 MR. SINGH: Just for -- I'm not a lawyer, right.  
23 I don't understand the terminology. But I'm learning  
24 throughout this hearing.

25 Now, when somebody hasn't read any document, how

1 come the person can say I don't object it. I just want to  
2 make --

3 HEARING OFFICER CELLI: They said they read it.  
4 And therefore they said they have no objection.

5 MR. SINGH: But before that they were just  
6 couldn't find the document and they were asking you. So  
7 that is my question -- just want to bring to your kind  
8 attention. Thank you.

9 HEARING OFFICER CELLI: Thank you.

10 Rob Simpson, anything further regarding land use?

11 MR. SIMPSON: I believe my testimony regarding  
12 property values is land use testimony.

13 HEARING OFFICER CELLI: I'm sorry. I didn't hear  
14 you.

15 MR. SIMPSON: I believe my testimony regarding  
16 property values is a land use issue.

17 HEARING OFFICER CELLI: Oh, that's Exhibit 1,000.  
18 Do you have a motion with regard to Exhibit 1,000?

19 MR. WHEATLAND: Is it socio or land use?

20 HEARING OFFICER CELLI: He had he was a broker.  
21 I remember it was a one-page document and he mentioned he  
22 was a real estate broker and had a comment I think about  
23 property values or something like that as I recall. I  
24 didn't memorize it. I've seen it.

25 So at this time, are you moving that exhibit into

1 the record?

2 MR. SIMPSON: Yes, sir.

3 HEARING OFFICER CELLI: Is there any objection to  
4 Exhibit 1,000 marked for identification to being received  
5 into the evidence by applicant?

6 MR. WHEATLAND: No objection.

7 HEARING OFFICER CELLI: Is there any objection by  
8 staff?

9 STAFF COUNSEL WILLIS: No objection.

10 HEARING OFFICER CELLI: Is there any objection by  
11 Mountain House Community Service District?

12 MR. GROOVER: None.

13 HEARING OFFICER CELLI: Thank you.

14 With that, Exhibit 1,000 will be received into  
15 evidence.

16 MR. SIMPSON: Will you check the other  
17 intervenors to see if they have any objection?

18 HEARING OFFICER CELLI: CalPilots, any objection  
19 to Exhibit 1,000?

20 MR. WILSON: No objection.

21 HEARING OFFICER CELLI: Okay. I didn't think.  
22 Thank you. With that, it's received into evidence.

23 (Whereupon, the above-referenced document  
24 was admitted into evidence by the  
25 Hearing Officer.)

1           MR. WHEATLAND: You haven't checked -- Hearing  
2 Officer Celli, you went around the table, but I wanted to  
3 add two things on land use before we close it out. Okay.

4           HEARING OFFICER CELLI: You're echoing a little  
5 bit. I don't know if we can fix that.

6           MR. WHEATLAND: First, I don't have any questions  
7 about Exhibit 704, but I will have questions about Mr.  
8 Wilson's resume or statement of qualification. With your  
9 consent what I'd like to do is to be able to ask those  
10 questions when he presents his aviation testimony because  
11 he'll come back and be testifying on that matter.

12          MR. SIMPSON: You have a third microphone there.  
13 That's probably where the echo is coming from.

14          HEARING OFFICER CELLI: I think -- is that  
15 your -- do you know what that is, Mr. Petty?

16          MR. WHEATLAND: I'd like to ask questions about  
17 his qualifications when he takes the stand on aviation  
18 rather than do that now. And I'd also like to suggest to  
19 Mr. Wilson just as a way of providing that if he was able  
20 to provide a detailed resume that would state his academic  
21 training and his professional experience in some detail it  
22 might shorten the questions that I would have.

23          HEARING OFFICER CELLI: Is that acceptable, Mr.  
24 Wilson?

25          MR. WILSON: That's acceptable.

1           MR. WHEATLAND: The other thing is I do intend to  
2 move into evidence Exhibit 69, but I would like the  
3 Committee and the parties an opportunity to review it  
4 before I do that. So if I could have leave to move that  
5 in tomorrow.

6           HEARING OFFICER CELLI: 69 is --

7           MR. WHEATLAND: That's the resolution that was  
8 adopted approving the three megawatt solar project by  
9 Alameda County. It's a matter that the Committee could  
10 take notice of because it's additional document of Alameda  
11 County. I think it's relevant in two respects. One  
12 because the Commission needs to consider other energy  
13 projects that are approved and being considered in the  
14 immediate vicinity of our project.

15           HEARING OFFICER CELLI: We will allow it in for  
16 the same reason we'll allow Mr. Sarvey's evidence in. But  
17 my question is I don't have a signed copy. What I have is  
18 three pages long.

19           MR. WHEATLAND: We'll provide a signed copy.

20           HEARING OFFICER CELLI: How many pages is the  
21 document? Mine ends at three after additional materials  
22 will be submitted for the planning department prior to  
23 obtaining a building permit.

24           MR. WHEATLAND: Right. I don't believe that that  
25 is a signed copy. So I'll provide the signed adopted

1 copy.

2 HEARING OFFICER CELLI: Okay. Thank you. With  
3 that, land use subject to -- land use is closed. We're on  
4 to air quality.

5 MR. SINGH: Mr. Celli, I just want to say two  
6 things, very short and briefly.

7 HEARING OFFICER CELLI: I'm sorry. I can't even  
8 hear you.

9 MR. SINGH: I just want to make a comment. Now,  
10 we saw --

11 HEARING OFFICER CELLI: Before you do, let me  
12 just ask applicant if you can have your air quality  
13 people, your panel.

14 MR. WHEATLAND: We do. But can we go off the  
15 record for a moment?

16 HEARING OFFICER CELLI: Okay.

17 MR. WHEATLAND: Just to talk about scheduling.

18 HEARING OFFICER CELLI: Well, let's talk about  
19 scheduling on the record.

20 MR. WHEATLAND: My understanding there may be  
21 some air quality witnesses, particularly San Joaquin  
22 County, that may not be able to be here tomorrow. So if  
23 there are any air quality witnesses that have a scheduling  
24 constraint and cannot come forward we would be more than  
25 happy to take them out of order and put our witnesses on

1 at such time as you have taken the witnesses that have the  
2 time constraint.

3 STAFF COUNSEL WILLIS: Yes, Mr. Celli. We also  
4 have the Bay Area Air District witness, and she's been  
5 here most of the day and is unable to come back tomorrow.  
6 So we had asked Mr. Wheatland if it would be possible with  
7 your consent that we switch order and have the staff's  
8 panel including the air district witness go first so she  
9 can actually get her testimony in.

10 HEARING OFFICER CELLI: So are we essentially  
11 taking staff's panel first, applicant's panel second?

12 STAFF COUNSEL WILLIS: I think -- Mr. Wheatland,  
13 is that correct?

14 MR. WHEATLAND: Yes. That would be fine with us.

15 STAFF COUNSEL WILLIS: And then Mr. Sweeney from  
16 the San Joaquin Air District is here also, and he won't be  
17 able to come back tomorrow as well.

18 HEARING OFFICER CELLI: Let's get him up here and  
19 get him sworn.

20 STAFF COUNSEL WILLIS: And one more point of  
21 housekeeping. Do we still think we're going to get to  
22 traffic and transportation tonight?

23 HEARING OFFICER CELLI: We're going to do our  
24 darnedest. See how we do here. It's 8:00. Let's move  
25 with alacrity, folks.

1 Mr. Singh, go ahead.

2 MR. SINGH: Yes, now, today we saw Alameda as  
3 well as Contra Costa County.

4 HEARING OFFICER CELLI: You need to really -- I  
5 can hardly hear you. Please speak loudly.

6 MR. SINGH: Today, we saw Alameda. And can you  
7 ask everybody to be quiet so I can ask my question? Let's  
8 make silence here so we can have a record here. Is the  
9 record being reported right now?

10 HEARING OFFICER CELLI: Yeah. Let's wait. Come  
11 on in. Mr. Singh had a question and I couldn't hear him  
12 because it was so loud in the room. I couldn't hear him.  
13 Mr. Singh, I really need you to speak really loudly into  
14 your mike.

15 MR. SINGH: So Mr. Celli, there is a request  
16 (inaudible). We saw Contra Costa County and Alameda  
17 County, they are in favor of this project, which is  
18 Mariposa project. And you can see why they are in favor  
19 because they got the mitigation money at the other end we  
20 understand that Contra Costa County their Board of  
21 Directors and the Supervisors got \$800,000 as a mitigation  
22 plan if I am correct. (inaudible) they have been told  
23 they will get it if they present form X, Y, Z, during this  
24 hearing. So we need to get more information on that of  
25 what was the deal being contracted by the applicant and

1 with the Contra Costa Board of Directors for 800,000. So  
2 I would like to make it in the record and we need more  
3 information on that.

4 HEARING OFFICER CELLI: Okay. One moment.  
5 Noted.

6 Let's get these witnesses sworn.  
7 (Whereupon the witnesses were sworn.)

8 MR. PETTY: You may be seated. And please state  
9 and spell your names for the record.

10 MR. LAYTON: I am Mathew Layton, L-a-y-t-o-n.

11 MS. CABRAL: My name is Brenda Cabral.  
12 B-r-e-n-d-a, C-a-b-r-a-l.

13 MS. LEYVA: My name is Jacquelyn Leyva,  
14 L-e-y-v-a.

15 MS. QIAN: My name is Wenjun Qian, W-e-n-j-u-n,  
16 Q-i-a-n.

17 DR. ODOEMELAM: My name is Dr. Obed Odoemelam.

18 HEARING OFFICER CELLI: Please proceed.

19 DIRECT EXAMINATION

20 STAFF COUNSEL WILLIS: Thank you. Just as a  
21 point of clarification, Ms. Cabral is being represented  
22 today by Randi Wallach, Assistant Counsel for Bay Area Air  
23 Quality Management District, who's seated to my right.

24 HEARING OFFICER CELLI: I am sorry. I didn't get  
25 the name.

1 STAFF COUNSEL WILLIS: It's Randi Wallach,  
2 W-a-l-l-a-c-h.

3 HEARING OFFICER CELLI: Randi Wallach. And  
4 you're representing Wenjun Qian?

5 STAFF COUNSEL WILLIS: No. She's representing  
6 Brenda Cabral.

7 HEARING OFFICER CELLI: Sorry. Thank you.

8 STAFF COUNSEL WILLIS: I'd like to start with  
9 Matthew Layton.

10 Did you supervise the preparation of the air  
11 quality testimony in the supplemental staff assessment  
12 marked Exhibit 301?

13 MR. LAYTON: I did.

14 STAFF COUNSEL WILLIS: Did you provide a  
15 statement of your qualifications?

16 MR. LAYTON: I did.

17 STAFF COUNSEL WILLIS: Do you have any changes to  
18 the testimony?

19 MR. LAYTON: I do not.

20 STAFF COUNSEL WILLIS: And do the opinions  
21 contained in your testimony represent your best  
22 professional judgment?

23 MR. LAYTON: Yes.

24 HEARING OFFICER CELLI: And now to Jacquelyn  
25 Leyva. Did you assist in the preparation of the air

1 quality testimony in the supplemental staff assessment  
2 marked Exhibit 301?

3 MS. LEYVA: I did.

4 STAFF COUNSEL WILLIS: Was the statement of your  
5 qualifications attached to your testimony?

6 MS. LEYVA: It was.

7 STAFF COUNSEL WILLIS: And do the opinions  
8 contained in your testimony represent your best  
9 professional judgment?

10 MS. LEYVA: Yes.

11 STAFF COUNSEL WILLIS: Wenjun Qian, did you  
12 assist in the preparation of the air quality testimony in  
13 this supplemental staff assessment?

14 MS. QIAN: Yes, I did.

15 STAFF COUNSEL WILLIS: Was the statement of your  
16 qualifications attached to your testimony?

17 MS. QIAN: Yes, it was.

18 STAFF COUNSEL WILLIS: And do the opinions  
19 contained in your testimony represent your best  
20 professional judgment?

21 MS. QIAN: Yes.

22 STAFF COUNSEL WILLIS: Ms. Cabral, could you just  
23 for the record please state the agency you worked for and  
24 your position?

25 MS. CABRAL: I work for the Bay Area Air Quality

1 Management District. I'm a supervising air quality  
2 engineer and I've worked for them for about 21 years.

3 STAFF COUNSEL WILLIS: Thank you. Tonight are  
4 you sponsoring the Bay Area Air Quality Management  
5 District's Final Determination of Compliance marked  
6 Exhibit 302?

7 MS. CABRAL: I am.

8 STAFF COUNSEL WILLIS: Thank you. Dr. Odoemelam,  
9 did you prepare the public health testimony in the  
10 supplemental staff assessment marked Exhibit 301?

11 DR. ODOEMELAM: Yes, I did.

12 STAFF COUNSEL WILLIS: And did you provide a  
13 statement of your qualifications?

14 DR. ODOEMELAM: I did.

15 STAFF COUNSEL WILLIS: And do the opinions  
16 contained in your testimony represent your best  
17 professional judgment?

18 DR. ODOEMELAM: Yes, it does.

19 STAFF COUNSEL WILLIS: And did you perform a  
20 public health risk assessment?

21 DR. ODOEMELAM: Yes, I did.

22 STAFF COUNSEL WILLIS: Could you please describe  
23 briefly how you conducted your assessment?

24 DR. ODOEMELAM: The assessment that was  
25 pollutants that were called non-criteria pollutants for

1 which there are no specific what is standards, the  
2 approach is to establish, assess the emission levels and  
3 the risks expected from them and compare those risks from  
4 levels of significance as established through  
5 methodologies. And for analysis, I established that the  
6 pollutants of concern is toxic pollutants from the  
7 facility would be emitted at levels that pose a risk that  
8 is not significant in terms of the potential for health  
9 and for cancer and non-cancer health effects. So we make  
10 no -- my recommendation would be that the risks would be  
11 low and make no further mitigation recommendations for  
12 further mitigation.

13 STAFF COUNSEL WILLIS: Thank you. These  
14 witnesses are now available for cross-examination.

15 HEARING OFFICER CELLI: Thank you. I think what  
16 we're going to have to face the reality of at this time  
17 because it's 8:16 we're probably not going to get past air  
18 quality tonight. That being the case, I think staff, you  
19 might as well let your people go who are not air quality  
20 people. Because I assume that there is quite a bit of air  
21 quality cross-examination that needs to take place.

22 STAFF COUNSEL WILLIS: Thank you.

23 HEARING OFFICER CELLI: So if you could go ahead  
24 and cut them loose.

25 Also, I have a question with regard -- before I

1 open up cross, I'd like to take in any -- entertain any  
2 motion to have exhibits received into evidence into regard  
3 to air quality at this time.

4 STAFF COUNSEL WILLIS: The only -- since I'm  
5 assuming we moved the entire Exhibit 301, then we would  
6 like to move Exhibit 302.

7 HEARING OFFICER CELLI: We received 301 and 302,  
8 but isn't the FDOC --

9 STAFF COUNSEL WILLIS: Is 302.

10 HEARING OFFICER CELLI: Oh, so we received 300  
11 and 301. There is a motion at this time to receive the  
12 FDOC, Final Determination of Compliance, which is Exhibit  
13 302. Is there any other air quality exhibits that you  
14 want?

15 STAFF COUNSEL WILLIS: No. That actually is all  
16 of staff's exhibits.

17 HEARING OFFICER CELLI: Okay. Any objection, Mr.  
18 Sarvey, to Exhibit 302?

19 MR. SARVEY: No objection.

20 HEARING OFFICER CELLI: Any objection from  
21 Mountain House?

22 MR. GROOVER: None.

23 HEARING OFFICER CELLI: Any objection, Mr. Dighe?  
24 Where did Mr. Dighe go? Mr. Dighe seems to have left the  
25 room.

1 Mr. Wilson, any objection to the FDOC?

2 MR. WILSON: No objection.

3 HEARING OFFICER CELLI: Mr. Simpson, any  
4 objection to 302?

5 MR. SIMPSON: No objection.

6 HEARING OFFICER CELLI: Mr. Wheatland, any  
7 objection to 302?

8 MR. WHEATLAND: No objection.

9 HEARING OFFICER CELLI: Okay. 302 will be  
10 received into evidence.

11 (Whereupon, the above-referenced document  
12 was admitted into evidence by the  
13 Hearing Officer.)

14 HEARING OFFICER CELLI: And cross-examination  
15 begins with Mr. Sarvey. And -- I'm sorry. Go ahead, Mr.  
16 Wilson.

17 MR. WILSON: Mr. Celli, for the record, CalPilots  
18 let their witnesses go. If you notice I was going back  
19 and forth.

20 HEARING OFFICER CELLI: My apologies we went a  
21 little longer. So we need to -- folks, I just want to say  
22 what we're trying to do is strike a balance between  
23 getting the evidence in in an efficient manner and giving  
24 the parties a real opportunity to test the evidence and we  
25 do our best. We've gone a little long. I think the air



1 MR. SIMPSON: I can't hear you.

2 HEARING OFFICER CELLI: If I can have you -- what  
3 you need to do is speak right into that microphone.

4 DR. ODOEMELAM: We typically do not address the  
5 (inaudible) of criteria pollutants in our public health  
6 analysis. That is done in our air quality analysis. But  
7 we do prepare an analysis showing the health effects on  
8 those criteria pollutants and attached them separately to  
9 our public health analysis.

10 MR. SARVEY: Thank you. I have some questions on  
11 the FDOC. Exhibit 302, Appendix D, page 27 states that  
12 the Bay Area Air Quality Management District draft PM2.5  
13 report concludes that ammonia emissions contribute more  
14 strongly to PM2.5 formation than other types of precursor  
15 emissions, including NOx. Did the report also conclude  
16 that ammonia contributes more to PM2.5 formation than SOX  
17 emissions as well?

18 MS. CABRAL: The FDOC did not estimate or compare  
19 the difference between SOX and ammonia.

20 MR. SARVEY: I'm speaking to your PM2.5 report,  
21 your analysis that you submitted as a footnote to the FDOC  
22 and essentially I'm asking you -- what your answer is SOX  
23 is not or is --

24 MS. CABRAL: You asked me if the analysis  
25 compared the impact of SO2 to ammonia and I don't believe

1 it did.

2 MR. SARVEY: I asked you did the report. Did the  
3 report that you site conclude that ammonia emissions  
4 contribute more to PM2.5 formation than SOX emissions  
5 only? In your report you clearly state that draft report  
6 concludes that ammonia emissions contribute more strongly  
7 to PM2.5 formation than other pollutants such as NOx is  
8 the same conclusion for SOX as well from your report? Not  
9 from your analysis.

10 MS. CABRAL: I don't know. I haven't read that  
11 part of the report or I don't know if the report concludes  
12 that.

13 MR. SARVEY: Exhibit 302, Appendix D, page 27  
14 states during the winter season when PM2.5 may accumulate  
15 to harmful levels, Mariposa Energy Center would be  
16 downwind of the Central Valley. As such, ammonia emission  
17 from this facility would be unlikely to significantly  
18 impact Central Valley air quality. From that, can we  
19 conclude that during the PM season you expect most of the  
20 emissions to impact the Bay Area Air Quality Management  
21 District?

22 MS. CABRAL: Yes.

23 MR. SARVEY: Yes.

24 In terms of nitric acid concentration, your PM2.5  
25 study states on page 30 that nitric acid was only able to

1 accumulate for a remote locations over coast range,  
2 Pacific Ocean and to a lesser extent rural location near  
3 the Central Valley Rim. Is that another way of saying  
4 these areas are not nitric acid limited?

5 MS. CABRAL: During most of the year, I  
6 understand that the Bay Area is nitric acid limited.

7 MR. SARVEY: Exhibit 302, Appendix D, page 12 the  
8 district states the air district does not have the  
9 appropriate tools to include fine particulate matter in  
10 its formal health risk assessment. When do you expect the  
11 district will have that ability?

12 MS. CABRAL: The State agency called OEHHA needs  
13 to give us a procedure or information to determine how to  
14 use fine particulate in a risk assessment. So we would  
15 depend on OEHHA before we could do that.

16 MR. SARVEY: Thank you. On appendix D, page 20  
17 it states the CEC staff assessment and the applicant's  
18 application for certification state that the water that is  
19 used for water injection will be de-mineralized so that  
20 the dissolved solvents are five parts per million. Water  
21 injection will not be a significant contributor to  
22 particular matter emissions less than .14 pounds. Is that  
23 .14 pounds per turbine or all turbines operating combined?

24 MS. CABRAL: That would be .14 pounds per turbine  
25 per hour.

1           MR. SARVEY: Thank you. On appendix D, page 39  
2 the district responds to a public comment which states  
3 that 66 percent of the project's water usage could be  
4 eliminated by the use of dry load NOx combustion. The  
5 district response is the Bay Area doesn't regulate the  
6 water use of the facility. Should the water use of the  
7 facility be included in the BACT analysis in terms of  
8 determining whether the turbine would be cost effective?

9           MS. CABRAL: There was an analysis -- a short  
10 analysis on the cost from the water injected turbans to  
11 the dry load NOx turbans in the response. It gave a  
12 ballpark figure on what it would cost. And what it would  
13 mean in dollars per ton reduced. It was a rough  
14 calculation. And it's true it did not subtract the cost  
15 of the water. That's a refinement that may or may not  
16 have made a difference.

17           MR. SARVEY: Appendix D, page 23 states that the  
18 district acknowledges that heat rate of the LM6000 PC is  
19 not only higher than the LM6000 PF gas turbine which has  
20 dry low NOx combustors. The difference in heat rates  
21 means the LM6000 PC will burn slightly more fuel and will  
22 have slightly higher greenhouse gas emission than the  
23 LM6000 PF. Shouldn't that be a consideration in your BACT  
24 analysis? Or is that also an Energy Commission issue?

25           MS. CABRAL: At this moment, there was no

1 greenhouse gas standard, no BACT standard for greenhouse  
2 gases. And while when we calculate how much more the  
3 greenhouse gases would have been, we don't regulate  
4 greenhouse gases at this time.

5 MR. SARVEY: Okay. Thank you. The PDOC, exhibit  
6 302 states on Page 19, "The district has concluded that  
7 imposing a numeral emissions limit in addition to  
8 requiring BACT technologies would not be warranted given  
9 that there are no add-on control devices that the facility  
10 can use to control PM emissions." Didn't the applicant  
11 themselves propose a 2.5 pound per hour PM10 limit as BACT  
12 for these turbines?

13 MS. CABRAL: Yes.

14 HEARING OFFICER CELLI: Mr. Sarvey, what exhibit  
15 did you just say that was?

16 MR. SARVEY: That is the same exhibit -- I am  
17 sorry, Mr. Celli. All of these questions of the FDOC  
18 would be Exhibit 302.

19 HEARING OFFICER CELLI: Okay. I'm sure  
20 inadvertently you called it the PDOC. I didn't know  
21 whether the PDOC was --

22 MR. SARVEY: I'm sorry. FDOC, sir. My mistake.

23 HEARING OFFICER CELLI: So the only thing going  
24 into evidence is the FDOC, right?

25 MR. SARVEY: Yes. And you're right. I meant the

1 FDOC.

2           Hasn't the district provided an hourly numeral  
3 emission limit as BACT for LM6000 turbines in previous  
4 BACT determinations?

5           MS. CABRAL: We've changed our minds on our  
6 approach.

7           MR. SARVEY: The district in 2002 limited the Los  
8 Esteros critical energy facility which used the same  
9 turbines the 2.5 pounds per hour and then in 2006 the  
10 district limited the San Francisco electrical liability  
11 project to 2.5 pounds per hour as BACT. And they were  
12 listed as BACT. Don't the earlier determinations, the  
13 applicant's voluntary proposal to limit the emissions to  
14 2.5 provide a basis for the district to use this as BACT  
15 for this project?

16           MS. CABRAL: The district has decided that best  
17 available control technology in this case is better served  
18 by the technology and not by numeral limit. The district  
19 says that BACT in this case is due to the use of natural  
20 gas. Good combustion practice has demonstrated by the CO  
21 limited, low CO demonstrates good combustion. Best  
22 combustion practice. This facility has inlet filtration  
23 for the air that comes in. The water is mineralized.  
24 There is no hook. There is no way to lower particulate  
25 other than the technology. And therefore a numerical

1 limit doesn't make any sense. We've decided that we are  
2 not going with the one hour, three hour pounds per hour  
3 limit.

4 MR. SARVEY: The Los Esteros Critical Energy  
5 Facility has the 2.5 pound per limit, as I mentioned  
6 earlier. And you have information in your FDOC which  
7 concludes that it's met that limit. Does that not achieve  
8 in practice BACT?

9 MS. CABRAL: The FDOC has 40 or 50 accounts of 40  
10 or 50 tests that show an extreme amount of variability.  
11 And based on conclusions on the variability of the  
12 different tests on the same equipment essentially the same  
13 equipment and looking at the source tests you can see that  
14 there is extreme variability from running to running. It  
15 takes three hours to complete one running and the samples  
16 end up being in the milligram range. There's a potential  
17 for measurement error. So we're extrapolating a milligram  
18 measurement to a source that's going to emit around two to  
19 two and a half pounds. It's about a million -- the  
20 difference between a milligram and two and a half pounds  
21 is about a million. So considering the variability, the  
22 measurement error, the fact that there isn't much more  
23 that can be done to control particulate with natural gas,  
24 we've concluded that the technology is the BACT  
25 determination.

1           MR. SARVEY: Exhibit 302, Appendix D, page 9,  
2 responds to a comment about the increment conception  
3 analysis for the Tesla project, which is Exhibit 412 in  
4 this proceeding. That increment conception analysis  
5 demonstrates that the maximum model 24 hour PM10 increment  
6 consumption is 140 micrograms per cubic meter and the  
7 annual average PM10 increment conception is 30 milligrams  
8 per cubic meter. Although those values exceed the  
9 (inaudible) increment for PM10, the location of the  
10 exceedances in the San Joaquin Valley, which is in  
11 non-attainment for PM10. Can you explain for the public  
12 what impact a 24-hour PM10 increment consumption of 140  
13 micrograms per cubic meter and an annual consumption of 30  
14 micrograms per cubic meter has on their health?

15           MS. CABRAL: I don't know what you're quoting  
16 from. I know that the district did not do the impacts  
17 analysis for the PM10. The CEC did it.

18           MR. SARVEY: I'm referring to your testimony --  
19 well, the FDOC, Appendix D, page 9, if you'd like to take  
20 a moment to take a look at it, that'd be nice.

21           MS. CABRAL: The quote -- the reason for the  
22 quote in the FDOC is merely to give a site for the  
23 conversion of 100 PGB to the 188 micrograms per cubic  
24 meter, merely to show the conversion. The rest of the  
25 document is not part of the testimony.

1 MR. SARVEY: I'll move on.

2 Staff's testimony on page 4.1-43 states the  
3 project will be permitted to operate 4,225 hours per year.  
4 Staff's testimony on page 4.1-6 says the project is  
5 licensed to operate up to 4,000 hours per year. The FDOC  
6 allows any turbine to operate up to 5,200 hours a year.  
7 Which of these numbers is staff's assessment based on?

8 MR. LAYTON: For what pollutant?

9 MR. SARVEY: Any pollutant.

10 MR. SIMPSON: I can't hear.

11 MR. SINGH: I can't hear.

12 MR. LAYTON: I asked for what pollutant.

13 MR. SARVEY: PM2.5 would be my preference. But  
14 you can answer in any pollutant you'd like.

15 MR. LAYTON: PM2.5 is based on 1,400 hours of  
16 operation per turbine per year.

17 HEARING OFFICER CELLI: Was that 1,400?

18 MR. LAYTON: 1-4-0-0. Yes.

19 MR. SARVEY: Normally, staff provides mitigation  
20 for the entire potential emissions from a project. Staff  
21 is proposing to mitigate only 33 percent of the project's  
22 potential emissions which equates to 1,400 hours of  
23 operation. If you're only going to mitigate an  
24 operational scenario of 1400 hours, shouldn't the permit  
25 limit the project's operation to 1400 hours a year?

1           MR. LAYTON: I guess what do you mean by  
2 normally? We do a CEQA analysis and we analyze the  
3 reasonable foreseeable operating scenario. In this case,  
4 for this peaker, we've conservatively picked 1400 hours.

5           MR. SARVEY: Exhibit 301, page 4.1-21  
6 comparatively states another recently approved power plant  
7 project in the Bay Area, Marsh Landing, is permitted to  
8 operate at a capacity of up to 20 percent, equivalent to  
9 1,752 hours annually, which is closer to the expected  
10 capacity factor for this type of power plant. What  
11 capacity factor did staff utilize with the Marsh Landing  
12 mitigation proposal? Was it 1,752 hours or was it 1400  
13 hours or was it 600 hours?

14           MR. LAYTON: I'm not aware.

15           MR. SARVEY: Anybody else?

16           MR. LAYTON: We didn't work on that project.

17           MR. SARVEY: Okay. Good answer.

18           The applicant requested and the district approved  
19 the condition to allow one turbine to operate to 5,200  
20 hours. The entire project is licensed to operate 4,250  
21 hours. Is it not reasonably foreseeable considering this  
22 license for the project that it could run more than 1400  
23 hours a year?

24           MR. LAYTON: We do not believe it's reasonably  
25 foreseeable, no.

1 HEARING OFFICER CELLI: I'm sorry. Mr. Layton,  
2 I'm having a hard time hearing you. Can I ask you to  
3 speak directly into the microphone?

4 MR. LAYTON: We did not think that was reasonable  
5 beyond 1400 hours.

6 MR. SARVEY: And how did you come to the  
7 conclusion that the project wouldn't operate over 1400  
8 hours?

9 MR. LAYTON: We looked at all the peakers in the  
10 state. Simple cycle turbans. The operating capacities  
11 are anywhere from three to five percent, which is about  
12 maximum of 400 hours per year. In fact, I pulled up Tracy  
13 from 2003 to 2008, Tracy has operated exactly 76 hours on  
14 average per year per turbine.

15 Now, that's a slight rounding down, because  
16 that's megawatts divided by capacity. Operating hours  
17 probably are a little bit more if you look at the number  
18 of hours that it might be on-line. So peaker is operating  
19 in the hundreds of hours, not in the thousands of hours.  
20 And this is common statewide. This project is proposed as  
21 a peaker and so we think the three to five percent is  
22 representative. We've conservatively bumped that up to  
23 1400 hours and are basing the mitigation on what we think  
24 is reasonably foreseeable for this project.

25 MR. SARVEY: Did I understand you correctly. You

1 said this peaker is only operated an average of 76 hours?

2 Is that correct?

3 MR. LAYTON: Yes, but again, I caveated that  
4 carefully. This is based on megawatt hours divided by  
5 capacity. Actual operating hours might be online presume  
6 .1 megawatts. So it would be the number of hours is  
7 probably closer to 100 on average for getting operational  
8 the turbine from 2003 to 2009.

9 MR. SARVEY: When staff analyzed the 100 similar  
10 existing peaker projects to arrive at an operating  
11 scenario, did staff take into consideration the permit  
12 limits of the peakers analyzed?

13 MR. LAYTON: We did.

14 MR. SARVEY: What was the average permit limit  
15 per hour?

16 MR. LAYTON: They vary greatly around the state.  
17 Some of them are 8,000 hours. Some of them are about 800  
18 hours.

19 MR. SARVEY: Did staff take into consideration  
20 the heat rating of the 100 similar turbines?

21 MR. LAYTON: We did not.

22 MR. SARVEY: So you don't have an answer for what  
23 the average heat rate of these 100 similar existing  
24 peaking turbines you analyzed?

25 MR. LAYTON: I don't have it in front of me, but

1 I can find it for you.

2 MR. SARVEY: That's good enough.

3 What is the highest annual capacity rate of the  
4 peaker staff examined?

5 MR. LAYTON: I don't remember.

6 MR. SARVEY: What happens if the project operates  
7 more than 1,400 hours since it's permitted for 4,250  
8 hours? Does staff have a condition to deal with that  
9 issue?

10 MR. LAYTON: We do not.

11 MR. SARVEY: Staff's testimony on page 4.1-11  
12 states that almost all combustion related particles being  
13 including those from wood, smoke, and cooking are smaller  
14 than 2.5 microns. What is staff's estimate on the  
15 percentage of particulate matter from this project will be  
16 PM2.5?

17 MR. LAYTON: From what sources on the site?

18 MR. SARVEY: It would be staff's testimony page  
19 4.1-11.

20 MR. LAYTON: What was the question again?

21 MR. SARVEY: I'm basically asking what staff's  
22 assumption is, what percentage of the emissions from this  
23 project -- PM emissions will be PM2.5?

24 MR. LAYTON: What did we say in our testimony?

25 MR. SARVEY: It's not in your testimony.

1 Otherwise, I wouldn't be asking you.

2 MR. LAYTON: Well, generally combustion  
3 byproducts are predominantly from natural gas and  
4 predominantly 2.5. But any time a cooling tower is on  
5 site or utility equipment, the PM10 numbers might be --  
6 contain some PM10 as well.

7 MR. SARVEY: So for a peaker project, that would  
8 be 99 percent?

9 MR. LAYTON: It would be a large number.

10 MR. SARVEY: Okay. I asked you earlier did staff  
11 evaluate the project's PM2.5 concentrations based on a 2.5  
12 pound per hour limit?

13 MR. LAYTON: I believe the modeling was done on  
14 three.

15 MR. SARVEY: What condition has staff proposed  
16 that limits the project's PM2.5 emissions to 2.5 pounds  
17 per hour?

18 MR. LAYTON: I believe there are some conditions  
19 in the -- excuse us for a second. Offhand, I cannot find  
20 that we have placed a limit on PM2.5. We do have  
21 emissions reductions based on the calculated value. So  
22 there is a mitigation.

23 But I agree with Ms. Cabral that PM10 numbers are  
24 very variable and therefore 2.5 is an average number for  
25 the year and will probably be very representative what the

1 emissions will be if there is emissions that goes up to  
2 three or emission test that goes down to two on average,  
3 the number will be for an annual average around 2.5 pounds  
4 per hour.

5 MR. SARVEY: But you have no condition limiting  
6 hourly PM2.5 emissions anywhere?

7 MR. LAYTON: That is correct.

8 MR. SARVEY: In your analysis, you assumed I  
9 think you said 3. pounds per hour. Do you have a  
10 condition that limits the 3. pounds per hour?

11 MR. LAYTON: I said the modeling (inaudible).

12 MR. SARVEY: So there is no condition anywhere  
13 limiting the hourly emitted PM 2.5 emissions from this  
14 project?

15 MR. LAYTON: That is correct.

16 MR. SARVEY: So it could be 100 pounds per hour;  
17 is that right?

18 MR. LAYTON: I would like to see the evidence  
19 that you could submit that would show that a turbine could  
20 operate at 100 pounds per hour.

21 MR. SARVEY: Well, I'm asking the questions right  
22 now, Mr. Layton.

23 MR. LAYTON: I didn't ask a question. I made a  
24 statement.

25 MR. SARVEY: Not to be disrespectful --

1 HEARING OFFICER CELLI: Let's not speak over each  
2 other. I'm going to ask that one person talk at a time.  
3 So go ahead, question. Go ahead.

4 MR. SARVEY: So there's no limit on the hourly  
5 emissions from this project from PM2.5; is that correct?

6 MR. LAYTON: Yes.

7 MR. SARVEY: Where in your analysis do you  
8 demonstrate compliance with the PM2.5 standard?

9 MR. LAYTON: We demonstrated a modelling  
10 compliance, is that what you're asking?

11 MR. SARVEY: Yes. Do you have anywhere in your  
12 analysis that you demonstrate compliance with the 24-hour  
13 PM2.5 standard?

14 MR. LAYTON: On page 4.1-38, what we demonstrated  
15 is that the project contributed to an existing violation  
16 of PM2.5.

17 MR. SARVEY: And how did you arrive at that  
18 without an hourly PM2.5 limit?

19 MR. LAYTON: As I said, we assumed 3.0 pounds per  
20 hour.

21 MR. SARVEY: Isn't it customary or required  
22 actually to compute the PM2.5 24-hour standard using the  
23 98 percentile combined with the project's maximum  
24 emissions?

25 MS. QIAN: We used the maximum 24-hour average

1 PM10 and PM2.5.

2 MR. SARVEY: Is that the proper way to compute  
3 the 24-hour PM2.5?

4 MS. QIAN: That's the conservative way of doing  
5 this.

6 MR. SARVEY: Is that the way EPA recommends that  
7 you do it?

8 MS. QIAN: EPA has a new standard that is to take  
9 a 98 percentile of daily maximum and we take basically the  
10 maximum.

11 MR. SARVEY: And you didn't do that?

12 MS. QIAN: We didn't do that.

13 MR. SARVEY: Why?

14 MS. QIAN: To be conservative.

15 MR. SARVEY: So you actually haven't demonstrated  
16 compliance with the PM2.5 standard; is that what you're  
17 saying?

18 MS. QIAN: We concluded that the project could  
19 contribute to the further violation of PM2.5.

20 MR. SARVEY: But without that analysis, can you  
21 conclude that the project won't cause a violation of the  
22 PM2.5 standard?

23 MS. QIAN: Well, the background is already above  
24 the standard.

25 MR. SARVEY: I'll repeat my question. Is that

1 how you determined whether a project is in compliance with  
2 the PM2.5 standard?

3 MS. QIAN: Yes.

4 MR. LAYTON: It is one method. We believe it's  
5 more conservative than the 98 percentile. We do not think  
6 that if you model this and usually the 98 percentile you  
7 would show different impacts than what we show. You  
8 probably show less impacts. So we think we did it  
9 conservatively.

10 MR. SARVEY: Has staff reviewed the FDOC?

11 MR. LAYTON: I believe staff did, yes.

12 MR. SARVEY: The FDOC on page 56 provides for  
13 results of emission testing on said facilities utilizing  
14 the sprint LM6000 PC turbines. Five of the seven  
15 facilities have never exceeded 2.2 pounds per hour for  
16 PM10. The best performing facility, the Gilroy Energy  
17 Center has never exceeded two pounds per hour for PM10.  
18 Is that not enough to establish a BACT limit of 2.5 or 2.2  
19 pounds per hour?

20 MS. CABRAL: As I said before, the district  
21 decided that BACT would be the technology and not a  
22 numerical limit. There is an annual limit based on 2.2.  
23 But that would be based on an average if you took a number  
24 of tests over time you could expect that it would average  
25 2.2. It's probable. But for a one hour or three hour we

1 don't think the limit is feasible.

2 MR. SARVEY: The CEC has permitted two recent  
3 projects, the Hanford and Henrietta, with 2.2 pound per  
4 hour limit. Doesn't that provide you enough information  
5 to provide this limit for this project?

6 MS. CABRAL: The district has decided that the  
7 technology is the BACT determination, not environmental  
8 limit.

9 MR. SARVEY: Exhibit 301, page 4.1-33 states that  
10 although (inaudible) satisfy the BACT requirements,  
11 without surrounding any PM2 or SO2 offsets, the San  
12 Joaquin Valley sought and obtained \$644,503 of mitigation  
13 fee to achieve the emission reductions in San Joaquin  
14 Valley. Staff expects at least eight tons of PM -- 11  
15 tons of PM 10 reductions to be achievable through the San  
16 Joaquin Valley Air Pollution Control District fee. Does  
17 staff expect the project to achieve that 11 tons yearly or  
18 just one time for the life of the project?

19 MR. LAYTON: We anticipate it will be for the  
20 life of the project.

21 MR. SARVEY: And what particular mitigation  
22 program do you think that you can receive with those type  
23 of numbers?

24 MR. LAYTON: The settlement agreement comes with  
25 a menu of options. So I don't know which option might be

1 used.

2 MR. SARVEY: Do you know what the average life of  
3 the Carl Moyer program?

4 MR. LAYTON: Some of them can be very long and  
5 some of them can be very short. Some of the ag engines  
6 have been in operation for 50, 60 years.

7 MR. SARVEY: Does the average of five to seven  
8 years sound accurate?

9 MR. LAYTON: It does not to me.

10 MR. SARVEY: Okay. Do you propose to use the  
11 wood stove program?

12 MR. LAYTON: Again, as I said, it's a menu of  
13 options.

14 MR. SARVEY: Well, will staff be deciding that?  
15 Will --

16 MR. LAYTON: If you've read the settlement  
17 agreement, I guess you could answer that question.

18 MR. SARVEY: Pardon me?

19 MR. LAYTON: Have you read the settlement  
20 agreement?

21 MR. SARVEY: Yeah, I have read the settlement  
22 agreement.

23 MR. LAYTON: And what does it say?

24 Mr. Simpson, I'm not trying to get you. I just  
25 appreciate the fact that --

1 MR. SARVEY: Mr. Sarvey --

2 MR. LAYTON: My vision is going, I apologize.

3 HEARING OFFICER CELLI: Let's continue. The  
4 questioner is Mr. Sarvey and the witness is, among others,  
5 Mr. Layton. Go ahead.

6 MR. SARVEY: No fun, Matt. Can't have fun.

7 HEARING OFFICER CELLI: Mr. Sarvey, how much more  
8 do you think you have?

9 MR. SARVEY: Just a couple more. I'm trying to  
10 sort through ones that are important so I don't have to  
11 ask a million more.

12 HEARING OFFICER CELLI: Okay.

13 MR. SARVEY: Page 4.1-8 of your testimony,  
14 Exhibit 301 states that each combustion turbine would use  
15 dry low NOx combusters to maintain low levels of NOx  
16 formation while ensuring complete combustion of fuel. Is  
17 this project really using dry low NOx combustors?

18 MR. LAYTON: Apparently, we do have a correction  
19 to make. I believe it is using the water injection for  
20 NOx control.

21 MR. SIMPSON: I didn't hear you.

22 MR. LAYTON: Apparently there is a mistake in the  
23 FSA. The project is using water injection for NOx  
24 control.

25 MR. SARVEY: Does the Bay Area Air Quality

1 Management District currently have PM2.5 emission  
2 reduction credits available?

3 MS. CABRAL: The Bay Area does not regulate PM2.5  
4 directly as of yet. We're working on a rule to include  
5 PM2.5 as a separate pollutant. If we need to use offsets  
6 that already exist, we'll have to analyze them to see if  
7 we can determine what portion of a particular set of  
8 offsets would be PM2.5. But all of those decisions have  
9 not been made yet.

10 MR. SARVEY: Last question, Mr. Celli. What  
11 monitoring station is closest to the highest PM2.5 impact  
12 in the project? Do you want me to answer it for you?

13 MR. LAYTON: Yes, please.

14 MR. SARVEY: Livermore.

15 MR. LAYTON: Thank you.

16 MR. SARVEY: Thank you. That's all I have.

17 MR. LAYTON: Mr. Sarvey, I did get your name  
18 correct. There are a couple of conditions that do limit  
19 the pounds per day of PM10 in pounds per year. It's not  
20 an hourly or three hour PM limit.

21 MR. SARVEY: Thank you.

22 HEARING OFFICER CELLI: There's no question.

23 MR. SARVEY: There's no question there.

24 MR. LAYTON: But it's AQ 9 and AQ 10.

25 HEARING OFFICER CELLI: I'm going to ask people

1 on the phone to please put your mute buttons on because  
2 we're getting background noise. So if you're on the  
3 telephone, if you're a WebEx participant, we love having  
4 you here. We welcome your participation, but we're going  
5 to ask you to mute your phones because we don't want to  
6 hear your dogs barking.

7 So we are with Mountain House Community Service  
8 District. Did you have any questions?

9 MR. GROOVER: One question based on the  
10 testimony. You stated that the average limit for PM2.5 I  
11 believe it was 2.2 pounds. But that was the average over  
12 the year. Would that assume the 1400 hours of run time  
13 that we used in earlier questions by Mr. Sarvey? Or is  
14 that the 4,000 hours that are permitted? What is that  
15 average 2.2? What hourly run time does it use?

16 MS. CABRAL: The plant has an overall limit of  
17 16,900. So the four turbine would be allowed to run up to  
18 16,900. The annual limit is based on that number times  
19 2.2.

20 MR. GROOVER: Thank you.

21 HEARING OFFICER CELLI: I just want to  
22 acknowledge and thank you for being the first person who  
23 said I only have one question and only asked one question.  
24 So thank you very much for that.

25 Mr. Dighe, any questions of these witnesses?

1 MR. DIGHE: Did the BAAQMD run the air disbursing  
2 models?

3 MS. CABRAL: The district ran a risk assessment  
4 model. The district did not run a model for criteria  
5 pollutants. The reason is is that it's not a PSP project,  
6 meaning a major source more than 100 tons. And therefore  
7 our rules do not require that we perform that modeling.

8 MR. DIGHE: But the extent of dispersion of the  
9 pollutants, what are the parameters of finding out how far  
10 the pollution is going to be effective? Did you do any  
11 study of that and CEC policies (inaudible) study on that?  
12 Like will it touch (inaudible) will it touch Lathrop?

13 MR. LAYTON: I'm not sure I understand your  
14 question.

15 MR. DIGHE: So basically I'm asking the effects  
16 of the air pollution. I'm assuming it is going to be  
17 (inaudible) as you go further away from the power plant.  
18 So has that study been done by either CEC or BAAQMD?

19 MR. LAYTON: I believe the applicant did modeling  
20 and the CEC did modeling, air dispersion modeling of the  
21 pollutants.

22 MR. DIGHE: What are the health impacts of this  
23 power plant?

24 DR. ODOEMELAM: What is your question?

25 MR. DIGHE: According to you, what are the

1 health -- what are different health impacts of this power  
2 plant?

3 DR. ODOEMELAM: I'm sorry. I don't understand  
4 you.

5 HEARING OFFICER CELLI: The question is --  
6 according to you, what are the health impacts from this  
7 power plant?

8 DR. ODOEMELAM: The health impacts from the  
9 emissions for the air toxic?

10 MR. DIGHE: Yes.

11 DR. ODOEMELAM: We judge them by in the testimony  
12 risk of cancer and non-cancer health effects. And the  
13 indices are very much below the levels of significance.

14 MR. DIGHE: Can you repeat what you said, the  
15 last statement?

16 DR. ODOEMELAM: I don't quite hear you.

17 MR. DIGHE: Can you repeat your last statement?

18 DR. ODOEMELAM: There is numbers of far below  
19 levels that staff could consider significant. Cancer risk  
20 is probably 77 in a million. It is really (inaudible)  
21 numbers. And you compare that with the background cancer  
22 risk of 330,000 in a million. So it (inaudible) numbers  
23 and (inaudible).

24 MR. DIGHE: What about the impacts on the health  
25 for example as to Mountain House? What are the effects of

1 this (inaudible)? Can you talk about that?

2 DR. ODOEMELAM: (Inaudible) approach to get the  
3 risk at the highest levels number or the maximum. The  
4 risk of the maximum exposure to individual and definitely  
5 screening analysis and impact is low and there's no  
6 (inaudible). So to the extent that the risk is very  
7 insignificant anyway, then we consider.

8 HEARING OFFICER CELLI: We're going to just take  
9 a moment. We need to break. Just so we're going to mute  
10 the people on the phone and then reopen the podium and  
11 host. And then if we want to, we can unmute everybody  
12 later. But the problem is we're getting this telephone  
13 business. So Lynn, tell me when we're back.

14 Okay. We're good to go. I'm sorry for the  
15 interruption.

16 Go ahead, Mr. Dighe.

17 MR. DIGHE: Are you aware that the area around  
18 the power plant Mountain House and the Mountain House  
19 community there is a high pollen -- high pollen  
20 concentrations. Are you aware of that?

21 DR. ODOEMELAM: The area around Mountain House is  
22 what?

23 MR. DIGHE: High pollen.

24 HEARING OFFICER CELLI: High pollen area?

25 MR. DIGHE: High pollen.

1 HEARING OFFICER CELLI: P-o-l-l-e-n.

2 MR. DIGHE: P-o-l-l-e-n.

3 DR. ODOEMELAM: Well, we would not measure pollen  
4 directly. I mean, pollen has health impacts that are  
5 different from the pollutants that we're dealing with.

6 MR. DIGHE: (inaudible) people, high pollen less  
7 pollutants, is there a study on that?

8 DR. ODOEMELAM: Study of asthma?

9 MR. DIGHE: Yes.

10 DR. ODOEMELAM: Asthma is a complicated issue, as  
11 we know. We don't quite know what -- asthma --

12 HEARING OFFICER CELLI: We need you to speak  
13 right into the microphone. Thank you.

14 DR. ODOEMELAM: The case for asthma is part of  
15 the reason we tried to limit pollutants in the first  
16 place. We don't know what causes asthma. We know it is  
17 based on many factors, some of which are socioeconomic  
18 conditions, racial components to it.

19 But the present approach is to minimize the  
20 pollutants from sources of this sort so that it will  
21 minimize potential for exacerbating asthma. But we do not  
22 specifically -- we don't know what levels (inaudible)  
23 asthma so we didn't set a specific level for any sort. So  
24 the approach is to clean up the (inaudible) and to ensure  
25 that emissions (inaudible) by the technology that

1 (inaudible) facility of this sort. But we don't set any  
2 specific levels as to what would prevent asthma, no.  
3 That's not our approach.

4 MR. DIGHE: So what are the long term impacts of  
5 these air pollutants on health 2.5 mile close to the power  
6 plant, specifically for kids and for elderly people?

7 DR. ODOEMELAM: As I noted earlier, we divided  
8 pollutants into criteria pollutants which are the ones  
9 dealt with in our air quality analysis and opposed to the  
10 non-criteria pollutants. And our findings on the  
11 non-criteria pollutants is that the levels are just --  
12 risks are just minute. But for the criteria pollutants,  
13 that is the reason we have specific technology  
14 requirements offsets -- that's offset emission reductions  
15 and (inaudible). So we have to treat those groups of  
16 pollutants differently.

17 MR. DIGHE: Can you specify that those type of  
18 pollutants that are different than you mentioned --

19 HEARING OFFICER CELLI: Dr. Odoemelam, if you  
20 would please speak right into that microphone. We're  
21 having a hard time hearing you.

22 MR. SIMPSON: I can't understand.

23 HEARING OFFICER CELLI: Please hold it up and  
24 speak about this far away from the microphone and we'll  
25 hear better.

1 DR. ODOEMELAM: On public health level two in my  
2 analysis --

3 HEARING OFFICER CELLI: Can you speak right into  
4 that microphone, please?

5 DR. ODOEMELAM: (Inaudible) my analysis to  
6 identify non-criteria pollutants for which we established  
7 the potential for impacts by comparing levels that were  
8 known carcinogen impacts with what we call RELs, relative  
9 exposure level. That is the approach for this pollutants.  
10 But for the criteria pollutants in the air (inaudible) is  
11 just a matter of establishing that there will be levels  
12 that do not violate specific air quality standards which  
13 are specified in our air quality section.

14 MR. DIGHE: (Inaudible) if I remember correctly,  
15 the few of the residents (inaudible) were asking for  
16 putting the staff assessment, the different facts on  
17 health categorized by the pollutants. I didn't see that  
18 in the staff assessment.

19 DR. ODOEMELAM: Well, we try to have conservative  
20 in our analysis. For instance, as I indicated, we  
21 (inaudible) in case of the cancer risk which is the most  
22 sensitive end point that we use. We assume that the  
23 individual that's exposed at the highest level would be  
24 exposed at the same spot for 70 years. That's how  
25 conservative we are in our analysis. So absent that

1 approach and the risk is still below a significance level,  
2 we are confident that the risk is insignificant.

3 MR. DIGHE: So am I hearing that the risk 2.5  
4 miles close to the power plant or seven miles further down  
5 is going to be exactly the same? Is that what --

6 DR. ODOEMELAM: No.

7 MR. DIGHE: You're stating --

8 DR. ODOEMELAM: No. (Inaudible) but it could be  
9 significant anywhere around the project area because again  
10 we made an analysis to identify an individual which is  
11 maximally exposed. And I assume that that individual will  
12 be at that spot for 70 years and exposed at that level.  
13 And we establish that risk of significantly lower than  
14 what we consider significant. So we are confident that  
15 the emissions will not be of any significance.

16 MR. DIGHE: So worst case scenario? Is that the  
17 worst case scenario that you just mentioned?

18 DR. ODOEMELAM: Yeah. That an individual would  
19 be exposed at a spot that has all the pollutants at the  
20 highest level and would be exposed consistently or  
21 constantly for 70 years. That is as conservative as you  
22 can get.

23 MR. DIGHE: So I assume the community -- I know  
24 there are a lot of people in the community specifically  
25 close friends whose kids with (inaudible) asthma issues.

1 And the power plant is close, 2.5 miles. That's the  
2 reason some of the questions are thrown out there. What's  
3 the -- again, my question I think comes specifically for  
4 (inaudible). Is that something you think we should be  
5 worried about because of this problem and the pollen  
6 concentration?

7 DR. ODOEMELAM: Again, we try to identify the  
8 pollutants from the source. Pollen will not be from the  
9 source. That is for a different kind of control. In this  
10 case, we try to recommend -- identify to the commissioners  
11 who will make the decision that there are three types of  
12 pollutants to worry about. There are ones from which  
13 there are health quality standards. Those are the ones  
14 that are dealt with in our air quality section. And there  
15 are all kinds of requirements; technological reduction  
16 from (inaudible) region wide.

17 For air toxics, we're talking about the highest  
18 levels you will encounter right after emission. Beyond  
19 that, it's not like NOx and the other pollutants which are  
20 (inaudible) PM10. And air toxic that will be reactive so  
21 they'll react and diminish significantly (inaudible) from  
22 the source.

23 So when the highest level that is near the fence  
24 line of the facility is insignificant, it will be even less  
25 significant among your community as we indicated in the

1 analysis. That is for these pollutants for the air toxics  
2 that we assess in public health analysis. And that's  
3 different from the air quality section in which there are  
4 all kinds of requirements. We are sure that on the  
5 average emissions would be lower than significant in terms  
6 of added to those that already exceeded the existing  
7 thresholds.

8 MR. DIGHE: So if it's already lower (inaudible)  
9 why are the GHG emissions standards becoming stricter and  
10 stricter? What is the advantage do you think? How we  
11 correlate GHG emissions and emissions impacts? It's  
12 already really low, it's insignificant. Why are you  
13 making the GHG emissions standards stricter and stricter?  
14 What is their advantage of doing that? Why is the State  
15 doing that?

16 DR. ODOEMELAM: Are you addressing the air toxic?

17 MR. DIGHE: Yes.

18 DR. ODOEMELAM: Well, it's technology driven.  
19 We're required best combustion practices (inaudible) area  
20 of control (inaudible). Those are the cutting edge of the  
21 technology that is required.

22 Of course, you would need reduction to the extent  
23 feasible. So to the extent that the applicant would  
24 (inaudible) and potential best available control  
25 technology will require them to get as low as (inaudible).

1 And that is (inaudible) because technology behind the  
2 control will have to get better and better and better.  
3 And we will continue to follow that path is make them  
4 (inaudible) as we get more confident that we can reach  
5 those levels.

6 HEARING OFFICER CELLI: Allow me to interrupt for  
7 a moment.

8 Mr. Petty, is this coming through okay for you?

9 Okay. Good.

10 I'm still having a hard time hearing you, Mr.  
11 Odoemelam. So if you wouldn't mind, I need you to really  
12 speak right into that microphone.

13 How many more questions, Mr. Dighe?

14 MR. DIGHE: Three more.

15 HEARING OFFICER CELLI: Please, go ahead.

16 MR. DIGHE: This is probably for you. This is a  
17 single cycle combustion. If it was a combined cycle, can  
18 you talk about how much increase efficiency it would have  
19 and how would it effect pollution?

20 MS. CABRAL: It could work -- there's various  
21 ways that a combined cycle turbine would be different.  
22 Usually, a combined cycle turbine will run more time.  
23 Usually, it will have what's called a duct burner, which  
24 means that they would burn fuel in the turbine and they  
25 would also burn fuel in the heat recovery steam generator.

1 And you would expect the combined cycle plant to be up  
2 much more time. As I've explained, somewhere in the FDOC,  
3 a simple cycle would not be allowed to run more than 60  
4 percent of the time. The combined cycle plants that we're  
5 looking at are expected to run 90 percent of the time.

6           So for your particular community, if it were  
7 combined cycle, I would have to conclude that there would  
8 be a higher level of pollution. But it would be more  
9 efficient and the CO2 emissions per megawatt would be  
10 less. But on a per hour basis, there would be a higher  
11 level of pollutants.

12           MR. DIGHE: So you decide to run the peaker plant  
13 in the combined cycle mode (inaudible) pollutants.

14           MS. CABRAL: It would run longer. It would run  
15 more.

16           MR. DIGHE: Did you -- did San Joaquin Air  
17 Quality work with you for mitigation as far as getting the  
18 relevant data of pollution?

19           MS. CABRAL: San Joaquin District did not comment  
20 on the PDOC.

21           MR. DIGHE: Did they talk to you about the amount  
22 of pollution when they were putting the mitigation in  
23 place?

24           MS. CABRAL: I did not communicate with San  
25 Joaquin County. I did look at some of their documents,

1 their clean air plan documents. But they did not talk to  
2 me. They were sent a notice.

3 MR. DIGHE: Thank you.

4 HEARING OFFICER CELLI: I am sorry. I didn't  
5 hear the last part of your -- you said they were what?

6 MS. CABRAL: They were sent a notice.

7 HEARING OFFICER CELLI: Okay.

8 MR. DIGHE: What are the effects of these air  
9 pollutants on water? Water quality around Mountain House  
10 (inaudible) --

11 MS. CABRAL: I can't hear you.

12 MR. DIGHE: It's getting late. I'm tired.

13 What are the effects -- let me rephrase. What  
14 are the different effects of these air pollutants on the  
15 open water bodies around the power plant? Did you do any  
16 study or did any other staff member contact you to  
17 understand the effects on the water?

18 MS. CABRAL: I don't know. We did not do  
19 analysis. CEC may have an answer.

20 MR. DIGHE: Can CEC take this question?

21 MR. LAYTON: We did not do that specific  
22 analysis. The concern generally is from NOx it's  
23 deposition on both the land and water. What -- we found  
24 the nitrogen deposition is a very difficult subject. So  
25 more importantly, we require that NOx be mitigated. So

1 the net from this project is a decrease in NOx emissions  
2 in the NOx inventory. So the effects on water will  
3 probably be diminished with the implementation of the  
4 mitigation that's required.

5 HEARING OFFICER CELLI: Anything more?

6 MR. DIGHE: I have one more question.

7 HEARING OFFICER CELLI: Please.

8 MR. DIGHE: What are the impacts on health when  
9 you use such water?

10 DR. ODOEMELAM: Now, the air pollution standards  
11 have secondary and primary standards. Assume exposure to  
12 humans, the humans are more sensitive than animals or even  
13 fish. So standards that we set with the human beings in  
14 mind is most sensitive in that if you establish that as  
15 adequate to protect against humans, then it is (inaudible)  
16 some levels to be less important when dealing with the air  
17 pollutants is (inaudible) on fish under the secondary  
18 standard. So the human is considered the most sensitive  
19 (inaudible) to use for the standards.

20 MR. DIGHE: Since he mentioned specifically, I  
21 have one more question.

22 HEARING OFFICER CELLI: Let this be your last  
23 question.

24 MR. DIGHE: So also I'm hearing there is an  
25 effect of these pollutants on the water bodies

1 specifically for (inaudible)? On the fish you just  
2 mentioned, is that correct?

3 DR. ODOEMELAM: Theoretically, yes.

4 MR. DIGHE: What is that? What's the -- how does  
5 it effect?

6 DR. ODOEMELAM: It's not a direct impact. It  
7 will have to dissolve into water for the fish. So you can  
8 see how to humans it's direct inhalation and we're more  
9 sensitive. So we look for the sensitive human. And if  
10 you can protect against human being, then there are  
11 impacts on plants and water and fish. There is a  
12 secondary standard. So if you protect against humans with  
13 the (inaudible) so we're more sensitive than wild animals,  
14 for instance.

15 MR. DIGHE: So just for the record, the effects  
16 on water because of these air pollutants was not studied;  
17 correct?

18 DR. ODOEMELAM: The effects (inaudible) in the  
19 air quality standards themselves. But what type of  
20 pollutants at levels part per million, you can imagine  
21 much of that you have to emit before you make a difference  
22 in a fish or for you to drink it when it's already  
23 dissolved. So when humans are exposed to it directly, so  
24 we're most sensitive for (inaudible) standards then  
25 (inaudible) impacts on fish, where the pollutants will

1 have to dissolve and then (inaudible) to the fish.

2 HEARING OFFICER CELLI: That was the second time  
3 he gave you that answer. So anything further?

4 MR. DIGHE: That's it.

5 HEARING OFFICER CELLI: Thank you. Mr. Wilson is  
6 chomping at the bit.

7 MR. WILSON: No comment.

8 HEARING OFFICER CELLI: Mr. Singh, please.

9 MR. SINGH: So I'm trying to see from where to  
10 start.

11 HEARING OFFICER CELLI: I need you -- Mr. Singh,  
12 I'm having a hard time hearing you.

13 MR. SINGH: So this is regarding the simulation  
14 model and the data collection that we made and the data  
15 input to the simulation model. I believe that all the  
16 data collection was done in Tracy with the meteorological  
17 department, Tracy meteorological; is that correct?

18 MS. QIAN: No. As you can see on page 4.1-41, we  
19 have answered the question about the meteorology data. In  
20 the workshop in November 2010, we identified the social  
21 meteorological data as Tracy airport. But the  
22 meteorological data we used were from (inaudible) formerly  
23 located along Patterson Pass Road, which is half mile from  
24 the Mountain House Community District.

25 MR. SINGH: Okay. Patterson --

1 MS. QIAN: Patterson Pass Road.

2 MR. SINGH: It's half a mile away from here?

3 HEARING OFFICER CELLI: Speak up louder, please.

4 MR. SINGH: Is it a half a mile from here, you  
5 said?

6 MS. QIAN: From the Mountain House Community  
7 Services District.

8 MR. SINGH: And before that, it was the Tracy  
9 meteorological data, right?

10 MS. QIAN: That is -- the air quality data is  
11 from the Tracy airport.

12 MR. SINGH: So when you collect the data, do you  
13 also see the calibration done for all the (inaudible) are  
14 which are correcting this data? Did you see the  
15 (inaudible) and how often the calibration is being done to  
16 all the equipments?

17 MS. QIAN: These data are certified by ARB. So  
18 we didn't see the calibration.

19 MR. SINGH: So you make an assumption since  
20 somebody's basically certified the data, but you do not  
21 see whether those certification (inaudible) output is out  
22 of the calibration of these equipment and collect the  
23 data. So you rely on some certification. So is that  
24 certification it's a State approved or federal approved  
25 they gave you or its general subcontractors collects the

1 data and he stamp it and you use it?

2 MS. QIAN: We follow the procedures -- the  
3 guideline by the EPA air quality modeling basically the  
4 meteorological data should have 90 percent -- more than 90  
5 percent completeness. So it's approved by the ARB. So we  
6 didn't do further calibration of this data.

7 MR. SINGH: But do you know for the fact that  
8 they do have a procedure in place to calibrate all of the  
9 equipment being used for the collection of the data? And  
10 they do the standardization of those equipment every year  
11 or every quarter or every six months?

12 MS. QIAN: Could you repeat your question?

13 MR. SINGH: Do you know for the fact that the  
14 equipments are being calibrated quarterly or semi-yearly  
15 or yearly when they certify the data? Is it a procedural  
16 guideline that they follow in calibration process?

17 MS. QIAN: I believe ARB has done procedure.

18 MR. SINGH: Okay. So when we talk about  
19 dispersion -- air pollution dispersion models, what is  
20 really being considered?

21 MS. QIAN: What's that?

22 MR. SINGH: What was the (inaudible) distribution  
23 in the air dispersion model?

24 MS. QIAN: Caution distribution in the basis of  
25 the model.

1 MR. SINGH: Caution distribution?

2 MS. QIAN: Yes.

3 MR. SINGH: If you don't mind, you know, can you  
4 tell me did you run the simulation? Who ran the  
5 (inaudible)?

6 MS. QIAN: I did.

7 MR. SINGH: Can you please tell me how many years  
8 of experience you have in running the simulation model?

9 MS. QIAN: I have a Ph.D. in air quality  
10 modeling.

11 MR. SINGH: But hands-on experience.

12 MS. QIAN: Five years of experience.

13 MR. SINGH: Okay. So do you think if a person  
14 with 15 years of experience who does a simulation can do a  
15 better job than a person with five years of experience?

16 MR. WHEATLAND: I'm going to object.

17 STAFF COUNSEL WILLIS: Objection.

18 HEARING OFFICER CELLI: Sustained.

19 Argumentative. Next question.

20 MR. SINGH: So now the data point was only one.  
21 Does the EPA tell you that the data point has to be one or  
22 it has to be simulation (inaudible) from three (inaudible)  
23 models and then the simulation need to be done from the  
24 three different sectors being collected?

25 MS. QIAN: One off site data is enough.

1           MR. SINGH: And that is what the procedure  
2 guidelines of the EPA?

3           MS. QIAN: Yeah.

4           MR. SINGH: Are you sure about it?

5           MS. QIAN: Yes.

6           MR. SINGH: So in your Ph.D., I believe you must  
7 have run lots of simulation. And there are three points  
8 of sectors collections being determined at three different  
9 location; is that correct? Or you only go with one  
10 simulation collection of data?

11          MS. QIAN: About my Ph.D.?

12          MR. SINGH: Yeah.

13          MS. QIAN: I don't know what's your question.

14          MR. SINGH: Anyway, so coming back to the  
15 pressure, temperature, and the speed of the air, so if you  
16 put one data point in the center of Mountain House, how  
17 much is the data (inaudible) from half a mile being taken  
18 from here? Has that simulation model been run?

19          MS. QIAN: Could you repeat your question?

20          MR. SINGH: In the Mountain House, let's say we  
21 put one (inaudible) in the center of Mountain House to  
22 collect the data. And the data we collect from  
23 (inaudible), how much deviation in the data you can  
24 expect? Did you run that simulation?

25          MS. QIAN: Actually, the applicant has provided

1 data explanation about the representativeness of the  
2 meteorological data collected from the Patterson Pass  
3 Road. Basically, they compared different windrows from  
4 different stations and then find the similarities in wind  
5 patterns. So we don't think there is a need to do further  
6 modeling using different data sets.

7 MR. SINGH: So can I assume for the fact on the  
8 record that you relied on the data of what applicant  
9 provided to you?

10 MS. QIAN: Based on the similarity of the  
11 surrounding topography and land use, we think that the  
12 meteorological data we used were appropriate and  
13 representative.

14 MR. SINGH: So -- but you did not do your own  
15 analysis on that what applicant did?

16 MS. QIAN: We did not do any further analysis.

17 MR. SINGH: So let us say for one single day as  
18 I'm reading on page number -- average temperatures, I  
19 think you took the average temperature from 30 to 35  
20 degree Fahrenheit and during the winter season. So let's  
21 say for one single day that temperature drops to ten  
22 degrees Fahrenheit. In that particular day, do you think  
23 the plumes will be hovering closer to the earth than as  
24 compared to the temperature which is 35 or 50 degrees  
25 Fahrenheit?

1 MS. QIAN: The model deals every kind of  
2 meteorological conditions. So it also considers about the  
3 temperature difference from --

4 MR. SINGH: I see that the average that you have  
5 taken is weekly, monthly, and yearly; is that correct?

6 MS. QIAN: Could you point me which page are you  
7 looking at?

8 MR. SINGH: I read somewhere. I cannot go to  
9 that page.

10 My question is one single day if the climate  
11 conditions changes and the temperature goes to close to  
12 negative, in that case, does the plumes that are 35  
13 degrees Fahrenheit versus negative temperature, do you  
14 think the plumes could become below near to the surface of  
15 (inaudible) which would be hovering 20 feet above the  
16 earth?

17 MS. QIAN: It depends on the stability of the  
18 atmosphere and the turbulence levels.

19 MR. SINGH: So you think that worse condition  
20 should have been considered? Because in Mountain House  
21 the reason I'm asking this question is there have been  
22 many instances that the temperature goes to even ten in  
23 the night.

24 MS. QIAN: We have four years of meteorological  
25 data which includes every kind of meteorological

1 conditions. So I think we can basically consider the  
2 worst case scenarios.

3 MR. SINGH: But --

4 MS. QIAN: We also did fumigation analysis.

5 HEARING OFFICER CELLI: And that answered the  
6 question. Did you have any sense how many more questions  
7 you have?

8 MR. SINGH: I have three more questions.

9 HEARING OFFICER CELLI: Thank you.

10 MR. SINGH: Coming down to population  
11 distribution, I would talk to the health department. So  
12 as the population distribution, what was your population  
13 distribution model in which the health are being effected  
14 by these type of plants?

15 DR. ODOEMELAM: I am sorry.

16 MR. SINGH: Population distribution means, okay,  
17 the age from one month to two-year-old year to  
18 five-year-old child, five to ten year, ten to 20 year, 20  
19 to 30 year, 30 to 40 year of the human population. So how  
20 did these type of plants they impact the various age  
21 population people?

22 DR. ODOEMELAM: As indicated in our analysis, we  
23 studied that the standards, the air quality standards  
24 themselves are the reference exposure levels that we use  
25 for criteria pollutants that those are established to

1 ensure protection of the most sensitive individuals.

2           First of all, in cases where the standards are  
3 established from animal studies, we look for the most  
4 sensitive animal for that pollutant. And we look for the  
5 most sensitive end point possible and (inaudible). So  
6 (inaudible) intended as we indicated in our analysis to  
7 ensure protection of the most sensitive includes as you  
8 know children who are more sensitive than adults, people  
9 with asthma or people with preexisting conditions so that  
10 all these standards that were established have all these  
11 (inaudible) factors and ensure protection of the most  
12 sensitive, in this case within the population the most  
13 sensitive being children or adults or people with  
14 preexisting conditions who are just that (inaudible) and  
15 then we are confident that everybody's protected.

16           MR. SINGH: So basically am I understanding  
17 correct that kids are more sensitive to these type of  
18 pollution as compared to 15-year-old or 20-year-old kid?

19           DR. ODOEMELAM: Yes, because they inhale more of  
20 the pollutants (inaudible) of their body.

21           MR. SINGH: So in your case, you're taking the  
22 most sensitive cases to study the impact?

23           DR. ODOEMELAM: Yes. Standards and (inaudible)  
24 protection of the most sensitive.

25           MR. SINGH: So coming back to NOx and SOX

1 mitigation, I believe like you guys provided -- I'm not  
2 sure whom to ask this question. When the mitigation being  
3 done by air quality district, now as I hear the mitigation  
4 has been done by giving the farm people replace their  
5 diesel engines. But diesel engines don't create NOx and  
6 SOX; is that correct? And how are you going to see the  
7 NOx and SOX are mitigated by San Joaquin people?

8 MR. LAYTON: Any combustion source will create  
9 NOx. And most combustion sources because of fuel, most  
10 fuels have some sulfur in them create SOX. So any engine  
11 that's burning some kind of fuel will create NOx and SOX,  
12 CO, VOC, all the pollutants.

13 HEARING OFFICER CELLI: So we're at question  
14 number 3 D or E at this point.

15 MR. SINGH: Okay. That's it. Thank you very  
16 much.

17 HEARING OFFICER CELLI: Thank you very much.

18 I'm not going to let you do it again, Mr. Sarvey.  
19 You're messing with me.

20 Mr. Simpson, you have some questions for these  
21 witnesses?

22 MR. SIMPSON: I've got a couple of questions  
23 starting with the air district. There is another source  
24 on this parcel. Does that make this a modification of the  
25 facility?

1 MS. CABRAL: I don't know of anything about the  
2 other source.

3 MR. SIMPSON: Okay. So the air district -- is  
4 the air district required to respond to comments on the  
5 PDOC?

6 MS. CABRAL: We do respond to comments.

7 MR. SIMPSON: Did you respond to my comments?

8 MS. CABRAL: Your comments were untimely.

9 MR. SIMPSON: I see.

10 HEARING OFFICER CELLI: I think I'd take that as  
11 a no.

12 MR. SIMPSON: And were my comments untimely  
13 because you didn't provide me notice after I had asked?  
14 Received notice?

15 MS. CABRAL: Our requirements are to provide  
16 notice by newspaper. We provided notice in four  
17 newspapers in and around the Mountain House around. As a  
18 courtesy, we send e-mails notice or mail notices to people  
19 who have requested notice. You did not request notice.  
20 You did not request -- we do not have a request by you for  
21 notice about all power plants or about this one in  
22 particular. We know that you're interested in the Russell  
23 City, but we have not received -- we had not at that time  
24 received any such request from you and we were not  
25 obligated to send you a notice. We attempted to send you

1 notice as a courtesy, but it's not a legal obligation.

2 HEARING OFFICER CELLI: Can I just say as a  
3 matter of relevance, the PMPD is not going to look at all  
4 at whether there was adequate notice or anything like that  
5 between whatever the air quality management district did.  
6 So I'm going to ask that you focus on things that are in  
7 our -- that we can handle up here. But whether they gave  
8 you adequate notice or not, we don't really have  
9 jurisdiction over that.

10 MR. SIMPSON: Oh, good. Good. Thank you.

11 HEARING OFFICER CELLI: I'd like to move to  
12 something for --

13 MR. SIMPSON: Thank you. I was under the  
14 impression that the CEC would be adjudicating the issues  
15 that I have with the FDOC. But that's --

16 HEARING OFFICER CELLI: Ask the questions about  
17 the air quality stuff, but notice, let's not go there.

18 MR. SIMPSON: Mr. Layton, where's Brewster  
19 Birdsall?

20 MR. LAYTON: He's on vacation.

21 MR. SIMPSON: I see. How long has he been on  
22 vacation?

23 MR. LAYTON: I think he left on Tuesday. He  
24 should be back on the end of the week.

25 MR. SIMPSON: Has anybody on the panel

1 participated in the conversion proceeding to convert a  
2 simple cycle to a combined cycle facility?

3 MR. LAYTON: I worked with Mr. Birdsall and Mr.  
4 Will Walters when we've done the conversions or we've  
5 worked with applicants who are proposing to convert  
6 Henrietta, Hanford, and Tracy.

7 MR. SIMPSON: From simple cycle to combined  
8 cycle?

9 MR. LAYTON: Yes.

10 MR. SIMPSON: And what's the basis for that  
11 conversion?

12 MR. WHEATLAND: Objection. Relevance.

13 HEARING OFFICER CELLI: I am sorry. I didn't  
14 hear the question. Ask the question -- what was the  
15 question?

16 MR. SIMPSON: What I'm trying to understand is  
17 why simple cycle facility is being built here now when  
18 other simple cycle facilities are now being converted to  
19 combined cycle facilities. So my question was --

20 HEARING OFFICER CELLI: And the objection is  
21 relevance? I think that, Mr. Layton, you have the  
22 expertise to answer that question.

23 MR. WHEATLAND: Well, Your Honor, he's not asking  
24 him the air quality impacts. He's asking him the reasons  
25 for one selection of one technology versus another for

1 this project.

2 MR. SIMPSON: I didn't say that. That's not what  
3 I said.

4 HEARING OFFICER CELLI: What's your question, Mr.  
5 Simpson?

6 MR. SIMPSON: My question is Mr. Layton is  
7 participating in conversions of facilities from simple  
8 cycle to combined cycle. So is that something that we  
9 should expect in this facility or are we starting with the  
10 wrong technology or why do we have on one set of the fence  
11 we have a new simple cycle going in and on the other side  
12 of the fences we've got simple cycle being converted to  
13 combined cycle and what are the air quality effects of  
14 those decisions?

15 STAFF COUNSEL WILLIS: Objection. Calls for  
16 speculation.

17 HEARING OFFICER CELLI: It does call for a little  
18 speculation. But I'm also concerned that these witnesses  
19 lack foundation. Because really, that's the applicant's  
20 call. And I think that's a question better directed to  
21 the applicant. Why did you design it this way instead of  
22 the other way? Why is it a peaker instead of combined  
23 cycle? But I'm not sure that's appropriate for staff's  
24 witnesses.

25 MR. SIMPSON: Well, my question specifically is

1 to Mr. Layton because he's participating in both  
2 proceedings. So I would think he'd have some insight.

3 HEARING OFFICER CELLI: I'm sorry. I didn't hear  
4 the last of that.

5 MR. SIMPSON: I would think he would have some  
6 insight.

7 MR. LAYTON: I didn't have any money on the  
8 conversion. I was not paying for the conversion. I was  
9 just responsible for analyzing the air quality.

10 HEARING OFFICER CELLI: Does that help?

11 MR. SIMPSON: Sure. Was there an air quality  
12 improvement by going combined cycle?

13 MR. LAYTON: It depends.

14 MR. SIMPSON: Depends on --

15 MR. LAYTON: I guess what do you call an air  
16 quality improvement? Increased emissions? Increased  
17 offsets? I mean, because when you convert, more likely  
18 you're going to operate more. More likely. These are all  
19 hypotheticals. At the same time, you get more offsets.  
20 It depends on the -- I think some of these projects were  
21 Tracy -- some of them already had offsets.

22 But I think what you should do is look at the  
23 greenhouse gas section. And one of the references in the  
24 greenhouse gas section is called the framework where it  
25 discusses how the system might be built out. And there is

1 a need for peakers. So the applicant has to be proposing  
2 the peaker and that's what we're reviewing here. If you  
3 look at Table 8 on page 89, you'll see some of the  
4 benefits or some of the characteristics of a peaker. And  
5 if the applicant wanted to build a system or build a  
6 project that had different characteristics, then this  
7 table would change.

8 But again, it's a decision the applicant has  
9 made, but given that we are looking at this project and  
10 it's a peaker, we evaluated the characteristics that a  
11 peaker has. So if they wanted to convert, that would be a  
12 different analysis.

13 MR. SIMPSON: So are there combined cycle  
14 peakers?

15 MR. LAYTON: There are a lot of peakers out  
16 there. Some of them are steam turbans. There are a  
17 variety of things that operate for a very limited number  
18 of hours, yes.

19 MR. SIMPSON: Yes, they're combined cycle peakers  
20 I think is what I heard.

21 MR. LAYTON: There are fast response peakers or  
22 fast response cycles.

23 MR. SIMPSON: Thank you.

24 MR. LAYTON: I don't think the capacity factor of  
25 a combined cycle is done in the peaker range of three to

1 five percent.

2 MR. SIMPSON: I didn't understand that.

3 MR. LAYTON: You asked if there was a combined  
4 cycle peaker. There are peakers that operate in three to  
5 five percent capacity factors. If a combined cycle was  
6 going to operate at three to five percent, then yes, I  
7 would call it a peaker. I have not yet seen a combined  
8 cycle built in the state of California that operates at  
9 that capacity factor. You could. I don't think it would  
10 be prudent.

11 MR. SIMPSON: Thank you.

12 You mention, Mr. Layton, since you're making a  
13 mistake in the SSA, are there other mistakes?

14 MR. LAYTON: Not that I'm aware of.

15 MR. SIMPSON: Were you aware of the last mistake  
16 before you were asked about it?

17 MR. LAYTON: No, I was not.

18 MR. SIMPSON: Thank you.

19 Ms. Cabral, did the air district participate in  
20 any air quality workshops with the CEC?

21 MS. CABRAL: Could you repeat your question?

22 MR. SIMPSON: Did the air district participate in  
23 any air quality workshops or other proceedings with regard  
24 to this?

25 MS. CABRAL: The air district held no hearings on

1 this project.

2 MR. SIMPSON: I understand. Did the air district  
3 participate in any CEC workshops regarding this project?

4 MS. CABRAL: I personally have been here -- this  
5 is the fourth time, so yes.

6 MR. SIMPSON: So you did. Did you record  
7 comments?

8 MS. CABRAL: I may have taken notes.

9 MR. SIMPSON: Okay. Did you respond in the FDOC  
10 to any comments you received at workshops?

11 MS. CABRAL: My recollection is that I was not  
12 asked many questions at the workshops or very minimal  
13 questions.

14 MR. SIMPSON: Okay. Is pollen PM?

15 MS. CABRAL: I think so.

16 MR. SIMPSON: Do greenhouse gases contribute to  
17 the efforts of other pollutants as a precursor or by  
18 trapping them in the local area?

19 MS. CABRAL: The district has written papers  
20 about the effects of climate change of increased  
21 temperatures on ozone. So I would say probably the  
22 official stance of the district is that increased  
23 temperatures overall would increase pollution.

24 MR. SIMPSON: So are there potential localized  
25 health risks associated with greenhouse gases?

1 MS. CABRAL: Not that I know of.

2 MR. SIMPSON: And for the health expert, can I  
3 ask you those same questions? Are localized health risks  
4 associating with carbon dioxide or greenhouse gas?

5 DR. ODOEMELAM: Probably.

6 MR. SIMPSON: You said probably?

7 DR. ODOEMELAM: Depends on the circumstance.  
8 Theoretically, yeah, there would be areas of concentrated  
9 exposures and concentrated levels.

10 MR. SIMPSON: Thank you.

11 Was there a cumulative analysis done that  
12 included proposed or approved projects that may not have  
13 been built yet?

14 MS. QIAN: Yes, we did include Altamont and the  
15 Byron cogen and the waste management cumulative analysis.

16 MR. SIMPSON: Thank you.

17 Was there a nitrogen deposition study?

18 MS. QIAN: What's that?

19 MR. SIMPSON: Was there a nitrogen deposition  
20 study?

21 MS. QIAN: No.

22 MR. SIMPSON: I see. For health expert, it  
23 sounds like you were saying humans are considered the most  
24 susceptible for the analysis. So a human is more  
25 susceptible than a canary?

1 DR. ODOEMELAM: The animals -- air quality  
2 standards (inaudible) human protection. We assume that  
3 humans are more sensitive than any other species.

4 MR. SIMPSON: I see. I'm good.

5 HEARING OFFICER CELLI: Thank you, sir.

6 Mr. Wheatland, cross-examination.

7 MR. WHEATLAND: No. No questions.

8 HEARING OFFICER CELLI: Staff, any redirect?

9 STAFF COUNSEL WILLIS: None.

10 HEARING OFFICER CELLI: Thank you very much. I'd  
11 like to thank all of you, this panel, for participating in  
12 these hearings. You are excused. At this time, we will  
13 take a five minute, ten minute -- take a ten minute break.  
14 It's now 9:48. Let's come back and we will take the  
15 applicant's panel at 10:00. So we will see you at 10:00.  
16 Please be back on time and in your seat and ready to go.  
17 We are off the record.

18 (Off record.)

19 HEARING OFFICER CELLI: We're on the record.  
20 What I'd like to do is read three comments into the record  
21 from some members of the public.

22 First was Nazeer Shaik, N-a-z-e-e-r, S-h-a-i-k.  
23 He's a member of the Mountain House community. And his  
24 remarks are that this plant may degrade the home values  
25 which are already in crisis. This plant may also pollute

1 the atmosphere which could cause health issues.

2           Then we have a comment from Anand Palanisamy,  
3 A-n-a-n-d, P-a-l-a-n-i-s-a-m-y, of the Mountain House  
4 community, and he said this plant is going -- he or she, I  
5 don't know -- this plant is going to pollute the air and  
6 also there will be a lot of noise. It will effect  
7 beautiful and brand-new community.

8           And finally we have a comment from Prakash Mohan,  
9 P-r-a-k-a-s-h, M-o-h-a-n from Mountain House. He's a  
10 resident. He/she. It will pollute air and I will be  
11 lured to move from my house to another place. I don't  
12 want to do that. I will be forced. Thank you. Forced to  
13 move to another place and they don't want to move.

14           So you know, these comments are good.

15           They're useful. I will give them to you in a  
16 little bit, Mr. Petty.

17           And just to underscore the need for us to really  
18 take evidence and take a look at what the evidence is.  
19 Because there are a lot of people running around and  
20 making conclusions and saying this or that about the  
21 project. Until we've seen it, we don't know. So now  
22 we're at that part of the proceedings where the applicant  
23 is going to call their witness. So applicant.

24           MR. WHEATLAND: Well, our witnesses have taken  
25 the stand. But I understand that the intervenors are

1 prepared to stipulate to the admission of our air quality  
2 testimony by declaration without the need for the  
3 witnesses to appear.

4 HEARING OFFICER CELLI: Let's do this. Before I  
5 get to you again, Mr. Wheatland, I took in all of staff's  
6 air quality evidence. That's been received now; correct?

7 STAFF COUNSEL WILLIS: That's correct.

8 HEARING OFFICER CELLI: And I took in Mr.  
9 Sarvey's, all of your air testimony; correct?

10 MR. SARVEY: No.

11 HEARING OFFICER CELLI: Except for that one  
12 document that we're waiting for.

13 MR. SARVEY: You haven't taken any of any air  
14 quality testimony.

15 HEARING OFFICER CELLI: I'm going to take that  
16 motion right now. So do you have any exhibits you wish to  
17 move in with regard to air quality, Mr. Sarvey?

18 MR. SARVEY: Yes. I'd like to move in Exhibit  
19 403, air quality testimony of Robert Sarvey; 411, the  
20 Mulqueeney ranch pump storage. Well, I could -- we can  
21 move that now. 412, the PSP increment consumption status  
22 report. And that would be what I would request to move  
23 into the record.

24 HEARING OFFICER CELLI: Okay. There is a motion  
25 that we receive exhibits marked for identification as 403,

1 411 and 412.

2 Is there any objection from staff?

3 STAFF COUNSEL WILLIS: None.

4 HEARING OFFICER CELLI: Any objection from  
5 Mountain House?

6 MR. GROOVER: None.

7 HEARING OFFICER CELLI: Dighe?

8 MR. DIGHE: None.

9 HEARING OFFICER CELLI: Singh?

10 MR. SINGH: None.

11 HEARING OFFICER CELLI: Simpson?

12 MR. SIMPSON: No, sir.

13 HEARING OFFICER CELLI: Applicant?

14 MR. WHEATLAND: No.

15 HEARING OFFICER CELLI: Then Exhibits 403, 411,  
16 412 marked for identification are received into the  
17 record.

18 (Whereupon the above-referenced exhibits  
19 were admitted into evidence by the  
20 Hearing Officer.)

21 HEARING OFFICER CELLI: Mr. Dighe, did you have  
22 any air quality evidence that you wanted to put in?

23 MR. DIGHE: I don't think so. All of my  
24 (inaudible).

25 HEARING OFFICER CELLI: Okay. Mr. Singh, did you

1 need to move any evidence in?

2 MR. SINGH: Can I?

3 HEARING OFFICER CELLI: Well, let me see what  
4 you -- let me get to your page.

5 MR. SINGH: I have not submitted earlier, but do  
6 I have time to submit something tomorrow?

7 MR. WHEATLAND: Not tomorrow.

8 MR. SINGH: I haven't submitted any evidence in  
9 air quality.

10 HEARING OFFICER CELLI: Okay. I didn't think so.  
11 I thought you did not.

12 Okay. And Mr. Simpson, did you have any air  
13 quality evidence to put?

14 MR. SIMPSON: I did not.

15 HEARING OFFICER CELLI: You already had the one  
16 exhibit that's already in. Your exhibits are already in.

17 MR. SIMPSON: And my comments in the FDOC are in,  
18 right? The whole FDOC is in with all the comments.

19 HEARING OFFICER CELLI: Okay. So with that, then  
20 we just received 403, 411, 412. And applicant, what are  
21 your exhibit numbers, please?

22 MR. WHEATLAND: They are 1, 2, 4, 5, 6, 7, 8, 9,  
23 11, 13, 14, 21, 22, 33, 34, 37, 46, 52, 57, 59, 61, 62,  
24 and 65.

25 HEARING OFFICER CELLI: Okay. So the motion is

1 for the receipt of the following exhibits: Exhibit 1  
2 through 9, inconclusive, 11, 13, 14, 21, 22, 33, 34, 37,  
3 46, 52, 57, 59, 61, 62, 65.

4 Any objection, staff?

5 STAFF COUNSEL WILLIS: No objection.

6 HEARING OFFICER CELLI: Any objection, Mr.  
7 Sarvey?

8 MR. SARVEY: No.

9 HEARING OFFICER CELLI: Mountain House, any  
10 objection?

11 MR. GROOVER: No.

12 HEARING OFFICER CELLI: Mr. Dighe, any objection?

13 MR. DIGHE: No.

14 HEARING OFFICER CELLI: Mr. Singh, any objection?

15 MR. SINGH: No.

16 HEARING OFFICER CELLI: Mr. Simpson, any  
17 objection?

18 MR. SIMPSON: Nope.

19 HEARING OFFICER CELLI: Okay. Those exhibits are  
20 received into the record.

21 (Whereupon the above-referenced exhibits  
22 were admitted into evidence by the  
23 Hearing Officer.)

24 HEARING OFFICER CELLI: And your representation  
25 was there was a stipulation --

1 MR. WHEATLAND: That's what I've been informed.

2 Perhaps Mr. Simpson can verify that for you.

3 MR. SIMPSON: My understanding is that none of us  
4 have questions for these witnesses.

5 HEARING OFFICER CELLI: So let me jump around so  
6 I can ask. Staff, any questions of these witnesses?

7 STAFF COUNSEL WILLIS: We have none.

8 HEARING OFFICER CELLI: Okay. Any questions by  
9 Mr. Sarvey?

10 MR. SARVEY: No questions.

11 HEARING OFFICER CELLI: Mountain House, any  
12 questions of these witnesses?

13 MR. GROOVER: None.

14 HEARING OFFICER CELLI: I just want to let  
15 everyone know that San Joaquin -- is it Air Pollution  
16 Control District is here and just so you know.

17 Mr. Dighe, did you have any questions for these  
18 witnesses?

19 MR. DIGHE: No.

20 HEARING OFFICER CELLI: Mr. Singh, did you have  
21 any questions of these witnesses?

22 MR. SINGH: No.

23 HEARING OFFICER CELLI: Mr. Simpson, do you have  
24 any questions of these witnesses?

25 MR. SIMPSON: No, sir.

1 HEARING OFFICER CELLI: So with that, I think we  
2 received your evidence with regard to air quality. There  
3 are no questions for these witnesses. We can excuse the  
4 witnesses. I want to thank you for being there. I'm  
5 sorry you had to hang around for so long.

6 And with that, I think we can close the record on  
7 air quality. Is there anything further on air quality,  
8 staff?

9 STAFF COUNSEL WILLIS: No, we don't.

10 HEARING OFFICER CELLI: Mr. Sarvey, anything  
11 further on air quality?

12 MR. SARVEY: Nothing further.

13 HEARING OFFICER CELLI: Mountain House, anything  
14 further on air quality?

15 MR. GROOVER: No.

16 HEARING OFFICER CELLI: Mr. Dighe, anything on  
17 air quality?

18 MR. DIGHE: No.

19 HEARING OFFICER CELLI: Mr. Singh, anything on  
20 air quality?

21 MR. SINGH: No.

22 HEARING OFFICER CELLI: Mr. Simpson?

23 MR. SIMPSON: No, sir.

24 HEARING OFFICER CELLI: Then the record on air  
25 quality is closed. At this time, I'm going to go off the

1 record for one second.

2 (Off record.)

3 HEARING OFFICER CELLI: I'm going to hand the  
4 hearing back over to Commissioner Douglas to adjourn for  
5 the night. We'll resume tomorrow at 10:00.

6 STAFF COUNSEL WILLIS: Mr. Celli, before we do  
7 that, we had a question on worker safety. There was only  
8 the issue of the fire department and not an issue  
9 necessarily with staff's assessment. But staff would like  
10 to be here if the fire department is going to be here.  
11 Otherwise, we would request that the issue be moved to  
12 this -- the fire department

13 HEARING OFFICER CELLI: Someone is on the phone  
14 is saying the fire department would be here.

15 MS. FARRON: I was on the phone this evening.  
16 And I thought I heard you say you were going to move  
17 public safety from tomorrow's agenda and I told him  
18 tomorrow morning I would try to find out what time for him  
19 to appear to enter his testimony.

20 HEARING OFFICER CELLI: And I better get an  
21 identification of the speaker, please.

22 MS. FARRON: My name is Celeste Farron. I was  
23 there earlier, director (inaudible).

24 HEARING OFFICER CELLI: I am sorry. Your name  
25 again?

1 MS. FARRON: My name is Celeste Farron, Director  
2 of (inaudible) Mountain House.

3 HEARING OFFICER CELLI: Okay. So tomorrow the  
4 agenda would be -- unless we need to discuss this further,  
5 we would

6 MS. FARRON: (Inaudible).

7 HEARING OFFICER CELLI: I didn't hear that.

8 MS. FARRON: I just spoke with him moments ago,  
9 and he said it is an issue that he does need to address  
10 the CEC.

11 HEARING OFFICER CELLI: Tomorrow I expect to  
12 begin immediately at 10:00 with traffic and  
13 transportation, which is aviation, followed by  
14 socioeconomics, which I hope won't take that long,  
15 followed by alternatives. Now, if people are going to be  
16 here for fire and worker safety, do you want us to fit  
17 that in somehow tomorrow or --

18 STAFF COUNSEL WILLIS: I was just asked by Mr.  
19 Layton since he was the supervisor he would be coming back  
20 for that issue. He wanted to know if it was possible to  
21 move it to the 7th. But if the fire department would be  
22 here, he said he would be willing to come back down for  
23 that.

24 MS. FARRON: Chief Brammel is making a special  
25 trip tomorrow to be there tomorrow.

1 HEARING OFFICER CELLI: Do you know what time he  
2 intends to be here?

3 MS. FARRON: I told him I would notify -- he can  
4 arrange his schedule tomorrow to be there at the  
5 appropriate time. I told him I would let him know in the  
6 morning when I found out.

7 HEARING OFFICER CELLI: Let me -- the applicant,  
8 is there any chance that this is going to settle for  
9 worker safety issues?

10 MR. WHEATLAND: Yes, there is a chance that it  
11 could settle.

12 HEARING OFFICER CELLI: Okay. Let me ask it  
13 differently. Is there a remote chance or is there a good  
14 chance?

15 MR. WHEATLAND: It's --

16 MS. FARRON: I just spoke with the chief. It  
17 doesn't sound like they were reaching an agreement.

18 MR. WHEATLAND: I'm not that pessimistic. It's  
19 better than remote. It's not quite to good, but it's  
20 better than remote. We're still having a serious  
21 discussion on this one, and it would be our expectation  
22 that we can try to settle it.

23 HEARING OFFICER CELLI: I hate dragging down  
24 people, especially from other agencies to sit around all  
25 day and then not call their matter.

1 MR. SIMPSON: How about 1:00?

2 HEARING OFFICER CELLI: Well, see, the problem is  
3 I'm going to have -- see, the beauty of getting rid of  
4 traffic and transportation, once I finish with that, then  
5 one of my intervenors leaves.

6 MR. WHEATLAND: If Mr. Curry is able to talk with  
7 Mr. Brammel -- Chief Brammel tomorrow morning if Chief  
8 Brammel is available to have a discussion, we can try to  
9 work this out. The key thing is that we'll need to have  
10 the two of them being able to talk together.

11 HEARING OFFICER CELLI: Let's do this. If you  
12 can -- Ms. Farron and all parties, if we can facilitate in  
13 some way the communication between the applicant and Chief  
14 Brammel.

15 MS. FARRON: The discussion has been ongoing  
16 today.

17 HEARING OFFICER CELLI: Good. Then maybe I can  
18 get a report back tomorrow morning first thing. And then  
19 if we have movement hopefully some stipulation, then we  
20 can -- we won't have to drag him into the proceedings.  
21 Because I really wanted to stick to the -- do you remember  
22 we have that pie chart that we did and we're trying to  
23 tackle the big issues up front first. So I wanted to  
24 hit --

25 MS. FARRON: I will note this has been the one

1 issue that Mountain House Community Service District our  
2 intervenors have been standing on. And I would  
3 respectfully request we don't move it if the fire chief  
4 wishes to have his moment with the CEC.

5 HEARING OFFICER CELLI: Okay. Well, it is  
6 important. And we will -- hopefully we can fit it in if  
7 we have to tomorrow. And it seems like we do.

8 MR. WHEATLAND: One other scheduling issue for  
9 tomorrow is as I mentioned earlier today, our witness on  
10 pipeline safety has flown out here to be available  
11 tomorrow. So we'd also ask that you take his testimony  
12 tomorrow, even if you take the other witnesses on the 7th.

13 HEARING OFFICER CELLI: I want to say that  
14 everyone did a really excellent job of moving along today.  
15 I think that everybody did a good job of having ready  
16 questions and I really appreciate that. And if we can do  
17 that again tomorrow, and if we can move with some alacrity  
18 through alternatives, I don't have to give all that  
19 preamble information up front like I do on day one.  
20 Tomorrow at 10:00, call your first witness on aviation.  
21 We hit the ground running. We should be able to tackle  
22 all of that. I will make sure that we handle the  
23 hazardous materials. So be prepared to ask your questions  
24 with regard to the hazardous materials expert that the  
25 applicant will be putting on. We're going to take him out

1 of order because we really expected to take hazard  
2 materials on day three on the 7th. That's when we really  
3 want to hear the rest of the evidence. But we're going to  
4 accommodate this.

5 So with that, traffic and transportation in the  
6 morning, followed by socio, followed by alternatives. And  
7 I have the feeling socioeconomics might be a little more  
8 abbreviated than people think.

9 Mr. Sarvey, you have a question?

10 MR. SARVEY: Well, I was just going to say since  
11 worker safety and fire protection was my issue, I have no  
12 objection to wait until the 7th to hear it.

13 HEARING OFFICER CELLI: I actually --

14 MR. SARVEY: I think it will give the parties  
15 more time to come to a reasonable agreement. But  
16 obviously I defer to your judgment, Mr. Celli.

17 HEARING OFFICER CELLI: You know what happens  
18 when you have an extra day out there, everything starts to  
19 pile up on the last day. And that's what I'm trying to  
20 avoid doing. Let's do our best tomorrow to get through  
21 traffic, transportation, socio, alternatives. And we'll  
22 see if we can't get hazardous materials started and maybe  
23 worker safety knocked out tomorrow. So that's the plan.

24 STAFF COUNSEL WILLIS: So we should have our  
25 witness here for worker safety?

1 HEARING OFFICER CELLI: It looks that way, yes.

2 STAFF COUNSEL WILLIS: Do you have a time?

3 Because they have some meetings tomorrow scheduled.

4 HEARING OFFICER CELLI: Let's put it this way.

5 If we can start tomorrow at 10:00 with traffic and

6 transportation and we move as quickly as we just did, we

7 might be able to get that finished by let's say lunchtime,

8 noon. And then we tackle socioeconomics after that. So

9 mid afternoon. Mid-afternoon seems reasonable.

10 STAFF COUNSEL WILLIS: Okay.

11 HEARING OFFICER CELLI: Anything else on

12 scheduling or housekeeping before we go?

13 MR. SINGH: I have a question. Is socioeconomic

14 and environmental justice combined together?

15 HEARING OFFICER CELLI: Socioeconomics and

16 environmental justice? The thing about environmental

17 justice is that socioeconomics addresses the statistics of

18 the minorities in a given area. Okay. What are the

19 demographics of the area. But once that's established, if

20 there is an impact, the impact would come from one of the

21 other areas, biology, traffic and transportation, noise,

22 something like that.

23 Do you understand what I mean?

24 So all that socioeconomics does is actually sets

25 up some statistical data. But it really doesn't go to

1 impacts, per se. That would then be proven in biology,  
2 soil and water, whatever the impact might be. So that's  
3 how socio -- socioeconomics deals with things like how  
4 many jobs are going to be created. How much tax revenue  
5 is going to be generated. How many workers are going to  
6 be coming into the area to work on this construction job.  
7 That kind of thing.

8 MR. SINGH: So the environmental justice  
9 basically like you don't consider as a minority community  
10 so we have to start (inaudible) from there where we have  
11 to establish the facts we are the minority community.

12 HEARING OFFICER CELLI: That's socioeconomics.  
13 Tomorrow is if we're getting into socioeconomics, then you  
14 will want to establish whether there is a minority or not.  
15 That's socioeconomics. Now, that's all we do in  
16 socioeconomics. Okay. So we don't talk about whether  
17 there's an air impact. We've already dealt with air, or  
18 biology or anything. We're just talking about what the  
19 statistics are. If I'm not doing a good job, I mean,  
20 please. Let me know. But that's what we expect for  
21 tomorrow.

22 And you should read some of the socioeconomics  
23 section of other PMPDs which are all on the Internet and  
24 you can get a sense of what the Committee is listening  
25 for, what we're looking for in socioeconomics.

1 Mr. Dighe, you had a question.

2 MR. DIGHE: Yeah. We had a joined motion and I  
3 think you said (inaudible).

4 HEARING OFFICER CELLI: Regretfully, the  
5 Committee denies the motion in its entirety. And so the  
6 motion is denied.

7 MR. SINGH: So in the morning you said the first  
8 item that --

9 HEARING OFFICER CELLI: Oh, Mr. Travis can appear  
10 for you. I'm sorry. But, yes, that part is granted. Mr.  
11 Travis's participation will be granted and he can  
12 represent you. But other than that, the request for  
13 translators and the request for a translated publication  
14 into native languages is denied.

15 MR. SINGH: But my understanding was once we  
16 establish that we are minority then we are going to take  
17 an action on those two items. If we're not able to  
18 establish a minority then no action would be taken for the  
19 other two items. That's what my understanding was in the  
20 morning from Mr. Celli.

21 MR. DIGHE: Because we believe that -- I mean  
22 there's significant facts which clearly prove it's a  
23 minority community and staff is kind of ignoring it right  
24 now. So I'm confused how can we make this motion. How  
25 did you deny --

1 HEARING OFFICER CELLI: Okay. I'll tell you what  
2 the basis for the denial is. Remember, we're granting the  
3 motion as to Mr. Travis Miller.

4 MR. SINGH: But he's not available tomorrow. So  
5 do you grant like the continuance second hearing?

6 HEARING OFFICER CELLI: Oh, the motion to  
7 continue?

8 MR. SINGH: The second hearing. That is what  
9 I've asked for, because Mr. Travis is not available.

10 HEARING OFFICER CELLI: Oh, I see. No, we're not  
11 going to do this because this is a noticed hearing. All  
12 of the parties are here. We have people flying out from I  
13 don't know where but people are flying in to testify.  
14 We're all ready to go. We will take the testimony. Now,  
15 so that is -- that motion is denied.

16 As to the motion with regard to interpreters and  
17 translation of the documents, that's purely an economical  
18 problem. The State, we can't even have travel. There  
19 just is no money. So there is no budget for translators  
20 to come in and translate written documents into whatever  
21 languages. Yes, thousands of pages.

22 MR. SINGH: So do I assume the burden has to be  
23 taken by the minorities instead of applicant in this  
24 state.

25 HEARING OFFICER CELLI: Can you state louder?

1           MR. SINGH: This is a burden that the minority  
2 will be carrying because you guys don't have the money.  
3 The applicant should take that burden and translate those  
4 documents so that --

5           HEARING OFFICER CELLI: Let me explain that in  
6 constitutional terms, you know, if you go into criminal  
7 court, you're looking at the loss of life and liberty.  
8 And that's a very high priority. And so they always are  
9 entitled to an interpreter in criminal court. But this is  
10 an administrative hearing that's not put life, liberty, or  
11 property at stake. And as such, there's just not money  
12 for that sort of thing. It's just not a high enough  
13 priority.

14          MR. SINGH: But is there any rules, regulations  
15 or legislation that deals like this is not being  
16 addressed?

17          HEARING OFFICER CELLI: Is there a --

18          MR. SINGH: Is there code of conduct or the rules  
19 of regulation of Legislature that this will not be  
20 addressed like for example you have big -- (inaudible)  
21 dictionary. Section so and so it says okay we can't  
22 cross-examine our own witnesses on friendly cross-examine.  
23 We have established document which says that.

24          HEARING OFFICER CELLI: Yes, I do.

25          MR. SINGH: Tell me what section would that be?

1 HEARING OFFICER CELLI: The section is 1203 of  
2 Title 20 of the California Code of Regulations. Basically  
3 says that the powers -- I am sorry. The powers in the  
4 Chairman. Well, 1203(c). All right. "The Presiding  
5 member" --

6 MR. SINGH: Are we on the record right now?

7 HEARING OFFICER CELLI: Yes, we are. 1203  
8 subsection (c) says that, "The Presiding member has the  
9 power to regulate the conduct of the proceedings in the  
10 hearings, including, but not limited to, disposing with  
11 procedural requests, meeting or excluding evidence,  
12 receiving exhibits, designating the order of appearance,  
13 the persons making oral comments or testimony during the  
14 hearings." So this comes under regulating the conduct of  
15 the proceedings and that is the section 1203(c).

16 MR. SINGH: So that goes back to again a simple  
17 problem that the minority is not established --

18 HEARING OFFICER CELLI: No. What that says is  
19 that. We ruled and the ruling is the motion is denied.  
20 And if you don't understand, you might want to talk to Mr.  
21 Travis about that. But that's the ruling.

22 MR. DIGHE: Can I put a statement on the record?

23 HEARING OFFICER CELLI: Sure. Go ahead.

24 MR. DIGHE: So it's like the minority communities  
25 not a --

1 HEARING OFFICER CELLI: There's no fact right now  
2 in the record other than allegations that this is a  
3 minority community. We're going to find out tomorrow.

4 MR. DIGHE: That's fine.

5 HEARING OFFICER CELLI: Let's just assume that it  
6 is a minority community.

7 MR. DIGHE: So now minority community is not able  
8 to establish --

9 HEARING OFFICER CELLI: A minority community  
10 is -- there are certain rules having to do with minority  
11 communities in terms of disparate impacts. That means  
12 that you can't pollute more on one group of people than  
13 everyone else. Basically that's the idea. If there isn't  
14 anything about minority -- there's nothing in CEQA that  
15 says minorities are entitled to transcripts in their  
16 native language or they're entitled to an interpreter.  
17 That's --

18 MR. DIGHE: I understand. I just want to put it  
19 so that the minority community is not able to establish a  
20 record, right, because of the lack of translators. I just  
21 want to say that (inaudible) right.

22 HEARING OFFICER CELLI: I am sorry. I didn't  
23 hear some of the words. He said some of the minority  
24 community is not capable of establishing a what?

25 MR. DIGHE: A record.

1 HEARING OFFICER CELLI: A record.

2 MR. DIGHE: Yeah, because of it's not going to  
3 establish a record because of the lack of -- because  
4 (inaudible) translators and our motion is getting denied,  
5 right?

6 HEARING OFFICER CELLI: The motion is denied.  
7 You're here. You're representing Mountain House. We're  
8 going to hear your evidence tomorrow on the  
9 socioeconomics. So and we have Mountain House community  
10 district here as well. And we're going to hear evidence  
11 on what the make up -- demographical make up is of  
12 Mountain House.

13 MR. DIGHE: Yes. But I think you explained that  
14 to translate --

15 HEARING OFFICER CELLI: Whoever is on the phone,  
16 I'm going to ask you to please hold off until we're done  
17 here. Go ahead.

18 MR. DIGHE: So I think the motion clearly  
19 explains the challenges which we are facing.

20 HEARING OFFICER CELLI: I understand. I wanted  
21 to say --

22 MR. DIGHE: It's fine. I just want to put it on  
23 the record that it's (inaudible)

24 HEARING OFFICER CELLI: We regret --

25 MR. DIGHE: Translators to establish a record.

1 HEARING OFFICER CELLI: I'm sorry that we -- I  
2 wish we could. I wish we could have translators. I wish  
3 we could have everything published in every language. We  
4 just can't. So --

5 MR. SINGH: That is because California doesn't  
6 have the funding. Is that it?

7 HEARING OFFICER CELLI: That's right. There is  
8 no budget for translation. There is no budget for  
9 interpreters for the California Energy Commission  
10 hearings. So that's our predicament. So understood that  
11 it's difficult. Not only do we have the people with  
12 English as a second language as intervenors, we have  
13 people with English as a second language who were  
14 witnesses. And we do our best to communicate and make a  
15 record. And hopefully in the end the right things  
16 happens.

17 MR. DIGHE: Yes, I understand. (Inaudible) as  
18 well but (inaudible) lot of statements during the  
19 workshops and that we had a lot of people that was in my  
20 community with multiple languages. And we just wish that  
21 we had the capability of getting those translators so that  
22 we could establish a record. And (inaudible) residents  
23 and communicating is a challenge. (inaudible) and I tried  
24 to get those translator into questions today. You must  
25 have seen. I tried my best. But I wanted to -- I want to

1 see if there was a chance. That's why we make motion.

2 But that's fine.

3 HEARING OFFICER CELLI: I appreciate that. And I  
4 want you to appreciate also that we stood here and  
5 listened to all of these Mountain House people say we're  
6 opposed to the project. We are worried about -- we have  
7 children. We are worried about air pollution. All of  
8 that came in. You know, the fact that more people say  
9 that, the information is the same. And so I just -- if  
10 your concern is that we're going to get more of the same  
11 information from more people, I don't think -- I think  
12 that's needlessly cumulative.

13 MR. DIGHE: Not necessarily. Because I don't  
14 think I did the justice in actually translating it myself.  
15 It is amazing the diverse finalized languages are there.  
16 And I tried my best. And the more and more I talked to  
17 people in the community, the more and more I realized how  
18 little I know about the different languages. And a lot of  
19 questions. And I think (inaudible) should probably be  
20 diversified questions instead of the same questions.  
21 That's a fact.

22 HEARING OFFICER CELLI: We are doing our best  
23 with what we can.

24 MR. DIGHE: Appreciate it.

25 MR. SINGH: If you see the record, all the cards

1 that came, the people that came here, 95 percent were  
2 minorities.

3 HEARING OFFICER CELLI: Certainly they were  
4 mostly Asian names. That's true. I'll give you that. So  
5 the sample of people who showed up were mostly minority  
6 people.

7 MR. SINGH: Right.

8 HEARING OFFICER CELLI: So with that, Mr. Sarvey  
9 has a question.

10 MR. SARVEY: I am sorry. I have one more  
11 question. I polled all the parties and about Mr. Powers  
12 testifying telephonically tomorrow. Everyone was in  
13 agreement, except for the applicant.

14 HEARING OFFICER CELLI: We're going to allow him  
15 to testify. But like I said, this is risky business  
16 having people testify by the phone. As you can hear  
17 it's --

18 MR. SARVEY: I understand. I just wanted to make  
19 sure it's all right.

20 MR. WHEATLAND: Mr. Sarvey actually didn't quite  
21 represent what I told him. I'm still prepared to accept  
22 Mr. Powers testimony by declaration without the need for  
23 him to appear and waive all questions. I understand that  
24 staff no longer has any questions. And if there is no  
25 friendly cross, there is no reason why his testimony

1 cannot be accepted without him having to appear.

2 HEARING OFFICER CELLI: Okay. And Mr. Powers is  
3 testifying under what topic?

4 MR. SARVEY: Alternatives.

5 HEARING OFFICER CELLI: Alternatives. And so  
6 essentially that means that your testimony comes in.

7 MR. SARVEY: I'm going to have him on the phone.  
8 If there's no cross or anything, then we'll be done. But  
9 I want to go through the formality of it.

10 HEARING OFFICER CELLI: If you talk to him,  
11 please let him know that a lot of these people call in and  
12 they're on their speaker phones. We have no fidelity on  
13 speaker phones. He needs to pick up the hand set and  
14 actually talk through a hand set to get the best sound  
15 that we can. And we are doing our best to accommodate  
16 this. But I just hope -- I'm not going to have the techy  
17 that I had here today. Matt Dowell was here today. He  
18 won't be in tomorrow. So I'm just hoping, knock wood,  
19 that WebEx works properly.

20 MR. SARVEY: Well, I'll talk to Mr. Powers  
21 tonight and I'll talk to Mr. Wheatland in the morning and  
22 we'll go from there.

23 HEARING OFFICER CELLI: Great. Thank you. And  
24 Mr. Wheatland had another question.

25 MR. WHEATLAND: Mr. Salamy reminded me that I

1 moved for admission of our air quality exhibits but I did  
2 not move for the admission of our public health witnesses  
3 and the two topics were combined. So I'd like to move  
4 those at this time, if I could.

5 HEARING OFFICER CELLI: What are those exhibits?

6 MR. WHEATLAND: Under public health 1, 3, 4, 6,  
7 11, 15, 37, 46, 61, and 62.

8 HEARING OFFICER CELLI: The motion is to have  
9 Exhibits 1, 3, 4, 6, 11, 15, 37, 46, 61 and 62 received  
10 into the record.

11 Is there any objection from staff?

12 STAFF COUNSEL WILLIS: None.

13 HEARING OFFICER CELLI: Any objection from  
14 Sarvey?

15 MR. SARVEY: None.

16 HEARING OFFICER CELLI: Any objection from  
17 Mountain House?

18 MR. GROOVER: None.

19 HEARING OFFICER CELLI: Any objection from Dighe?

20 MR. DIGHE: No.

21 HEARING OFFICER CELLI: Any objection from Singh?

22 MR. SINGH: None.

23 HEARING OFFICER CELLI: Any objection from  
24 Simpson?

25 MR. SIMPSON: No objection.

1           HEARING OFFICER CELLI: Okay. Those exhibits are  
2 now received into the record.

3           (Whereupon the above-referenced exhibits  
4 were admitted into evidence by the  
5 Hearing Officer.)

6           HEARING OFFICER CELLI: And with that, I'm going  
7 to now hand over the meeting to Commissioner Douglas.

8           COMMISSIONER DOUGLAS: Thank you, Mr. Celli. I'd  
9 like to thank everybody for their hard work today, their  
10 constructive focused and helpful questions and helpful to  
11 the Committee. So we'll be adjourned today. And see you  
12 all tomorrow.

13           (Thereupon the hearing recessed at 10:39 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 2nd day of March, 2011.

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TIFFANY C. KRAFT, CSR, RPR

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Certified Shorthand Reporter

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