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.

REPORTED BY:
PETER PETTY, CER*D

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

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

APPEARANCES CONTINUED

PUBLIC COMMENT

Ken Tan

Smitha Unnikrishnan

Yegneswara Somayajula Upadhyayula

Matthew Van Der Voort

Xin Wang

Jason Yao

Shirley Yao

Frank Ye

Bing Zhang

Tina Zhini

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PROCEEDINGS

COMMITTEE MEMBER DOUGLAS: My name is Commissioner Karen Douglas. I'm Presiding Member of this case.

To my left is our Hearing Officer, Ken Celli.

To my far right is my advisor, Paul Feist.

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

To my immediate right is my advisor, Galen Lemei.

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

MR. WHEATLAND: Good morning. I'm Gregg Wheatland. I'm counsel for the applicant.

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

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

COMMITTEE MEMBER DOUGLAS: Thank you, Mr. Wheatland.

And staff?

STAFF COUNSEL WILLIS: Good morning. My name is Kerry Willis, senior staff counsel with the Energy Commission. And I'm representing staff.

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

COMMITTEE MEMBER DOUGLAS: Thank you.

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

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

COMMITTEE MEMBER DOUGLAS: Thank you. Let's keep moving down then.

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

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

MR. DIGHE: Rajesh Dighe from Mountain House community.

COMMITTEE MEMBER DOUGLAS: Let me ask before Mr. Wilson starts, can everybody hear in the back of the room? No. All right. Let me ask that you have your mikes on

and be careful to speak into your mike.

We just had Mr. Lamb from Mountain House; Mr. Dighe here as an intervenor.

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

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

COMMITTEE MEMBER DOUGLAS: Could everybody hear that in the back? Yes.

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

COMMITTEE MEMBER DOUGLAS: Can you speak into your microphone?

MR. SINGH: Mountain House.

COMMITTEE MEMBER DOUGLAS: Can you try to turn the mike on?

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

MS. JENNINGS: No.

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

COMMITTEE MEMBER DOUGLAS: Ms. Jennings was shaking her head at me.

MR. SINGH: Can you hear me?

HEARING OFFICER CELLI: No. Keep trying.

MR. SINGH: Hello.

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

COMMITTEE MEMBER DOUGLAS: Mr. Sarvey is calling you again, but now that we're on the record, can you introduce yourself?

MR. SARVEY: Bob Sarvey, intervenor.

COMMITTEE MEMBER DOUGLAS: All right. And we had gotten to Mr. Singh.

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

MR. MAINLAND: Ed Mainland, Sierra Club California.

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

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

HEARING OFFICER CELLI: We could hear you fine. You know why? Because you spoke right into the microphone. And that's the way we're going to have to do it today is actually speak right into the microphone so everyone can hear you in the room. So thank you very much

for your patience. We have people working on the microphones right now. And we'll hopefully get the problem fixed within the next half hour or so.

We're on the record.

COMMITTEE MEMBER DOUGLAS: Are there any elected officials with us? Are there any elected officials in the room today?

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

COMMITTEE MEMBER DOUGLAS: Thank you.

Other elected officials in the room?

Mr. Lamb, I know.

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

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

COMMITTEE MEMBER DOUGLAS: Thank you. Was that microphone on? Was that picked up?

Thank you, Ms. Cabral.

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

Go ahead.

MS. WALLACH: Randi Wallach with the Bay Area Air Quality Management District.

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

COMMITTEE MEMBER DOUGLAS: All right.

HEARING OFFICER CELLI: Good morning.

COMMITTEE MEMBER DOUGLAS: Is anybody here from the city of Byron or Water Boards? Any State or local Water Boards?

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

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

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

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

The evidentiary hearing is a formal adjudicatory

proceeding to receive evidence into the formal evidentiary record from the parties. Only the parties who are the applicant, intervenors, and Energy Commission staff may present evidence for introduction into the formal evidentiary record which is the only evidence upon which the Commission may base its decision under law.

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

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

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

The Committee will rule on motions and objections. The Committee may take official notice of matters within the Energy Commission's field of competence and of any fact that may be judicially noticed by the California courts. The official record of this proceeding includes sworn testimony of the parties' witnesses, the

reporter's transcript of the evidentiary hearing, the exhibits received into evidence, briefs, pleading, orders, notices, and comments submitted by members of the public. The Committee's decision will be based solely on the record of competent evidence in order to determine whether the project complies with applicable law.

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

Members of the public who wish to speak should fill out a blue card provided by the public advisor and Jennifer Jennings who's in the back of the room. Has a red shirt and gray coat. She's holding up a blue card. If you'd like to make a comment or if you just want to

submit a written comment, you can use that blue card and that's how we know that you're here, that you want to make a comment and we call you in the order that we receive them.

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

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

Finally, intervenor will offer their evidence of the uncontested topics into the record in the following order which is how I have you seated. And this is in order of intervention. Mr. Sarvey, Mountain House Community Service Districts, Mr. Dighe, the California

Pilots Association, Mr. Singh, Sierra Club of California, and Rob Simpson.

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

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

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

MR. HOFFMAN: Yes, I do.

HEARING OFFICER CELLI: Mr. Curry?

MR. CURRY: I do.

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

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

Now before I allow applicant to move their documents at this time, I'm going to have to go off the record for one moment. Excuse me.

(Off record.)

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

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

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

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

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

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

MR. WHEATLAND: All right. Under the topic of project Description, Exhibit 1, Exhibit 4, Exhibit 5,

Exhibit 6, Exhibit 11, Exhibit 64, and Exhibit 66. And again this is on a list that we have provided to you and to the parties in this proceeding.

HEARING OFFICER CELLI: Please, cultural.

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

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

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

Under electric transmission, Exhibits 1, 4, 5, 6,

7, 8, 11, 23, 25, 26, 51, and 61.

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

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

MR. WHEATLAND: All right.

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

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

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

MR. WHEATLAND: Correct.

HEARING OFFICER CELLI: Thank you.

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

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

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

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

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

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

HEARING OFFICER CELLI: Thank you.

Any objection, staff?

STAFF COUNSEL WILLIS: None

HEARING OFFICER CELLI: Any objection, Mr. Sarvey?

MR. SARVEY: I have no objection.

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

HEARING OFFICER CELLI: Mr. Groover?

MR. GROOVER: No objection.

HEARING OFFICER CELLI: Mr. Dighe?

MR. DIGHE: No objection.

HEARING OFFICER CELLI: Mr. Wilson?

MR. WILSON: No objection.

HEARING OFFICER CELLI: Mr. Singh?

MR. SINGH: No objection.

HEARING OFFICER CELLI: Mr. Mainland?

MR. MAINLAND: No objection.

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

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

MR. SIMPSON: I have no objection.

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

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

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

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

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

STAFF COUNSEL WILLIS: That we would be moving

that are undisputed.

HEARING OFFICER CELLI: Thank you, Ms. Willis.

Any objection, Mr. Sarvey?

MR. SARVEY: No objection.

HEARING OFFICER CELLI: Any objection from Mountain House?

MR. GROOVER: No objection.

HEARING OFFICER CELLI: Thank you.

Any objection, Mr. Dighe?

MR. DIGHE: No objection.

HEARING OFFICER CELLI: Any objection, Mr. Wilson?

MR. WILSON: No objection.

HEARING OFFICER CELLI: Any objection, Mr. Singh?

MR. SINGH: No objection.

HEARING OFFICER CELLI: Any objection, Mr. Carlton?

MR. CARLTON: No objection.

HEARING OFFICER CELLI: Any objection, Mr. Simpson?

MR. SIMPSON: No objection.

HEARING OFFICER CELLI: Thank you. At this time Exhibits 300 and 301 will be received.

(Whereupon the above-referenced documents were admitted into evidence by the

Hearing Officer.)

HEARING OFFICER CELLI: Mr. Sarvey, do you wish to move your evidence into the record at this time on any of these subjects?

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

HEARING OFFICER CELLI: Thank you.

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

Thank you. Thank you, Mr. Sarvey.

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

MR. GROOVER: Not at this time.

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

MR. DIGHE: No.

HEARING OFFICER CELLI: Thank you.

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

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

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

MR. SINGH: Not at this time.

HEARING OFFICER CELLI: Thank you.

Mr. Carlton, on behalf of Sierra Club California?

MR. CARLTON: Not at this time.

HEARING OFFICER CELLI: And Mr. Simpson?

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

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

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

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

MR. SIMPSON: No, sir.

HEARING OFFICER CELLI: Do you have any evidence

yourself to put in on any of these undisputed topics?

MR. SIMPSON: No, sir.

HEARING OFFICER CELLI: Thank you.

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

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

HEARING OFFICER CELLI: One is better than none.

Mr. Sarvey, did you have a question?

MR. SARVEY: I just wanted to update the Committee on the workshop and the current negotiations that are going on between applicant, staff, and myself. We are discussing a condition of certification for visual, which will probably take care of all these issues. I have proposed a condition of certification for hazardous materials, which the applicant has regrettably informed me they do not wish to adopt. And also have made an agreement with staff and applicant that if the applicant can come to an agreement with the Tracy Fire, we can pull worker safety and fire protection off the list as well. But at this time, I spoke to Tracy Fire this morning, there doesn't seem to be any movement at this point. And I was hoping we could wrap it up by the end of that day. But that seems entirely up to applicant and Tracy Fire. Trace fire is willing to accept the applicant's proposal. I'm willing to take worker safety and fire protection off the table.

HEARING OFFICER CELLI: Thank you, Mr. Sarvey.

Applicant, did you care to respond the that?

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

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

MR. WHEATLAND: I'm sorry. I don't know. They're aware of the hearings progressing now and our anxiousness to receive their response. But I can't say when they'll answer.

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

Mr. -- go ahead, Mr. Groover.

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

HEARING OFFICER CELLI: Thank you.

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

At the prehearing conference, we talked about how we would receive and we came up with the agenda essentially that -- let me actually talk about the topics that are in dispute so that you know what to expect. We're talking about disputed areas are: Air quality, alternatives, biological resources, land use,

socioeconomics, soil and water resources, visual resources, worker safety, traffic and transportation, which is aviation, public health, and hazardous materials.

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

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

STAFF COUNSEL WILLIS: Excuse me, Mr. Celli.

Just to be clear, we only have the witnesses coming scheduled for today.

HEARING OFFICER CELLI: Right. We'll see what we can do. Because if it looks like we're really running through this, maybe we can have some people appear on the telephone and get into some things and speed things up. I'm sure we can make that happen.

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

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

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

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

HEARING OFFICER CELLI: Right.

STAFF COUNSEL WILLIS: Okay.

HEARING OFFICER CELLI: I did send you an e-mail to that effect. Other people weren't clear. I guess it didn't go to everybody who had the question.

Mr. Wheatland, you had a question?

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

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

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

MR. WASHINGTON: I'm Mr. Washington.

HEARING OFFICER CELLI: And Mr. Lopez? Okay. And why don't you all step forward. I'm going to take your testimony first this morning. So come on up. I'm

going to ask you to sit at this table on my left. I'm hoping those microphones are working. But please be mindful that everybody needs to hear you and we need to speak directly into these microphones.

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

(Whereupon the witnesses were sworn.)

MR. WASHINGTON: I do.

MR. LOPEZ: I do.

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

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

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

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

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

HEARING OFFICER CELLI: Thank you. We're going to proceed in an unusual way this morning, ladies and gentlemen. The people who are before you to testify today are nobody's witness in particular. They've come down at the request of the Committee to answer some questions. Since they aren't really affiliated or associated with any party in this case, we, the Committee, asked the parties to submit questions that the Committee will ask of the parties. And then afterwards, we will give some limited cross-examination to the parties so you can ask follow up questions as needed.

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

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

will be quoting from today.

HEARING OFFICER CELLI: Thank you.

And Mr. Jensen?

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

HEARING OFFICER CELLI: Thank you.

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

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

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

MR. LOPEZ: Sure. Measure D is a voter-approved initiative. It was approved in the fall of the year 2000. Essentially is a growth control measure to define the

urban growth boundary around cities. I understand it was initially brought forward to the voters in response to the development potential or the desire for development to occur in the north Livermore area, which at that time there was a strong desire to keep that as open space. Measure D was passed ostensibly to curb that kind of growth and to limit the ability for new residential, new commercial and new industrial development to occur in the unincorporated non-urban growth boundary areas of Alameda County.

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

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

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

MR. LOPEZ: We don't believe it does. I should

probably -- what I wanted to do is actually ask too we did have a prepared statement that addresses some of these issues. And I don't know if I could just read that into the record. It does address that issue as well as a variety of other issues.

HEARING OFFICER CELLI: Please do.

MR. LOPEZ: Thank you very much.

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

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

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

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

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

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

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

MR. LOPEZ: I will do that.

HEARING OFFICER CELLI: Thank you.

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

MR. LOPEZ: I'll slow it down. The county considers the project a public facility, because it would serve a key need of the public at large in order to

provide adequate electrical services.

It is also considered infrastructure under the definition provided in Policy 13 of the East County Area Plan and will not have an excessive growth inducing effect on the East County area as it is not designed to support empty quantity of new development in excess of what is permissible in the plan. As a peaker plant, this project does not seek to promote new development but is designed to serve existing power users within the regional network.

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

County staff also finds that the project is consistent with those provisions of the East County Area Plan that have a bearing on Byron Airport. These include issues such as height limitations, glare, potential bird strikes, and electronic interference. Our letter to the Commission on September 17th, 2010, provides further detail and analysis on these issues. We also recognize that the FAA, which has sole jurisdiction over aircraft and pilot safety issues, has already issued determinations of no hazard to air navigation for the project stocks and

power lines which also included an analysis of the project's plumes.

Furthermore, we understand that in performing its air nautical study on the project the FAA was required to consider the plan of runway extractions which are specified in the Byron Airport master plan as though they already exist at their planned future lengths.

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

Is that better, folks?

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

Finally, we note that the applicant has been in contact with the Alameda County fire chief and fire marshal. We believe the county's fire and first responder services are adequate to serve the project. The fire chief and fire marshal both reviewed the project's hazardous materials lay out and fire protection and believe that both plans are adequate. It is unlikely that the power plant will require significant fire protection or other first responder services from the county. We further note that the project will have a dedicated fire water tank that will be available for Alameda County to use in case of a grass fire or other emergency in the area.

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

And that concludes our statement. Thank you.

HEARING OFFICER CELLI: Thank you.

Now I have to go through the questions that everybody asked and sort of strike certain things that you've answered. And forgive me if I end up asking the same questions over again and cover ground because I haven't prepared for that.

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

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

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

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

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

MR. LOPEZ: Sure. That definition is here. Infrastructure shall include public facilities, community facilities and all structures and development necessary to the provision of public services and utilities as a provider of energy power. I think it's very clear this is a public service.

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

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

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

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

HEARING OFFICER CELLI: Thank you.

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

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

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

question?

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

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

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

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

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

MR. LOPEZ: Well, I don't think that violates policy 52. You have to look at the East County Area Plan as a whole. I mean, the ECAP as admitted by Measure D is I think at its core an open space initiative. It is designed to preserve open space. It does however allow some development to still occur to infrastructure being one of those types of development or types of facilities I guess you should say. So I don't believe that the MEP violates policy 52. There's a lot of other policies in the plan and programs of the county that you preserve open space explicitly. So I don't think there's any concern in regards to that particular policy.

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

MR. LOPEZ: Well, as a public facility and infrastructure, this would clearly fall within the categories of those uses that could be approved outside the urban growth boundary. So I don't think there is a

problem with policy 54 either.

HEARING OFFICER CELLI: Also policy 72? While you're looking for that, I just want to mention, Mr. Dighe, that the question with regard to Williamson Act was measured in his prepared statement. So I won't be asking that question.

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

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

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

HEARING OFFICER CELLI: I did ask four.

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

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

Go ahead, Mr. Jensen.

MR. JENSEN: Thank you.

Policy 72 states that the county shall preserve the Mountain House area for intensive agricultural use. It asks us to look at the definition of Table 1. Our sense is that because this parcel is located in an area where the agriculture has been and probably will continue

to be marginal in its natural state and because it's only been used as marginal grazing land for many years, it's not considered to be prime soils. It's not an area that has ever been used as intensive agriculture. This particular project would not -- would not be found out of compliance with that policy. The area where intensive agriculture actually occurs in the Mountain House area is not really affected by this project at all.

HEARING OFFICER CELLI: Thank you.

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

MR. LOPEZ: Which letter were you referring to?

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

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

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

MR. DIGHE: It was the first page actually.

HEARING OFFICER CELLI: Under general.

MR. LOPEZ: Yes, the statement in the letter dated May 20th from our Agency Director Chris Bazar states that the county staff believes that the proposed project is or can be made consistent with all applicable policies of the Alameda County general plan, in particular the ECAP with judicious use of planning and mitigation measures and that the ECAP does not preclude construction of a power plant outside the urban growth boundary on lands designated for large parcel agriculture use. So the question is -- sorry. What was the question?

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

MR. LOPEZ: I do agree with this statement.

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

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

HEARING OFFICER CELLI: And I don't know if it's

you or Mr. Jensen who speaks to whether the MEP is consistent with the policy 76, 85, 93, and 218. And it has to do with the Williamson Act and supporting agricultural uses.

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

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

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

HEARING OFFICER CELLI: And lastly, policy 218 seeks to develop an expansion of public facilities that

the county shall allow development and expansion of public facilities inappropriate locations outside the urban growth boundary consistent with the policies and land use diagram of east end county area plan. Is the question -- the question is is the MEP consistent with policy 218 or does it violate the policy 218?

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

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

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

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

MR. LOPEZ: No. As the host community, we are obligated and you could say mandated to review this project and any other sort of outcome of the review of

that project and any other agreement that we enter into with the MEP to the benefit of Alameda County. Not to say that we would intentionally do something to harm any other county. But that is really our function. That's our job is to negotiate on behalf of Alameda County.

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

HEARING OFFICER CELLI: Okay.

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

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

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

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

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

HEARING OFFICER CELLI: But I also have a Web Ex broadcast going and I want to know what the word is from them. So here's the plan. What if he projected but projects from this distance like so, so it is going feeding through the microphone but he's speaking loudly enough for everyone to hear in the room. I'm going to strain your vocal cords, folks. Sorry. But give it a whirl and see how we do.

MR. SIMPSON: We can hear you.

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

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

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

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

HEARING OFFICER CELLI: Louder.

MR. LOPEZ: The question was whether we had worked -- Alameda County had worked with either San

Joaquin, Contra Costa, or Santa Clara County to review this project.

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

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

The problem was luckily the lands answer was a repeat of the previous answer. But the panel will need to speak into the microphones because the Web Ex people, the

people on the telephone can't hear. So I'm sorry, folks, but we're going to have a suffer a little echo. And I need you to speak into the microphones enough to get a boosted signal to the telephone. So thank you.

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

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

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

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

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

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

The environmental impacts to Alameda County, because of the MEP with regard to the GHG emissions, I'm

going to ask a question. The question is does it bother Alameda County that this project will have GHG emissions? That's the question.

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

But that said, as you stated, I think just a second ago is that Alameda County is -- we are a concerned party but we are not the approving body for this project. We did through our cooperation agreement try to address some of the mitigation -- some of the impacts of GHGs through mitigation that can have a positive impact on GHG here in Alameda County. And so I could go into that if a question arises around that issue. But it is a little bit of a leading question it's whether or not Alameda County is bothered by GHG. You're getting just the opinion of the planning director and the gentleman that runs our

climate action plan. So you're probably getting an opinion that may not be reflected of the Board of Supervisors who ultimately determine what the county's bothered by.

HEARING OFFICER CELLI: Thank you.

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

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

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

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

items of that nature.

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

The other part to the cooperation agreement relate to mostly permitting and expediting and obligates the county to respond in a timely fashion to request for

easements for encroachment permits and as well as for the delivery of county services and the approval of permits.

So in sum, the cooperation agreement approved by the Board of Supervisors of Alameda County covers not just sort of who's going to do what, but also stipulates the mitigation payments to the county of Alameda and what those payments are to be used for.

HEARING OFFICER CELLI: Thank you.

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

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

So the next question -- just Mr. Dighe, I just want you to know that in the socio -- in the socioeconomics section, there is a complete analysis of how much tax revenue will be generated by the MEP. And how many jobs will be created. And that would be in the

FSA in the socioeconomics question. But I'm going to go ahead and ask if you know. And if you don't know, that's fine. The question was: Do you know the annual projected yearly tax revenues from the MEP?

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

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

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

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

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

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

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

HEARING OFFICER CELLI: Okay. And 49 hasn't been moved in yet. We'll move in exhibits after we hear from

Alameda County today. So the question is regarding policy 150. The county shall recognize the Byron (East Contra Costa County) airport as a regional resource and shall work with Contra Costa County to ensure that land use is approved in Alameda County within the Byron Airport's referral area are compatible with the airport's operations.

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

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

Our ALUC has told us that they do not have a specific level of jurisdiction over the airport and its relationship to the land use in our county. We are under the impression and we believe it's a correct one that the ALUC in Contra Costa County also does not have jurisdiction over land use outside the boundaries of Contra Costa County. We have looked at the airport land

use plan for the Byron Airport and we note that this is in I believe it's called sector D. And sector D basically doesn't do -- doesn't provide a lot of restriction on the type of development. It does set a maximum height limit of around 100 feet. I believe that the height limits for this project are below 100 feet. And otherwise it doesn't have any other restrictive requirements for the type of development that can occur in that sector.

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

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

MR. JENSEN: We don't have the document in front of us right now. And we weren't anticipating that we would need to have our transportation planner here. She would have all of that information I think at the tip of

her fingertips. I think we have to say that we don't know a precise answer to that question right now.

HEARING OFFICER CELLI: Okay. The next question is under what authority does Mr. Bazar, the director of Alameda County Community Development Agency, have to overrule the Alameda County Airport Lands Use Commission to review and comment on the Mariposa Energy Project which is located in Alameda County when in fact they have done so for the Russell City Energy Center and East Shore Energy Center?

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

HEARING OFFICER CELLI: Thank you.

The next set of questions comes from intervenor Rob Simpson. A perfect segue. What was the basis for the county opposition of the Russell City energy center and the East Shore Energy Center compared to the support for this project?

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

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

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

HEARING OFFICER CELLI: Thank you very much for that.

The question is did the county consult with its public health department regarding this project? The question was did the county consult with its public health department prior to approving this project?

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

HEARING OFFICER CELLI: I'm sorry. I'm reading directly. Let's ask it this way. Did the county consult with the public health department regarding this project at all?

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

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

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

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

MR. LOPEZ: I don't know.

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

MR. JENSEN: If this project were to come before Alameda County as the lead agency, and we were to look in the general plan at the allowance that we have for it, we

were to take a same approach that we took in the letter that we submitted in May, then we would probably require the Mariposa Energy, LLC, to come to us with an application for a conditional use permit. And it would get a full environmental review and we would take it past every agency and every group or individual with an interest in it in order to determine what kind of conditions of approval it would need and ultimately whether or not we would approve the project.

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

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

HEARING OFFICER CELLI: Should Alameda County

share the mitigation package or other revenues from this project with neighboring counties for increased pressure on its fire department or for other reasons is the question?

HEARING OFFICER CELLI: I am sorry. Could you repeat the question?

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

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

HEARING OFFICER CELLI: This next question, just I'm going to modify a little bit, Mr. Simpson, because

Alameda County doesn't approve the project. So I think the way I would ask this next question is would the county's determination that the MEP project does not violate the ECAP, would they have made that determination without the benefit package? Do you understand the question? I think that's where you were going with the question, Mr. Simpson.

MR. SIMPSON: Thank you.

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

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

MR. LOPEZ: No, it would not.

HEARING OFFICER CELLI: Thank you. And then finally, I'm going to ask some questions from the Sierra Club. A lot of these questions were really addressed in the statement, but I'll just generally ask again how you consider the MEP to fall within the category of a public use.

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

HEARING OFFICER CELLI: Thank you.

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

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

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

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

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

MR. LOPEZ: It would be a service or product provided to the public that could be provided either by a private entity or some sort of hybrid private entity with some sort of government oversight. So the answer is that we believe the MEP does qualify as either -- we consider to be a public or quasi public use.

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

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

HEARING OFFICER CELLI: Did you hear that?

MR. CARLTON: Yes.

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

MR. LOPEZ: I do believe that removing those words does have meaning. Also, Measure D did put some new words in to that have meaning in regard to this project,

specifically policy I believe at that time it was called policy 14A that specifically addresses public quasi public uses and infrastructure.

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

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

HEARING OFFICER CELLI: Thank you.

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

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

For instance, such things as reseeding of existing grazing land and permitted grazing acreages is a

question that's going to be better asked to staff or applicant's witnesses about that than these particular witnesses.

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

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

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

MR. JENSEN: Our climate action plan has been in process now for about two years. We had hoped to have it adopted as early as a year ago. However, there's been quite a bit of political controversy over our climate action plan, we're sorry to say. As it is right now it is -- as yet, it's unapproved as yet by the Board. It's been through quite a few hearings before other public agencies, including our Planning Commission. But it's still being challenged by certain groups, both private and public interest groups. And we're right now looking for possibly a hearing before the Board in April. And that's

as close as we can come with a cap right now. So the cap is only a draft. It does not constitute a formal public policy of Alameda County. And even one the Board approves it, it will still have not yet had a CEQA analysis done on it which will be necessary for final approval.

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

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

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

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

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

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

sorry.

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

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

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

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

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

MR. CARLTON: To get the truth.

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

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

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

up the time with that?

MR. CARLTON: Because Alameda is supporting this project which directly causes them to violate some other part of their project. We want to understand why. This project violates their cap.

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

MR. CARLTON: I heard the answer, yes.

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

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

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

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

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

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

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

STAFF COUNSEL WILLIS: No, we do not. And we

thank them for coming.

HEARING OFFICER CELLI: Mr. Sarvey, please.

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

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

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

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

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

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

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

MR. SARVEY: So if the electricity from this project is needed, why did Alameda County oppose both the

Russell City project and the East Shore project?

MR. LOPEZ: We opposed -- generally oppose projects that are constructed in an urban area in regards to the need, that need is not established by Alameda County but by the CEC.

MR. SIMPSON: I didn't understand.

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

MR. SINGH: Can you repeat that, please?

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

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

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

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

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

MR. SARVEY: You say that the cooperation agreement was done transparently. And this is a question for Mr. Jensen. I've been talking to you for over two years about this project. Did you inform me about this action by the county?

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

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

HEARING OFFICER CELLI: Did you hear the question?

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

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

MR. SARVEY: Oh, one more question.

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

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

MR. SARVEY: Well, the county says this is a

public facility. Is this acquisition of public land under the Williamson Act?

MR. LOPEZ: This land is in private ownership.

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

MR. LOPEZ: No.

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

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

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

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

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

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

MR. SIMPSON: Or not.

MR. JENSEN: We believe based on the best information we have at hand that this project is consistent with the Williamson Act, as the Williamson Act allows as a compatible use electrical project. It is still generally required to fit with the compatibility

requirements of the Williamson Act and we have a letter -- and I forget exactly what the date is, but we have a letter from the State Department of Conservation that provides us with their opinion on that matter. They believe it to be compatible use on this property as it's relatively small and it also mitigates for its own agricultural impacts on site.

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

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

COMMITTEE MEMBER DOUGLAS: So just to clarify what you're saying is regardless of what this particular contract says you believe this compatible use provision would provide any Williamson Act?

MR. JENSEN: That's correct.

HEARING OFFICER CELLI: Thank you.

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

MR. GROOVER: Mr. Lopez, first I'd like to thank

you for coming as the planning director for Mountain House. I'm betting things on your desk would be much more interesting for you to be dealing with today. Specifically if they only let you out with counsel, that's a double bummer.

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

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

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

I don't have your prepared statement in front of me. I'm paraphrasing what your prepared statement said. You said in -- excuse me if I paraphrase it incorrectly. But you said that because this was providing regional electricity for the region it was regional infrastructure and therefore compatible with what is a proposition or whatever it was. In your assessment of what the region

was in your prepared statement you gave today, did you consider anything outside of your jurisdiction?

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

MR. GROOVER: Thank you.

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

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

MR. GROOVER: Yes.

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

MR. GROOVER: That's all I have.

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

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

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

HEARING OFFICER CELLI: Quickly.

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

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

MR. GROOVER: All right. Thank you.

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

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

MR. GROOVER: Okay. It had something in it. Again I'm paraphrasing because I don't have a copy of that. You said that you determined for fire safety that there was no impacts from this facility. And I'm just wondering what was the root of that statement? If there

was a study, if there was a professional opinion, if it was --

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

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

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

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

HEARING OFFICER CELLI: Okay. Thank you.

Mr. Dighe, go ahead.

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

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

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

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

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

MR. DIGHE: I have one question. So since the land falls under Measure D and is voter approved, I'm just wondering what (inaudible) were taken by Alameda County to

collectively present it to the voters (inaudible) the power plant and what communications have gone out from the county to the voters.

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

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

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

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

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

HEARING OFFICER CELLI: Are there any further

questions, Mr. Dighe?

MR. DIGHE: Just to follow up what you just said, you said the notices were published. And how were they published?

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

HEARING OFFICER CELLI: Any further, Mr. Dighe?

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

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

MR. WILSON: Thank you.

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

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

MR. WILSON: So you showed up without your Alameda County planner. You have to confirm you have no laws, LORS, laws, ordinances, or regulations. You haven't change or written any policy to protect the airport zones within Alameda County; is that correct?

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

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

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

HEARING OFFICER CELLI: That's his answer.

MR. WILSON: Are these the right people?

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

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

aware of that determination?

MR. JENSEN: Yes.

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

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

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

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

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

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

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

Costa County determination.

HEARING OFFICER CELLI: Thank you, Mr. Wilson.

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

With that, thank you, Mr. Wilson.

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

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

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

MR. SINGH: Mr. Celli, Mr. Commissioner, this is our last opportunity. What we are seeing here, everything has been rushed out. You can think about the minority will carry this burden throughout their live, their death if this plant comes here. And are you going to here be

supporting the minority, a racial minority, environmental justice so that we all intervenor in the interest of the minority because this is the burden we are going to carry until death. And we would like that we should be given ample amount of time that we should ask the questions have all the justification and all the clarification.

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

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

MR. SINGH: As the elected official of the minority, racial minority of Mountain House, all these

(inaudible) interventions and whatever the documents we have shuttled among each of us, we do not have the facts and the truth -- for example --

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

MR. SINGH: Alameda has got a huge --

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

MR. SINGH: I'm not making argument.

HEARING OFFICER CELLI: This is argument.

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

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

MR. SINGH: So --

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

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

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

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

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

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

MR. SINGH: So let's say if you have to build the society around this Mariposa plant in Alameda County, is

there any guidelines that you will not build a town in so many miles around this power plant?

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

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

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

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

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

HEARING OFFICER CELLI: Anything further, Mr. Singh?

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

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

MR. SINGH: Are you aware of anybody who has met with applicant, broker, agent directly or indirectly for any financial transaction or for any economical gain apart from mitigation, including your Board members or Supervisor of Board members? You're under penalty of perjury.

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

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

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

Anything further, Mr. Singh?

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

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

MR. LOPEZ: We do not have a contingency plan for

this power plant.

MR. SINGH: As you mentioned, need is not part of county jurisdiction. Then let's say county responsible for supplying water, having clean roads. So why do you think that the need of power is not part of county jurisdiction?

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

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

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

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

MR. LOPEZ: Preempted.

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

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

MR. WHEATLAND: I'm going to just ask for clarification. Generally, the Commission does not allow multiple parties to conduct questioning. I mean, several

individuals interrupting is letting the same party to conduct questionings. So I'm just going to --

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

MR. MAINLAND: Thank you, Mr. Celli.

Can you hear me through this microphone?

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

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

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

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

One question, Mr. Lopez, you stated in your opening statement that the MEP is needed infrastructure. It's public use or quasi public use as needed

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

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

MR. MAINLAND: So am I correct in understanding you that you did no analysis as a county on this question of coalition need?

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

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

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

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

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

MR. LOPEZ: They're a private utility.

MR. CARLTON: Owned by private shareholders; correct?

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

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

MR. CARLTON: Now, you've stated this is a public facility and I'd like you to read -- I'd like to read you the California Government Code Section 8698(c), public facility means any facility of a public subdivision, including parks, schools, and vacant or under utilized facilities which are owned, operated, leased, or maintained or any combination thereof by the political subdivision through money derived by taxation or assessment. So how is this a public facility?

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

MR. CARLTON: 5698.

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

MR. CARLTON: In the Government Code.

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

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

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

MR. CARLTON: 8698

HEARING OFFICER CELLI: Of the --

MR. CARLTON: Government Code.

HEARING OFFICER CELLI: Are you familiar with that section?

MR. LOPEZ: No, I'm not.

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

MR. CARLTON: I will defer that question.

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

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

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

MR. LOPEZ: Sure. I've also stated in my opening statement that it will not have an excessive growth

inducing effect on the East County area and it is not designed to support any quantity of new development in excess of what is permissible in the plan. As you know, Measure D in ECAP limit development significantly. We do not believe that this power plant would change that in any way.

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

MR. LOPEZ: Correct.

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

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

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

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

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

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

HEARING OFFICER CELLI: Or if he knows.

MR. WASHINGTON: If I could just generally object. I feel like we're getting really cumulative here. I'd ask us to move on if possible, please.

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

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

HEARING OFFICER CELLI: Thank you.

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

Go ahead, Mr. Simpson.

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

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

MR. LOPEZ: No, we did not.

MR. SIMPSON: It sounded like in your opening statement -- as I've mentioned, I don't have a copy of it -- that you relied on the Department of Conservation's

determination that this is consistent with the Williamson Act; is that correct?

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

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

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

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

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

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

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

MR. SIMPSON: I see. So do you agree with the statement that this project may actually discourage new

residential development in the immediate area?

MR. LOPEZ: I think that is speculative. I don't have an answer to that question.

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

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

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

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

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

MR. SIMPSON: So the public notice that you published in the newspaper, it wasn't posted at the site?

It wasn't disseminated to the neighbors, it was merely published and posted maybe in the county building?

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

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

MR. SIMPSON: Sure. Sure.

Did the Planning Commission review this proposal?

MR. LOPEZ: No, they did not.

MR. CARLTON: Can I ask one more question?

MR. SIMPSON: I'll defer my --

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

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

MR. JENSEN: Our climate action plan has inventory. And the inventory covers primarily the greenhouse gas emission, the CO2 equivalent emissions of residential and commercial and to an extent industrial types of emissions. The inventory does not cover -- at least at this point in time -- emissions from things like

power plants. And there are a few other things like agriculture that we don't have any decent modeling for. And so if we were to include this plant under our inventory, then we would have obviously a much bigger burden that we would have to try to base our reduction on. However, this is a State project. It's not a county project. I mean, there are things within our borders that we're just -- we really can't account for them. They're not under our jurisdiction, and if we had to take on this burden, might be impossible for us to do it anyway.

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

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

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

HEARING OFFICER CELLI: Thank you.

Ladies and gentlemen, we're going to take a lunch

break. Right now, according to my computer, it's 12:33. We will resume at 1:00. I want to really thank Mr. Washington, Mr. Jensen, Mr. Lopez, thank you for coming and answering questions on such short notice. We will see everybody back on the record at 1:00. We're off the record.

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

AFTERNOON SESSION

1:10 p.m.

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

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

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

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

HEARING OFFICER CELLI: A motion to?

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

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

MR. SINGH: Yes.

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

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

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

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

HEARING OFFICER CELLI: He wants to represent you.

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

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

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

HEARING OFFICER CELLI: Have a seat.

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

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

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

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

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

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

MR. SINGH: Together. Jointly.

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

MR. SINGH: His name is Travis Miller.

HEARING OFFICER CELLI: Is he here today?

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

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

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

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

MR. DIGHE: Can I make a second --

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

(Off record.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

somewhere else to go.

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

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

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

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

MR. DIGHE: Is it me or --

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

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

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

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

Mr. Petty, did you want to wear these witnesses?

(Whereupon the witnesses were sworn.)

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

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

HEARING OFFICER CELLI: Thank you.

Next?

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

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

HEARING OFFICER CELLI: Thank you.

Next?

MR. GWERDER: My name is Jim Gwerder. The last name is spelled G-w-e-r-d-e-r. I work for Souza Realty and development in Tracy. And I've worked at Souza Realty for the Souza family for about 24 years. The first two years I worked for the family I worked on their cattle ranch. And then for about 18 years after that, I was involved with the management of their cattle ranch which is right over the county line in the East Hills. I've had a real estate and sales license for 22 years, a broker's license for 18 years and the majority of my real estate transactions have been with agricultural and mitigation properties. I'm here today to answer any questions about the agricultural resource values that are in question.

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

HEARING OFFICER CELLI: Thank you. Go ahead, Mr.

Wheatland.

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

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

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

HEARING OFFICER CELLI: Thank you. Bob Sarvey.

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

HEARING OFFICER CELLI: Well, based on what code

section did you rely on that says that you can't have an attorney testify?

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

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

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

HEARING OFFICER CELLI: Applicant?

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

MR. SARVEY: Mr. Gwerder.

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

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

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

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

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

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

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

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

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

MR. SARVEY: Mr. Martinelli, in Exhibit 67, page 2 of rebuttal testimony you stated that the Mariposa Energy Project can be considered a public facility as it serves the need of the public at large. Based upon having a long term power purchase agreement with Pacific Gas and Electric. If this project didn't have a long term power

purchase agreement, would it no longer be a public facility?

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

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

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

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

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

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

MR. SARVEY: In this particular instance, you're stating that the MEP is a public facility because it has its power purchase agreement. What happens when this

purchase power agreement is no longer in effect?

MR. MARTINELLI: I don't know.

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

MR. MARTINELLI: No.

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

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

MR. SARVEY: To your knowledge, does the Beck study include the Altamont Energy Center as part of their analysis?

MR. MARTINELLI: I believe it did, yes.

MR. SARVEY: So Policy 19 of the ECAP limits development enormous service eastern Alameda County. Is there any language in Policy 19 that expands that to all of Alameda County or the rest of the state?

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

MR. SARVEY: The Byron cogen facility a public facility?

MR. MARTINELLI: No.

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

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

HEARING OFFICER CELLI: Is that a responsive answer to your question, Mr. Sarvey?

MR. SARVEY: I think we need to move on. I don't

think he understood he could answer the question. There's no need going further.

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

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

MR. MARTINELLI: Pardon me?

MR. SARVEY: Do you know what duct firing is? Are you familiar or do you know that the East Altamont Energy Center has between 200 and 250 megawatts of duct fire capability?

MR. MARTINELLI: No.

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

MR. MARTINELLI: I have reviewed the Beck -- I've looked at the Beck study. I don't know the exact numbers.

It was a very conservative assessment in that it included projects like East Altamont that doesn't exist and is likely to be constructed.

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

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

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

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

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

MR. MARTINELLI: Not in my judgment.

MR. SARVEY: Do you know how much generation is either permitted or is going through the permitting

process right now for eastern Alameda County?

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

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

MR. MARTINELLI: I didn't understand?

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

MR. MARTINELLI: I don't believe so.

MR. SARVEY: And why is that?

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

MR. SARVEY: You state that Mariposa Energy is needed to provide back up for renewable generation. Do you have any idea whether eastern Alameda County has enough -- has adequate regulation up and down to support

the existing renewable energy in Alameda County and eastern Alameda County.

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

MR. MARTINELLI: No.

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

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

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

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

Now, according to Mountain House Community Service Districts prehearing conference statements, they had no questions for these witnesses. Is that still the case?

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

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

MR. DIGHE: So anybody can answer this. So the

Measure D, and the eastern in your plan, there are a lot of policies. Can you actually explain can the definition of violation and consistent with the policy? Does it mean that (inaudible) trying to respect some of the other policies and then try to get to the consistency of Measure D is okay for the MEP project and how does it work? Explain in detail violations and consistency.

MR. MARTINELLI: If I understand correctly, I would preface the answer by saying that Measure D modified a portion of the East County Area Plan. The East County Area Plan was modified to reconcile the changes that was caused by Measure D. So the applicable general plan policy is the East County Area Plan. As any general plan, it has a series of policies and programs that apply through a broad array of the requirements of society. The policies need to be balanced such that there is a consistent internally consistent program. But if you take any one policy out of context or read it solely, you may not achieve the overall objective of the general plan. For example, there is a policy that says you have to protect the environment. And there's other policies that says it's great to have renewable resources and wind farms. You have to balance those two, the windmills kill birds. There's mitigation proposed so that impact is mitigated but you then accomplish protection of the

environment and also generating alternative energy.

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

MR. DIGHE: Thank you.

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

HEARING OFFICER CELLI: Do you understand the question?

MR. MARTINELLI: Not entirely, but I think my

prior answer spoke to this question.

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

Somebody's Blackberry or iPhone or something is too close to the microphones. So if you have one sitting next to the microphone, please pull it away. And I'm also going to ask that the people who are on the telephone, if you have a mute button on your phones at home and you're just listening in, I ask that you press your mute button to we don't have to listen to anybody breathing on their telephone line. That will facilitate the high fidelity sounds we're trying to achieve here.

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

MR. MARTINELLI: Further, I just had a chance to find Policy 93. It states the county shall seek to stimulate agricultural investment and enhance the economic viability of existing or potential rural agricultural areas. And I believe the question said how do you reconcile that policy with Policy 13, which sets the standards for permissible infrastructure. They're not mutually exclusive. Infrastructure is required for economic viability of agriculture. The water that comes through the South Bay Aqueduct that's pumped over the Altamont water that irrigates agricultural activities is

moved by pumps. Energy is used to draw water out of wells, to run the tractor, in order to -- they're not mutually exclusive. They're complementary.

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

MR. MARTINELLI: The policy towards agricultural preservation and the uses that are permitted in an agricultural area are two separate things. The policy -- there's the goal and there are programs to accomplish it. But there are also exceptions to the limitations on the uses in an agricultural district and infrastructure is a permissible exception to the agricultural activity. And there are examples of infrastructure throughout the East

County area that exist, are being developed, are being expanded to serve the community at large, are in agricultural areas but they do not preclude the agricultural use of the remaining properties. So they're compatible with the agricultural use.

I could site a lot of examples of infrastructure.

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

HEARING OFFICER CELLI: Thank you, Mr. Dighe.

Mr. Wilson.

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

HEARING OFFICER CELLI: I thought you had reserved -- I mean, of course you can ask questions of staff's witnesses. But my recollection was you were interested in aviation and land use.

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

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

So thank you, Mr. Wilson.

Mr. Singh, any questions of these witnesses?

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

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

MR. CARLTON: Excuse me. Mr. Martinelli, are you aware that Measure D which it passed when it was being considered deleted language from what was on the ballot that previously permitted other industrial uses appropriate for remote areas and determined to be compatible with agriculture?

MR. MARTINELLI: Yes.

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

MR. MARTINELLI: Could you repeat that?

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

MR. MARTINELLI: Yes.

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

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

MR. CARLTON: We'll get to infrastructure. Okay. So Policy 13 allows infrastructure such as pipelines, canals and power transmission lines which have no excessive growth inducing effect in East County area and

have permit conditions to ensure that no service can be provided beyond that consistent with the development allowed by the initiative. Are there any such conditions in this application or permit?

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

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

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

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

MR. MARTINELLI: I'm not sure. To the extent East County is part of the region and to the extent that the -- as I understand it, the PUC indicated that this type of facility was required of PG&E and PG&E did a request for proposals and selected this facility to

pursue, I believe that it's essential as within the terms of the public utility service of PG&E which serves the East County and the rest of Alameda County.

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

MR. MARTINELLI: I'm saying --

MR. WHEATLAND: Asked and answered.

HEARING OFFICER CELLI: Sustained.

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

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

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

MR. MARTINELLI: Well, it would not be a public -- electric utility unless there was a power generating source to provide electricity. I think if you

read it in the context of the way it's written, it is structured necessary for the provision of public utilities.

MR. CARLTON: What's necessary though?

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

MR. CARLTON: But they already generate enough electricity.

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

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

MR. MAINLAND: Testing. Testing.

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

Go ahead.

MR. MARTINELLI: Mr. Martinelli, you apparently also maintained that this is a key need of infrastructure for east Alameda County. Much of the argument for this

being a key need rests on the Mariposa settlement agreement, which is under let's say criticism by numerous groups in the CPUC for PG&E's violation of it and in fact, DRA has asked that severe sanctions against PG&E for violating the agreement be imposed and they've recommended staying or suspending approval of the Mariposa PPA as others have recommended. If this --

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

HEARING OFFICER CELLI: Sustained.

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

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

HEARING OFFICER CELLI: Anything further, Mr. Mainland? You shook your head to indicate no? Okay. He just answered by shaking his head yes. Because we're on the record, I need to hear no's and yes's.

MR. MAINLAND: That's all our questions.

HEARING OFFICER CELLI: I'm sorry. I don't mean

to be so formal, but we're making a record. And if I have a question that says do you have any further questions and the record is silent, we don't know if you did or did not. That's why I make the question and that's why I need an answer on the record.

We're at Rob Simpson now. Go ahead.

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

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

MS. SARVEY: I wanted to tell you I was on Web Ex and people would be speaking. I couldn't hear the first quarter of what they were saying. The most important part

of what I needed to hear it would either be completely silent or it would be staticy. And I finally had to leave work and come here because it happened so much I could not tell what was being said.

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

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

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

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

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

MR. SIMPSON: Okay. I didn't think that whether they commented now or later would effect the length of their comment or the length of our proceeding. Based on

the failure of Web Ex to provide the service that you've described, I'd like to make a motion that you open the public comment period at this time.

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

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

MR. BLACKWELL: To who are you directing this?

MR. SIMPSON: To each member.

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

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

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

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

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

MR. BLACKWELL: As I stated at the outset, I'm

here to testify about the application of the Williamson Act and if there are any questions related to that. Mr. Martinelli is here to testify primarily to the ECAP as he's been doing throughout the day.

MR. MARTINELLI: The project can be considered a public facility since it serves needs of the public at large, has a long term power purchase agreement with Pacific gas and electric company which is a public utility provider for Alameda County, accept for a few spots. And it's also a structure that's necessary for the development of public utilities, which is a public -- it's necessary to provide electricity which is a public utility function.

MR. SIMPSON: I see. Would a gas station be a public facility?

HEARING OFFICER CELLI: Please speak into your mike.

MR. MARTINELLI: No.

MR. SIMPSON: But roads would be a public facility?

MR. MARTINELLI: Yes. I mean, most roads would be a public facility.

MR. SIMPSON: Public road would be a public facility? But cars need gas. So wouldn't gas then be a public facility?

MR. MARTINELLI: No. It's a commodity.

MR. SIMPSON: Are power plants considered an industrial use? Maybe I didn't understand that response earlier.

MR. MARTINELLI: It has industrial characteristics. But under the terms of the East County Area Plan it's permissible infrastructure.

MR. SIMPSON: I see.

I notice some distinction between the site and the parcel. We've got 150 acre parcel and a 10 acre site. Can you help me understand why the site size is delineated different than the parcel size?

MR. MARTINELLI: Well, my understanding is that the Mariposa Energy Project is leasing the 158 acre site, and that is the parcel. It's not being subdivided. The actual area that will be developed directly for the project will be approximately ten acres. So that the area of which the facility will be constructed is limited to that small percentage of the overall site.

MR. SIMPSON: I see. Do you know what the percentage of coverage of the site would be?

MR. MARTINELLI: I don't know the exact amount, but it was well below what is required to meet the .01 FAR ratio.

MR. SIMPSON: So .01 of the site or the parcel?

MR. MARTINELLI: Of the site -- I mean of the

parcel. I'm sorry. The coverage limitation is based on the area of a parcel. So it's 158 acres it would allow approximately 65,000 or 70,000 square feet of coverage.

MR. SIMPSON: Isn't ten acres more than that?

MR. MARTINELLI: It's the difference between building site area and building coverage. In fact, in the discussion of permitted agricultural uses, infrastructure is the only use other than certain agricultural activities that is allowed to go beyond the building site limitations that are in the agricultural district.

MR. SIMPSON: So this is infrastructure?

MR. MARTINELLI: This is infrastructure, yes.

MR. SIMPSON: I see.

So the .01 percentage of -- you say --

MR. MARTINELLI: It's building coverage.

MR. SIMPSON: It's building coverage. So it's above .01 for the site.

MR. MARTINELLI: I'm not following that.

MR. SIMPSON: Well, you said it's below .01 percentage of the 150 acres that's being covered.

MR. MARTINELLI: Correct.

MR. SIMPSON: But is it below .01 period of time of the ten acres that's being covered?

MR. MARTINELLI: No.

MR. SIMPSON: No?

MR. MARTINELLI: But it doesn't matter, because it's tied to the site. It's not a separate parcel. It's one parcel.

MR. SIMPSON: I see.

MR. MARTINELLI: It's an expansion of intensity of use over the broad agricultural area.

MR. SIMPSON: I see. So if the ten acres was subdivided from the rest of the parcel, then the coverage of the ten acres would be .01 percentage. Is that --

MR. MARTINELLI: That subdivision is precluded by Measure D in its requirements. But if there were a ten acre parcel, you would be limited to -- no, actually there is an exemption so you can have a minimum of 20,000 square feet of coverage of any individual parcel in the agricultural district.

MR. SIMPSON: I'm sorry. I'm getting feedback here on the mike. Not on the mike, in the PA system.

So I believe the contention is that this coverage is not significant -- or this use is not significant in the amount of land it takes from agricultural use?

MR. MARTINELLI: Yes.

MR. SIMPSON: What amount would be significant?

MR. MARTINELLI: It is beyond the discussion of significance is beyond the amount of land. It also depends on the compatibility of the use. You know, that

is, can the agricultural operation that exists in function in the environment without interference from the use as proposed.

MR. SIMPSON: So if this thing killed all the corresponding greenhouse or chased them away, then that would be significant; is that what you're saying?

MR. MARTINELLI: Yes.

MR. WHEATLAND: Objection.

MR. MARTINELLI: Well, I wasn't saying that but --

HEARING OFFICER CELLI: The objection is?

MR. WHEATLAND: The objection is relevance.

HEARING OFFICER CELLI: Well, it's relevant. It's argumentative.

MR. WHEATLAND: It's speculative too.

HEARING OFFICER CELLI: But the cat's out of the bag. So let's move on.

MR. SIMPSON: Well, I'm trying to determine what's significant. Is it how much land is covered? Is it how much land is taken from agriculture? And where that threshold is. I see that is not significant, but I don't understand does this mean they can put five more facilities like this on this parcel or make up a bunch of different sites and put more facilities or is there a threshold?

MR. MARTINELLI: It's abstract to even speculate on what a threshold would be. I just know what this project is. This project is compatible with the functioning of this project would not interfere with the agricultural activities, the mitigation that's proposed as part of this project would increase productivity on the property beyond -- or equal to or beyond what it is now. It's very low intensity agriculture as it is. It isn't prime soils or soils of statewide significance.

HEARING OFFICER CELLI: Any further questions, Mr. Simpson?

MR. SIMPSON: Oh, yes. Are you familiar with this Department of Conservation letter dated July 6th, 2009, between the county and the Department of Conservation regarding the Williamson Act?

HEARING OFFICER CELLI: Do we have an exhibit number?

MR. MARTINELLI: I am, but Mr. Blackwell should respond to that.

HEARING OFFICER CELLI: Before we do, is this an identified exhibit?

MR. WHEATLAND: Yes, it is. Just a minute. We'll find it for you.

HEARING OFFICER CELLI: Thank you. The reason I'm asking is because when the day comes for us to start

working on this, we want to know what document you're talking about. So when you refer to a document, if we can refer to it as an exhibit number, that is most helpful to the Committee.

MR. SIMPSON: Thanks. I think it was referenced earlier by the county of Alameda also.

HEARING OFFICER CELLI: Was that Exhibit 41, the letter from Mr. Bazar?

MR. BLACKWELL: Mr. Celli, no. That's actually Exhibit 20 is the letter that the intervenor is referring to. And I am familiar with that letter if you'd like to direct questions about that.

HEARING OFFICER CELLI: Go ahead, Mr. Simpson.

MR. SIMPSON: Oh, good. Is this the Department of Conservation determining that this is compatible land use?

MR. BLACKWELL: Yes, it made the determination under 51238.1 that under the principles of compatibility established by the Legislature this would be considered compatible use.

MR. SIMPSON: I see. As far as -- we've got a real estate broker here. Would it be your opinion that land that residences could be built is of higher value than agricultural land?

MR. GWERDER: I don't understand the question.

Please restate it.

MR. SIMPSON: If you have a parcel of land that you can build a house on, is that a higher value piece of land than a parcel you can't build a house on?

MR. GWERDER: It depends on what the buyer is trying to accomplish.

MR. SIMPSON: Let's take the neighboring parcel. If the neighboring parcel can build one house on his 100 acres or whatever he has, is that a higher value than the neighboring parcel not being able to build a house?

MR. GWERDER: It would be a higher value to somebody who's looking for an estate home for a place to build a home. But it might not be a higher value who wants to clearly just do some sort of agricultural -- again, it depends on what they're looking for.

MR. SIMPSON: Would you agree with this statement that this project may actually discourage new residential development in the immediate area?

MR. GWERDER: I don't particularly agree with that, no.

MR. SIMPSON: No? That was the project proponent.

HEARING OFFICER CELLI: Anything further, Mr. Simpson?

MR. SIMPSON: We don't really know what

percentage of land is covered. I want to make sure I understand that --

MR. BLACKWELL: I'm sorry. Is that a threshold you were getting at or are you talking about as far as this particular project on this particular parcel of land? It's 158 parcel of land --

MR. SIMPSON: Yes, on this 158 acre parcel or tanker site, do we know anything about what percentage of coverage?

MR. BLACKWELL: I saw an earlier county correspondence referring to 7.6 percent.

MR. MARTINELLI: That's 7.6 percent is the site area that would be occupied by this. But building coverage is different. Different requirement.

MR. WHEATLAND: We can provide the building coverage for the record. It is part of the record now. We can provide that figure.

HEARING OFFICER CELLI: Do you have it right now at your fingertips?

MR. WHEATLAND: We're digging it out as we speak. But we can do it before we conclude land use.

HEARING OFFICER CELLI: Okay. Anything further?

MR. SIMPSON: Oh, I do have one more question. If the facility is built and it doesn't operate because it's not needed, is it still a public facility?

MR. MARTINELLI: I can't answer that. I don't know.

HEARING OFFICER CELLI: Is there anyone at this panel who can answer this question?

MR. BLACKWELL: That asks for some speculation, but I would assume that it's the use that it's being defined for is what you defined it as. So if it's designed to produce energy, then it would be considered a public facility because there are uses that don't operate. But that's still what the use is defined under typical planning and zoning law.

MR. SIMPSON: Thank you.

HEARING OFFICER CELLI: Thank you.

Now, Mr. Singh, what I wanted to do is I had a request from Travis Miller to ask questions. And since he's working on your behalf, we're going to let him ask the question.

MR. SINGH: Thank you.

HEARING OFFICER CELLI: Mr. Miller, can you hear me?

MR. MILLER: Yeah. I had a question. I was wondering how was it established that a 200 megawatt facility was voted deviant for the intended purpose as opposed to, say, a 100 megawatt facility if the operated permit is only going to be half of the annual allowance or

the annual total generation capacity?

HEARING OFFICER CELLI: Did you get the question, experts? What I'm going to ask you to do, Mr. Miller, is speak really loudly into your phone because we're having a hard time. You're a little muffled.

MR. MILLER: Okay. I'll try to speak up a bit.

HEARING OFFICER CELLI: Let me ask you this, Mr. Miller. Do you happen to be on a speaker phone?

MR. MILLER: Yes. I dialed in by the computer. I can type the question.

HEARING OFFICER CELLI: The reason I'm asking is generally I find that when people go off the speaker and onto their headset, they're a lot clearer. Go ahead. I guess this is as good as we're going to get.

MR. MILLER: My question was how is it determined a 200 megawatt facility was necessary as opposed to say 100 megawatt facility?

MR. WHEATLAND: That's a question either for alternatives or for project description. But it's not a question --

MR. SIMPSON: Can you identify yourself for the speaker on the call?

HEARING OFFICER CELLI: We have an objection. Go ahead, Mr. Wheatland.

MR. WHEATLAND: Mr. Miller, this is Gregg

Wheatland. I'm the attorney for the applicant. And I was objecting to the question that's a question that's appropriate for the discussion of alternatives or for the project description, but it's not an issue that the land use panel is here to address.

HEARING OFFICER CELLI: And that objection is sustained. And I want to be clear for your purposes, Mr. Miller, that this panel is here to talk about land use. So if you can limit your questions to land use and things that come under land use.

MR. MILLER: Yes. I was attempting to ascertain why it was that this use was intended to be for a 200 megawatt facility as opposed to a smaller facility, judging on the impacts for the land use of the surrounding (inaudible).

HEARING OFFICER CELLI: Did you hear the question?

MR. GWERDER: I think he asked why it was 100 megawatts instead of 200 megawatts and how that effects the surrounding parcels. That's all I could catch.

HEARING OFFICER CELLI: Does that sound like the question you asked, Mr. Miller? Is your question that it's the choice to proceed by way of a 200 versus a 100 megawatt power plant and how does it effect the nearest parcels?

MR. MILLER: Yes.

HEARING OFFICER CELLI: Okay. That's the question. Can you answer that?

MR. GWERDER: So is the question that if the power plant was half the size would there be less of an effect on surrounding parcels? Is that the question?

MR. MILLER: Yes. Why a 200 megawatt facility? Why such a heavy use if it's only going to be a peak operating plant?

HEARING OFFICER CELLI: Well, go ahead.

MR. GWERDER: This is Jim Gwerder. I can't answer why 200 instead of 100 megawatts. But as to the effect on the surrounding parcels, in my opinion, there would be no difference.

HEARING OFFICER CELLI: Go ahead, Mr. Miller. Next question.

MR. MILLER: The reason I ask -- the reason I ask was because of it seems as though there are concerns about the neighboring value of property and seeing as the way that the wind blows and such, was there any level of (inaudible) or any evaluation of (inaudible) to the downstream party if it be subject to the emissions coming from the plant.

MR. WHEATLAND: I'm going at the object on the basis of relevance.

HEARING OFFICER CELLI: Sustained. Mr. Miller, that is a question -- the topic we're going to take up after land use would be air quality impacts which is emissions and things like that. So right now we're just limiting this inquiry into the land use question, which are things like Williamson Act, contract, and the parcel size and use and Measure D and that kind of thing. So did you have any questions that are relevant to land use?

MR. MILLER: That was my question. I was just wondering if there was estimate done of what the impact would be based upon the (inaudible) being placed where it was.

HEARING OFFICER CELLI: Well, because what's going to happen after we finish with land use is we're going to get to air quality. And that question is appropriate for the air quality panel of experts.

MR. MILLER: Thank you.

HEARING OFFICER CELLI: Thank you.

Mr. Lamb, did you have a question?

MR. LAMB: I have a follow up question.

HEARING OFFICER CELLI: I'm sorry? A follow up question? Just one, please. Because I just want to acknowledge that

MR. LAMB: The intervenors it seemed like there was a common thread in the questions because it seems

Measure D says that infrastructure is only allowed. And I'm wondering how I don't know (inaudible) how you define infrastructure. How do you determine what is infrastructure legally what is not infrastructure? When I think of infrastructure, I think of ancillary or supportive things to do to something that's happening. For instance, a freeway is (inaudible) to driving. You wouldn't call the act of driving the structure. I look at this as more the pursuit here is producing power to sell to residents or consumers. And the infrastructure is to support that, power lines, conveyances. Can you correct my line of thinking? How do you define infrastructure? Is there anything in the power generation chain that's not infrastructure by your definition?

MR. MARTINELLI: I can't easily grasp anything that's possible in a power generation environment. But I can tell you the plain language of the definition of infrastructure. It says infrastructure shall include all development necessary to the provision of public services and utilities.

MR. LAMB: That's -- what are you reading from?

MR. MARTINELLI: That's Policy 13 of the East County Area Plan.

MR. LAMB: That's defined by the county's plan?

MR. MARTINELLI: Yes.

MR. LAMB: Okay. Thank you.

HEARING OFFICER CELLI: Thank you.

Go ahead, Commissioner.

COMMITTEE MEMBER DOUGLAS: I have a few questions for this panel and staff's witnesses may also want to address this question.

When I look at the land conservation agreement for this parcel, it seems to be very narrow and the agreement says that during the term of the agreement the property should not be used for any purpose other than agricultural uses for producing agricultural commodities or compatible uses as provided in Exhibit B. And when you look at Exhibit B, it says graze and green and entrainment of horses and cattle and item two is cogen wastewater distillation facility per a specific conditional use permit. So my question is how was a power plant a compatible use in terms of this agreement?

MR. BLACKWELL: Yes, Commissioner Douglas. Government Code 51201(e) defines compatible use. And that recognizes that compatible use can be determined by either the local agency or by the act itself. And therefore when the Legislature adopted 51238, that sets forth statutory compatible uses that are separate from and above and beyond compatible uses that are determined locally. The Legislature recognized that there are certain statutory

uses that must be deemed compatible unless the local agency through a noticed public hearing expressly finds otherwise. And that is not the case here. Therefore, electric facilities are specifically defined as compatible uses by the State Legislature.

COMMITTEE MEMBER DOUGLAS: I see. So what you're saying is unless the local jurisdiction affirmatively finds that something like power use anything under this provision is ran into in a contract?

MR. BLACKWELL: That's correct.

HEARING OFFICER CELLI: All right. And when was this? When did the Legislature adopt this provision?

MR. BLACKWELL: Well, there's several parts. The Act itself was adopted in 1965 and the compatible use definition was in a different section than where it is now. But the electricity facilities portion of it has remained throughout the life of the Act. It's always been recognized as a statutory compatible use. What happened in 1994 through AB 2663, the Legislature then also adopted what is 51238.1, which is the principles of compatibility which sets forth if a local agency decides it wants to add compatible uses --

MR. SIMPSON: Could you talk a little slower, please?

COMMITTEE MEMBER DOUGLAS: Maybe go back a few

phrases.

MR. BLACKWELL: The Legislature in 1994 through AB 2663 adopted what is now enumerated in 51238.1, which are the three principles of compatibility. And that's what's addressed by the Department of Conservation in Exhibit 20. That sets forth that if a local agency is going to decide what are additional compatible uses besides those set forth in 51238, that those uses meet those three principles of compatibility, which are essentially you don't displace agriculture, substantially interfere with agriculture uses, that type of thing. And here the county and the Department of Conservation looked at 51238.1 and applied it to this site and found that the MEP was a compatible use.

COMMITTEE MEMBER DOUGLAS: I looked at the letter and it says that the Department of Conservation finds that it would be reasonable to consider that a compatible use.

Let me ask -- because I haven't looked at that provision of the Government Code. Is electricity generation called out as well as transmission? Or is it more broadly covered under electricity facilities?

MR. BLACKWELL: It's electric facilities.

COMMITTEE MEMBER DOUGLAS: All right. Are you aware of how this issue was handled in the -- for the Energy Commission in the Tesla or East Altamont cases?

MR. BLACKWELL: I was not involved with either of those actions, and I don't know the details.

COMMITTEE MEMBER DOUGLAS: Okay. I think that's all the questions. I wanted to see if Mr. Martinelli knows the answer to that question, given your experience with Alameda County.

MR. MARTINELLI: Yes. I believe the property was placed into the Williamson Act in early 1970s, maybe 1971.

COMMITTEE MEMBER DOUGLAS: And specifically, Mr. Martinelli, which property are you addressing? The property for this proposed --

MR. MARTINELLI: Oh, I'm sorry. This property that Mariposa Energy Project. Were you asking this or the other property?

COMMITTEE MEMBER DOUGLAS: I was actually asking if you are aware of how this issue was dealt with in the Tracy or East Altamont projects, Tesla and East Altamont.

MR. MARTINELLI: I was just trying to look through the records to see if either of these projects were in the Williamson Act. I don't recall what they were under the Williamson Act restrictions.

COMMITTEE MEMBER DOUGLAS: Our understanding -- the reason I'm asking this question is at least with regard to the Tesla project, the Board of Supervisors went through a partial cancellation of the Williamson Act

contract during the Energy Commission process. So I'm trying to understand if there's anything that's changed between then and now that would make this a compatible use when in the other case the contract was actually partially canceled.

MR. MARTINELLI: Even though I was not present in either of those proceedings and can't talk about exactly what happened there, what I do know -- somewhat anecdotal, the Department of Conservation, some members of staff over the years have said even though it's not codified anywhere that such contract should be canceled or partially canceled.

When we spoke to the Department of Conservation about this and the head of the land resource protection group, Mr. Leahy who authored the letter, he agreed with us that that under written uncodified way of doing things wasn't necessarily appropriate. Even though people have done it before doesn't mean it's the right way to do it. And he recognized that keeping the land under the Williamson Act contract as opposed to canceling it and therefore ceding any DOC jurisdiction of it makes more sense. It's now under -- stays under the contract which is a good thing for the DOC and for protection.

COMMITTEE MEMBER DOUGLAS: Thank you.

HEARING OFFICER CELLI: Thank you.

Any redirect by the applicant?

MR. WHEATLAND: No redirect.

HEARING OFFICER CELLI: Thank you. This panel is excused. I want to thank you for coming in today.

MR. SARVEY: Will we get redirect?

HEARING OFFICER CELLI: There's no redirect, sir. There's no recross.

So at this point, we now excuse this panel and we're going to call staff's panel. But before we do, there was -- I am sorry. I didn't get the name of the person who needed to get to work, but if you would please come forward to the podium --

MR. SIMPSON: I had some questions based on the Commissioner's questions.

MR. SARVEY: I have to object -- (inaudible).

HEARING OFFICER CELLI: One moment. Let's go off the record.

(Off record.)

HEARING OFFICER CELLI: The ruling of the Committee then is that the parties were all given a chance to cross. The parties will be able to file briefs and make arguments in their briefs. And that's --

MR. SARVEY: (inaudible)

HEARING OFFICER CELLI: This is testimony that is going to get whatever weight it deserves. But that's all

argument from your brief. That isn't necessarily we need to hear cross-examination on now. Thank you.

Thank you, panel.

Ma'am, I didn't get your name. Please state your name and spell it.

MS. SARVEY: My name is Susan Sarvey. S-u-s-a-n S-a-r-v-e-y.

I have a couple of different areas I want to speak about.

Mr. Martinelli based a lot of his testimony on East Altamont not being built. Mr. Wheatland is the attorney of record for East Altamont, so I would like to ask him, have your services been terminated by CalPine in have they walked away?

COMMITTEE MEMBER DOUGLAS: Maybe --

MS. SARVEY: I think that's a perfect question. If they still have an attorney, they are not are not dead.

COMMITTEE MEMBER DOUGLAS: I think your point the East Altamont may go forward. Is that your point?

MS. SARVEY: My point is that East Altamont is going forward. It is alive. They still have an attorney of record sitting in this room and they are basing their opinions on it not going forward. How can that be when they have an attorney of record sitting here?

COMMITTEE MEMBER DOUGLAS: Thank you for that

question, comments. Can I ask if you can continue.

MS. SARVEY: Yes, please. In regards to the discuss of Measure D, I was at every single proceeding for Tesla and East Altamont and the GWF peaker plant and participated fully in all three proceedings. My understanding of Measure D based on these three previous proceedings was if you were putting in infrastructure into a Measure D area, it had to be for the sole consumption and use of the people in that area. It could not be for San Joaquin County. It wouldn't be for people in Contra Costa County. It cannot be for people in San Francisco. That energy can only be used in the Measure D area and that's what was testified to over and over again. Mariposa power plant is not just for Contra Costa County -- for Alameda County is what my thing is there. But now I would like to read my other thing. But that is just on what I heard here so far.

CEC staff is proposing to defer to Alameda County and its interpretation of its land use regulations. Alameda County says the Mariposa project is a public facility. How can a merchant power plant selling power to an inventory owned utility be a public facility? The CEC staff is deferring to Alameda County's interpretation that that project is not (inaudible). That's absurd. Alameda County is stating that the project is needed for the

public necessity, but the fact is we are currently having 35 percent planning reserve margin in PG&E's territory. And we are expending rate payer funds to build another 2000 megawatt with Oakley, Marsh Landing and Russell City projects. As the CEC has reported peak demand is falling, not rising due to successful energy efficiency measures and the economic downturn.

Before I go forward with the rest of my statement, I would like to also remind you I as a public rate payer and taxpayer of San Joaquin County, we paid $170 million to built the Tracy Peaker Plant right down the street. It went online at the end of 2003. It is 2011. It has run less than 500 hours. We are paying well over $1,000 a megawatt when you can just go on the grid and buy it for $65 max. That's crazy. That's not for the public good or me as a taxpayer or a rate payer.

In 2002, when we had the hearings on the Tracy Peaker Plant, the city of Tracy and San Joaquin County intervened and told the Commission staff that the peaker plant was not consistent with our land use policy. And yet, the Commission staff refused to defer to them. Why? Because Commission staff didn't agree with their conclusions. There seems to be a double standard in the Commission process where agencies opinions are only valid and deferred to when they agree with the Commission

decision on land use laws.

The same thing happened the Carlsbad and is also happening in this proceeding with regards to the Byron Airport Land Use Commission. It is easy to see why Alameda County supports this project. They have a lucrative cooperation agreement with the applicant. When CalPine wanted to build the Russell City Plant, Alameda County opposed it because it was the city of Hayward and not Alameda County that get the ten million dollar agreement. When East Shore was proposed, Alameda County opposed that also. Now Alameda County says Mariposa is needed by the public to provide additional generation in Alameda County.

HEARING OFFICER CELLI: Ms. Sarvey --

MS. SARVEY: Surely it's not their decision in Russell City --

HEARING OFFICER CELLI: Ms. Sarvey --

MS. SARVEY: -- and in the East Shore proceedings --

HEARING OFFICER CELLI: May I ask you a question?

MS. SARVEY: Yes.

HEARING OFFICER CELLI: I was informed that you have another person's statement as well and I --

MS. SARVEY: No, I don't have anybody else's statement.

HEARING OFFICER CELLI: Thank you. Sorry for the interruption.

MS. SARVEY: I'm only talking about land use. This is a great deal for Alameda County because they got -- the county and San Joaquin Valley gets the pollution yet again. It is no secret that the San Joaquin County is much more polluted than Alameda County and the rest of the Bay Area. In the Russell City proceeding, the Alameda County Health Department came out against the project and its particulate matter impacts to its residence. Where is the Alameda County Health Department now? They're certainly not looking out for me.

And I want to remind you once again, I cannot do the math standing here, but $170 million for a 500 hour maximum use at a peaker plant and you want to built another one right down the street. It's never going to turn on. This last Wednesday I went to the ground-breaking for a combined cycle plant next to the Tracy Peaker Plant. It's going online in 2012. It's going to run 24/7. We will have even more power in the corner than we have right now and we're already not turning on the peaker plant we have. This is a ridiculous situation we are in. You are reaming the taxpayers and the rate payers. It is really not right.

HEARING OFFICER CELLI: Thank you, Ms. Sarvey,

for coming in.

Now let's resume. Staff, please call your panel. We'll have the public comment at 5:00.

STAFF COUNSEL WILLIS: Thank you.

At this time, staff calls Amanda Stennick and Lisa Worrall.

HEARING OFFICER CELLI: And Mr. Petty, if you'll have them sworn.

(Whereupon the witnesses were sworn.)

MR. PETTY: Please state and spell your names for the record.

MS. STENNICK: My name is Amanda Stennick, A-m-a-n-d-a, S-t-e-n-n-i-c-k.

MS. WORRALL: My name is Lisa Worrall, L-i-s-a, W-o-r-r-a-l-l.

STAFF COUNSEL WILLIS: Why don't you guys move the microphone over.

HEARING OFFICER CELLI: Now, staff, Ms. Willis, you submitted direct testimony from these witnesses. Did you have any -- I'm sorry -- written testimony. Do you have any direct?

STAFF COUNSEL WILLIS: Yes, I do.

HEARING OFFICER CELLI: Okay.

DIRECT EXAMINATION

STAFF COUNSEL WILLIS: First of all, I need to

just establish since Ms. Stennick was not on the testimony. Just her qualifications. Ms. Stennick, first of all, was the statement of qualifications filed on your behalf?

MS. STENNICK: I am the supervisor for the land use and the socioeconomics analyses that are done by staff at the Step Division. I've been employed at the Energy Commission as a planner for over 17 years. Prior to that, I worked for Yolo County as a planner, Sacramento County as a planner, and two consulting firms as a planner.

STAFF COUNSEL WILLIS: Thank you.

Ms. Worrall, I'm going to turn to you now. Was the statement of your qualifications attached to your testimony?

MS. WORRALL: Yes, it was.

STAFF COUNSEL WILLIS: And did you prepare the testimony entitled land use in the supplemental staff assessment that we've marked Exhibit 301?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: Do you have any changes to your written testimony that you're proposing today?

MS. WORRALL: Yes. Just, first of all, let me state that the reason for these changes, it's to keep document consistency.

HEARING OFFICER CELLI: Please speak directly

into that mike. Bring it up to your mouth. Thanks.

MS. WORRALL: Originally when I was drafting up the proposed Conditions of Certification, I had lumped what is proposed as Land 2 and Land 3 into one condition. And towards the end of my analysis, I decided it's better to put it out into two separate conditions for ease of verification of these conditions. And so the changes that we're proposing today are to reflect the change from Land 2 to Land 2 and Land 3.

First of all, on page 4.12-13 of land use doc supplemental assessment proposed on the first paragraph under the bulletted list at the end of the last sentence to add with the inclusion of the proposed Conditions of Certification Land 2 and Land 3.

The next is on page 4.12-19, second paragraph, line 5, add Land 3.

On page 4.12-21, first paragraph, line 6, add Land 3.

On page 4.12-23, first paragraph, line 4, add Land 3.

And finally, on page 4.12-36, under the basis for determination in the land use Table 2, add Land 3 in the first paragraph, line 4, and in the second paragraph, add Land 3 on line 3.

STAFF COUNSEL WILLIS: Thank you. And with those

changes, did the opinions contained in your testimony represent your best professional judgment?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: First of all, how did you address the project's potential impacts related to land use?

MS. WORRALL: To determine the project's impacts as related to land use, I addressed the project's compatibility with the existing or reasonably foreseeable land uses. The project's consistency with applicable LORS, and the potential project related direct indirect and cumulative environmental impacts. Also determined the significance of the potential project impacts using Appendix G of CEQA guidelines, plus other performance standards and thresholds that has been identified by Energy Commission staff, other public agencies, other subject experts and have been supported by substantial evidence. And lastly, proposed Conditions of Certification when necessary.

STAFF COUNSEL WILLIS: In general, what documents did you review in performing your analysis?

MS. WORRALL: First of all, the project's application for certification. And then the applicable State and county LORS and the county specifically Alameda and Contra Costa County. I also consulted representatives

from State Department of Conservation, Alameda, and Contra Costa Counties as well as Byron-Bethany Irrigation District.

STAFF COUNSEL WILLIS: And Ms. Worrall, are you familiar with the Williamson Act?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: Did you determine that the project is consistent with the Williamson Act?

MS. WORRALL: Yes, I did.

STAFF COUNSEL WILLIS: And why is that?

MS. WORRALL: I -- in doing my analysis, I reviewed the Williamson Act contract for the property. I reviewed previous county actions on the property. Reviewed the Williamson Act and most specifically the principles of compatibility in the Williamson Act and the county regulations on the Williamson Act. I also spoke with Department of Conservation representative and Alameda County. I also noted the comments from Department of Conservation in their letter of July 2009. And also noted the Alameda County's letter may 20, 2010 that addressed Williamson Act contract and compatibility.

STAFF COUNSEL WILLIS: Thank you. Have you reviewed the East County Area Plan?

MS. WORRALL: Oh, yes.

STAFF COUNSEL WILLIS: And in your opinion, is

the project consistent with the ECAP?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: Did you review height requirements for the project as it pertains to the airport?

MS. WORRALL: Yes, I did.

STAFF COUNSEL WILLIS: And do the right requirements apply to plumes?

MS. WORRALL: Height requirements pertain to objects such as structures, antennas, trees, but they don't actually apply to plumes.

STAFF COUNSEL WILLIS: And you've heard a lot of discussion this morning about need for the project. On page 4.12-25 of the supplemental staff assessment, you identified four findings that would have been made by the county of Alameda for conditional use permit if they were the permitting agency, one of which is "is the use required for the public need." Did you analyze need for the project?

MS. WORRALL: No. Staff does not conduct any need analysis. However, in order to assess if the project would be compatible with the findings that in the case the Energy Commission would make, I looked at the PG&E's request for offers. And I also noted in Alameda County's May 2010 letter their statement roughly saying that they

will require significant electrical energy, especially in times of peak demand, even with the growth constraints built into the ECAP and obviously this is peaker, so --

STAFF COUNSEL WILLIS: Did you conclude that the project was in compliance with all LORS?

MS. WORRALL: Yes, I did.

STAFF COUNSEL WILLIS: And did you determine whether or not this project would create adverse environmental impacts?

MS. WORRALL: Yes, I did that analysis.

STAFF COUNSEL WILLIS: And what was your conclusion?

MS. WORRALL: I conclude that had with the proposed Conditions of Certification Land 1 through Land 4 that no significant adverse land impacts would result from the project.

STAFF COUNSEL WILLIS: Thank you. Does that conclude your testimony?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: These witnesses are open to cross-examination.

HEARING OFFICER CELLI: Thank you.

Mr. Sarvey, cross-examination.

MR. SARVEY: Thank you. (inaudible).

STAFF COUNSEL WILLIS: We can provide that for

you.

MR. SARVEY: (inaudible)

STAFF COUNSEL WILLIS: We don't have them written down. I mean, we can provide them for you at a later date. But they were basically adding Land 3 to five different pages.

MR. SIMPSON: I objected to them not being prepared. It's the same thing with the county. They came in with written testimony. We should have got a copy. We should get a copy of these changes. I'd like a continuance until they provide the complete testimony.

HEARING OFFICER CELLI: Overruled. Go ahead, Mr. Sarvey.

CROSS-EXAMINATION

MR. SARVEY: Is this project considered a cogen facility with the water distillation (inaudible) --

STAFF COUNSEL WILLIS: I'm going to object to that question. I think we're aware the project is not a cogen facility.

HEARING OFFICER CELLI: I'm sorry. Because of the echo in the room, I couldn't hear your objection.

STAFF COUNSEL WILLIS: I think we're aware of what the project is proposed. He's asking if it's a cogen facility. It seems argumentative to me.

HEARING OFFICER CELLI: I think it's a fair

question and these witnesses should be able to say yes or no or I don't know. Those seem to be the options.

Go ahead, Mr. Sarvey.

MR. SARVEY: Do I need to repeat the question?

HEARING OFFICER CELLI: No.

MS. WORRALL: I just wanted to clarify, you wanted to inquire if the project is a cogen facility that's being proposed?

MR. SARVEY: (inaudible) water distillation.

MS. WORRALL: I know the project is not a cogen facility. As far as water distillation, that's outside of my area of analysis.

MR. SARVEY: Will the project (inaudible).

MS. WORRALL: That is actually the noise and vibration specialists area of expertise.

MR. SARVEY: Mr. Celli, this is what I was (inaudible).

HEARING OFFICER CELLI: Right. You know what? They are land use people, not the noise people. Let's do the land use questions.

MR. SARVEY: We have to be able to ask these questions (inaudible) I've raised in the comments why (inaudible) noise.

HEARING OFFICER CELLI: Right. But you said you wanted the noise people with regard to biology.

MR. SARVEY: (inaudible) with regards to water (inaudible). I asked specifically for the people to be (inaudible).

HEARING OFFICER CELLI: No, I did not say that the land use people are going to be able to answer your noise questions. But I happen to have -- the conversation had to do with noise in the context of biology which we said that you would be able to cross on when we get to biology. This is land. So let's do land use.

MR. SARVEY: I think it's the same. (inaudible).

MR. SIMPSON: Mr. Sarvey, can you speak up a little bit, please?

MR. SARVEY: Sure. How can the project (inaudible) referred to earlier on this project specifically says no other (inaudible) use allowed on this land. This is cogen facility, water distillation (inaudible) of the existing contract on this project?

HEARING OFFICER CELLI: Exhibit 8 is what, Mr. Sarvey? Just for description.

MS. STENNICK: Excuse me, Mr. Sarvey. Are we being asked to determine whether this proposed project is consistent with the existing agricultural Williamson Act contract?

MR. SARVEY: (Inaudible).

MS. STENNICK: Okay.

MS. WORRALL: Yes, the project is consistent with the contract as written now. Excuse me one second. Alameda County also even when they testified, they determined that the project would not require cancellation or a change of the contract in order to go forward if --

MR. SARVEY: What was your analysis say?

MS. WORRALL: My independent analysis said that as I reviewed the principles of compatibility with the Williamson Act, it met all the principles of compatibility. And I found that it was consistent.

MR. SARVEY: I understand that. The question I'm asking is it (inaudible) water distillation facility (inaudible) and project (inaudible).

STAFF COUNSEL WILLIS: Just to clarify what you said existing project, you mean existing contract?

MR. SARVEY: Existing contract.

STAFF COUNSEL WILLIS: Thank you.

HEARING OFFICER CELLI: Can I make an inquiry of applicant? Is the contract in evidence going to be -- is it marked for evidence?

MR. SARVEY: It is (inaudible).

HEARING OFFICER CELLI: Thank you. It helps to know what document. Exhibit 12? Is that the contract, Mr. Wheatland?

MS. POTTENGER: We're checking right now.

STAFF COUNSEL WILLIS: I just want to address my witnesses. Do you guys have the contract in front of you?

MS. WORRALL: Yes.

STAFF COUNSEL WILLIS: Okay.

MS. WORRALL: My understanding -- and I'm not -- the contract is between -- sorry. The contract is it's a contract between Alameda County and the property owner. And in looking at whether or not any cancellation would be required, I relied on Alameda County's determination. The contract is between the county and the property owner.

MR. SARVEY: It's Exhibit 8.

HEARING OFFICER CELLI: 8. Thank you.

MR. SARVEY: Alameda County has (inaudible) determination whether it's consistent with the existing contract. They said that (inaudible) compatible with the Williamson Act. So my question is is it compactible with the existing contract (inaudible).

MS. STENNICK: It's staff's opinion that the proposed project is consistent with the contracts and with the proposed uses currently on the site.

MR. SIMPSON: On the site or the parcel?

MS. STENNICK: Excuse me. On the 154 plus, 158 acre parcel.

MR. SIMPSON: Thank you.

MS. STENNICK: You're welcome.

MR. SIMPSON: So staff's --

MS. WORRALL: Energy Commission staff has no -- has no jurisdiction over entering into any or requiring any contractual change between any county and any project own are regarding their property in the Williamson Act.

MR. SARVEY: (inaudible) contract is the law.

STAFF COUNSEL WILLIS: Objection. Assumes facts not in evidence. A contract is not a law.

HEARING OFFICER CELLI: I need to hear the question and then I want to hear the objection. So because I didn't get what the question was.

MR. SARVEY: The question was staff is in their testimony says the project is compatible with all the laws, ordinances (inaudible). I'm saying (inaudible) Williamson Act contract (inaudible) comply with (inaudible).

STAFF COUNSEL WILLIS: And I'm going to continue my objection. It's not a LORS. It's a contract. It's between a private party and a county.

HEARING OFFICER CELLI: I'm going to sustain the objection, because I don't believe the contract is a LORS. But the rest of your -- I think you can rephrase to get the information you're asking for.

MR. WHEATLAND: If I could -- while Bob is composing his question, the contract is set forth in

Exhibit 12, which is data request set 2-A. And it's data request number one which requested that we attach the agreement.

HEARING OFFICER CELLI: Thank you for the clarification. So Mr. Sarvey, sustain the objection as asked. Go ahead with your next question.

MR. SARVEY: On page 4-2 of your testimony, you state that you (inaudible) cogen plant and subject property (inaudible) by staff. Would the MEP as it's currently proposed apply to the existing Williamson Act on the project?

MS. WORRALL: Yes, it would.

MR. SARVEY: Is it your testimony that project (inaudible) as a cogen facility?

STAFF COUNSEL WILLIS: Objection. Asked and answered.

HEARING OFFICER CELLI: Overruled. Go ahead and answer.

MS. WORRALL: Well, the project is not a cogen facility as far as distilling water. That wasn't part of my land use analysis. And it's not within my expertise.

MR. SARVEY: All of the (inaudible) page 4.4-2 (inaudible) on the property (inaudible) cogen reservation plant. And subject property (inaudible) does staff and the existing bio cogen facility a public facility?

MS. WORRALL: I didn't analyze that. That's not -- wasn't relevant.

MR. SARVEY: (inaudible).

MS. WORRALL: Mariposa Energy Project is a public facility, because it provides electrical energy that would then in turn be used to supply electricity for the residents, businesses. So in the end run, it does provide a service, a public service for the public by providing electricity.

MR. SARVEY: So would a (inaudible).

STAFF COUNSEL WILLIS: Objection. Outside her scope of testimony.

HEARING OFFICER CELLI: I don't believe he did ask these witnesses. I know it being asked of the previous witnesses. I didn't say asked and answered. I said it's outside the scope of her testimony. She didn't discuss oil refineries in her testimony. She's really --

HEARING OFFICER CELLI: This is cross. You can ask the question and answer it, please. Go ahead, Mr. Sarvey.

MR. SARVEY: Would staff consider an oil refinery (inaudible) facility and (inaudible).

MS. WORRALL: Well, I would need to analyze that use with the existing LORS in order to make that determination. And it wasn't part of the scope of this

project, so it wasn't something that I analyzed.

MR. SARVEY: (Inaudible).

MS. WORRALL: I don't make opinions.

MR. SARVEY: Since staff considers MEP (inaudible) facility does staff public (inaudible) governed by Government Code Section 50290 to 50296.

MS. WORRALL: An acquisition?

MR. SARVEY: Of public facility. Williamson Act land is acquisition (inaudible).

MS. STENNICK: Excuse me, Mr. Sarvey. Could you read more slowly, please, if you're quoting from a specific Government Code, it would be actually more helpful to read what --

HEARING OFFICER CELLI: I'm going to ask everyone to sit back in your chair, take a deep breath and relax for a second, because if you want to drive a court reporter crazy, have two people or more talk at the same time. And I don't want to drive Mr. Petty crazy. So we're going to not let that happen. Please be mindful that we need to have everybody talk one at a time. The questioner asks the questions, the witness answers the question and they don't talk over each other. So thank you.

Go ahead.

MR. SARVEY: Since the MEP is considered a public

facility,

HEARING OFFICER CELLI: Mr. Sarvey, I'm getting people giving me this in the back of the room. They can't hear you.

MR. SARVEY: Since the MEP is considered a public facility, does staff consider this a public acquisition of Williamson Act (inaudible) Government Code Section 50290 and 50296?

MS. WORRALL: No.

MR. SARVEY: Why?

MS. WORRALL: There is no acquisition being proposed.

MR. SARVEY: Are you familiar with the codified?

MS. WORRALL: Can you repeat those numbers again?

MR. SARVEY: It's 50295 and 50296.6.

MS. STENNICK: Again, is this you're reading from the Government Code the definition of a public facility?

MR. SARVEY: No. I'm asking you is since this is considered a public facility, it's a public acquisition of Williamson Act land does this subject to Government Code Section 50290 to 50296?

STAFF COUNSEL WILLIS: Well, I'm going to object because there assumes facts not in evidence and mischaracterizes their testimony.

MR. SIMPSON: I can't hear.

STAFF COUNSEL WILLIS: Once again, I object. It mischaracterized their testimony. They said it was not a public acquisition of land, not that it was.

HEARING OFFICER CELLI: Okay. And what I'm going to ask you to do Mr. Sarvey because I'm not sitting here reading the code section, and I'm trying to see where you're going with this so I can see whether the answer is responsive or not, can you kind of get to the heart of it and there's something that there is a qualifying act that you're trying to get to. And I'd like to see if you can cut to the chase and get that information into the record.

MR. SARVEY: Well, there's a lot of requirements related to public acquisition of Williamson Act land and I'm wondering if staff has analyzed that and whether they think it's something that the project should be subject to and do they even know what those code section are basically.

HEARING OFFICER CELLI: Now, that's the bottom line, right?

MR. SARVEY: Right

HEARING OFFICER CELLI: Can we get an answer to that question?

MS. WORRALL: As the project is not a public acquisition of Williamson Act land, I didn't review that section, because I determined it wasn't applicable to the

project.

MR. SARVEY: Your testimony -- all this is Exhibit 301, by the way. I don't know whether you want me to say that every time.

HEARING OFFICER CELLI: I appreciate that. The FSA, just be clear, it's actually the supplemental staff assessment is Exhibit 301. Go ahead.

MR. SARVEY: Your testimony on page 4.2-76 of the Contra Costa County Land Use Compatibility Plan includes policies for Byron Airport to ensure compatibility between the new development and the airport influence area. The airport a land use Commission presented a finding that the (inaudible) MEP is not compatible with the airport. How come you have not deferred to them as you have deferred to Alameda County in all their LORS interpretations?

MS. WORRALL: My recollection of their letter -- make a specific in their letter, the date. October 14 of 2010, reading their letter, they didn't make any determination with respect to specific policies or anything that had a relation to land use. So there wasn't really anything applicable to the decision, any determinations on my side.

MR. SARVEY: Under what circumstances does staff not defer to the city or county with land use jurisdiction?

MS. WORRALL: When the basis of the determinations by the county who would have been jurisdictions, if the determination based on (inaudible) legally deficient information that would then put forward flawed information legally efficient information to the Committee that they might find -- base their findings on legally deficient information.

MR. SARVEY: And has the Byron Airport Land Commission provided you with legally deficient information?

STAFF COUNSEL WILLIS: Objection. Assumes facts not in evidence. Are you talking about --

MR. SIMPSON: I can't hear you.

STAFF COUNSEL WILLIS: Objection. It assumes facts not in evidence. We were talking about the deferring to a local jurisdiction that would have jurisdiction over this project. And he's talking about the Airport Land Use Commission, which is not the jurisdiction all as we established earlier with Alameda County.

HEARING OFFICER CELLI: Maybe you can ask it a different way without assigning jurisdiction.

MR. SARVEY: I'll move on.

Without Alameda County's input, would your independent judgment conclude that the MEP, a 200 megawatt

power plant is not an urban use?

MS. WORRALL: In reviewing the ECAP, I look at the definitions as laid out in the ECAP how they define infrastructure, how they define urban use. Underlying those definitions, these are their policies in LORS. I this rely on their interpretation. I would -- I'm sorry. Can you restate your question? I mean, I --

MR. SARVEY: Okay. Without Alameda County's input, would your independent judgment conclude that the MEP is a 200 megawatt power plant is not an urban use?

MS. WORRALL: Would I consider it not an urban use if Alameda County hadn't made any determinations?

MR. SARVEY: Yes.

MS. WORRALL: Yes. It is not an urban use.

MR. SARVEY: Is the Byron cogen plant an urban use?

MS. WORRALL: I didn't actually analyze that. It's outside of my analysis.

MR. SARVEY: You list the Byron cogen as similar infrastructure to the MEP. If these projects, the MEP and the Byron cogen are compatible with the land use LORS, why is a conditional use permit required?

MS. WORRALL: What page are you referring to? Are you referring to my supplemental staff assessment?

MR. SARVEY: I apologize. I don't have a page

number. I'll bring back later.

MS. WORRALL: Okay.

MR. SARVEY: Did Alameda County provide you with an analysis that the MEP was necessary to create adequate infrastructure for Alameda County? I understand earlier you said you didn't make that analysis. So I just wanted to ask you did the county provide one?

MS. WORRALL: No.

MR. SARVEY: Thank you.

MS. WORRALL: Infrastructure such as pipelines, canals, and power transmission lines would have no excessive growth inducing effect on east county area and have permit conditions to ensure that no service can be provided beyond that consistent with the development allowed by the initiative. Did Alameda County provide you with an analysis that the MEP is consistent and does not provide any growth inducing effects on east county?

MS. WORRALL: Consistent with what exactly?

MR. SARVEY: Consistent with the fact that infrastructure such as pipelines, canals, and power transmission lines have no excessive growth inducing effect. Did Alameda County provide you with an analysis that the MEP does not have any excessive growth inducing effect on east county?

STAFF COUNSEL WILLIS: Just for point of

clarification, are you reading from somewhere, Mr. Sarvey? Because I'm not sure.

MR. SARVEY: I can't hear you.

HEARING OFFICER CELLI: I can't hear you, Ms. Willis.

MR. SARVEY: Policy 13.

STAFF COUNSEL WILLIS: And I would just ask that in the future if you're reading something from somewhere, we need to know where -- they all have laptops and we don't. And I don't know where they're reading from, if it's from the staff assessment or some --

HEARING OFFICER CELLI: I understand. I just need you to speak directly into the mike.

STAFF COUNSEL WILLIS: And I just need to know where the questions are coming from. Thank you.

HEARING OFFICER CELLI: Go ahead, Mr. Sarvey.

MR. SARVEY: Your testimony on page 4.12-20 states that the project design in isolated location would not encourage urban infill development and increase urbanization of open space areas. Does the project design preclude in project from converting to a combined cycle plant?

MS. WORRALL: I'm sorry. Specifically where are you page on 4.12-20?

MR. SARVEY: 4.12-20.

MS. WORRALL: Entitled starting with paragraph the project property is developed with the Byron cogeneration plant. Is that where you're referring?

MR. SARVEY: The exact language is the project designed in isolated location would not encourage urban in-fill development and increased urbanization of open spaces.

MS. WORRALL: Can you provide a little more specifics on what paragraph number you're on? Because I don't see that language.

MR. SARVEY: I'll move on. Isn't the existence of all these water and energy facilities and the approval of the east Altamont Energy Center, the Byron cogeneration and now the MEP evidence that the project area is rapidly becoming urbanized contrary to the intent of Measure D in the ECAP?

MS. WORRALL: Well, I would say that that would be speculative of staff to answer. Staff based its analysis -- staff did an analysis on one specific project including potential cumulative effects and including whether or not this project would be consistent with the ECAP and the build out in the energy requirements of the ECAP.

MR. SARVEY: And in staff's cumulative analysis, they actually call out all these particular facilities.

And I'm asking does all this urbanization is that contrary to the intent of Measure D in ECAP?

MS. STENNICK: Staff -- in staff's analysis on page 4.12-40 lists numerous projects that we considered in our cumulative section. Lists numerous projects. Some of them -- we took a look at whether or not it would convert agricultural land as one of the prime reasons of -- as one of the prime effects of cumulative impacts. Numerous projects were not applicable because they did not convert any agricultural land. Some of the projects were approved but not built. Some were under review.

MR. SARVEY: On page 4.12-25, do you conclude that the project is eligible for conditional use permit because it is required by the public need. What are the findings and requirements necessary to conclude that the MEP is required by the public need?

MS. WORRALL: In order to look one of the findings necessary for conditional use permit is the use required by the public need. I looked to the PG&E's request for proposals for energy facilities, energy resources.

MR. SARVEY: Was that the extent of what you examined?

MS. WORRALL: Oh, yes. I actually looked at Alameda County's comments in their May 20 letter. I think

I said that in my opening testimony about how they consider that Alameda County -- that Alameda County would require significant electrical energy, especially at times of peak demand, even with the growth constraints built into the ECAP. So (inaudible) it's based on those two.

MR. SARVEY: I may have asked you this earlier. Did Alameda County provide you that analysis that they need additional energy?

MS. WORRALL: They provided me with their determination.

MR. SARVEY: But no analysis?

MS. WORRALL: I didn't receive analysis.

MR. SARVEY: Okay. Thank you.

Are there any other requirements other than the PG&E long term procurement project to find it necessary for the public need? I mean, does it have to be no other place they can put it? What's the requirements of public need?

STAFF COUNSEL WILLIS: I object. Asked and answered. Mr. Celli?

HEARING OFFICER CELLI: I am sorry.

STAFF COUNSEL WILLIS: I just objected to a question. It was already asked and answered regarding public need.

HEARING OFFICER CELLI: Let me ask you this, Mr.

Sarvey, because we're getting a little far afield here with the public need business. And I wanted to ask you how many more questions did you have on cross?

MR. SARVEY: I have about five more questions. But this one is specifically important because --

HEARING OFFICER CELLI: You don't have to tell me why. But what I'd like to do is ask that you please reask the question, repeat the question and let me make a determination.

MR. SARVEY: On page 4.12-25 -- well, that was my previous question. She answered that only that she looked to the long-term procurement contract to determine if the MEP was required by the public need. And I was asking was there other requirement outside of the PG&E 2008 long-term procurement contract that is required, other findings that are required for her to state that this project is for the public need. I mean, there are other elements of that.

HEARING OFFICER CELLI: Did she -- what did she look at?

MR. SARVEY: Yeah.

STAFF COUNSEL WILLIS: And she already answered that she also looked at the county's letter when they gave their determination.

HEARING OFFICER CELLI: That's right.

STAFF COUNSEL WILLIS: But she just testified to

that minutes ago.

HEARING OFFICER CELLI: So did you have a follow up question? Anything other than that? Is that what you --

MR. SARVEY: Is there a requirement that this project cannot be located on some other land to meet this need, that it has to be this land because it's a requirement like that? I'm just trying to understand what you mean when you say public need. Public convenience and necessity has all kinds of requirements. You're just saying public need. Is this the same as public convenience and necessity? Is that the standard that you're setting here?

MS. WORRALL: I didn't write the ECAP. I'm just reading it, and I also look to Alameda County's interpretation of their policies.

MR. SARVEY: So you're not aware of any other requirements that are necessary to make a finding that this is needed for the public?

MS. WORRALL: No.

MS. STENNICK: Not in the land use section.

MR. SARVEY: Okay. Page 4-12-12 states the Department of Conservation staff indicated in its July 2000 letter to the applicant that the MEP appears to be a compatible use with ongoing agricultural activities during

on the 158 acre parcel. Is a power plant explicitly called out in the Williamson Act as a compatible use?

MS. WORRALL: I don't happen to have the Williamson Act with me.

HEARING OFFICER CELLI: Is that something that would be in the terms of the contract that's provided under Exhibit 12?

MS. STENNICK: Excuse me. Are you referring to the principles of compatibility?

MR. SARVEY: No. I'm asking is an electrical generating facility like MEP automatically compatible use with the Williamson Act?

MS. STENNICK: It's compatible with land in the agricultural preserves and it's also compatible -- it can be compatible through the local agency actions under specific contracts.

MR. SARVEY: And is there an agency action that has occurred by Alameda County that's determined that this power project is a compatible use?

MS. STENNICK: Past actions from the county and letter from the Department of Conservation indicates to us that these two agencies are satisfied that it would be consistent with the Williamson Act under that particular contract. The Energy Commission staff cannot require the county to change a contract with a third party as part of

its CEQA analysis or its LORS analysis.

MR. SARVEY: Part of your -- strike that. In the east Altamont and GWF proceedings, staff required acre for acre mitigation for conversion of grazing land to host the power plant to prevent a significant impact to agricultural resources. How is this project any different and why aren't you requiring acre for acre mitigation?

MS. STENNICK: Which project? I'm sorry. Which project?

MR. SARVEY: East Altamont, all of them.

MS. STENNICK: East Altamont. Well, I remember that the East Altamont was converting prime agriculture land and this is grazing land. So the difference in terms of the quality of land and the designation of the land. I happen to recall that in the ordinances there is no mitigation program written in the ordinance.

MR. SARVEY: Are you sure the East Altamont is not grazing land?

STAFF COUNSEL WILLIS: First of all, I'm going to object. I'm not sure if this witness testified in East Altamont or was prepared that testimony. So --

HEARING OFFICER CELLI: It's the kind of question that really has an implied parenthetical if you know at the end of the question. But I just want to say we're winding down here.

Go ahead, Mr. Sarvey. Let's move.

MR. SARVEY: Has a scientific method been utilized in any way to calculate how much of the property for the Mariposa would need to be seeded with the higher quality seed to mitigate the ten acre loss of grazing land?

MS. WORRALL: Not to my knowledge.

MR. SARVEY: Pardon me?

MS. WORRALL: Not to my knowledge.

MR. SARVEY: Has a range manager evaluated the property and recommended how much acres would be needed to reseed to mitigate the ten acres of grazing land?

MR. SARVEY: Thank you very much. I'm sorry for shouting at you. I'm done, Mr. Celli.

HEARING OFFICER CELLI: Thank you. Thank you, Mr. Sarvey.

Cross is next with Mountain House. But again, Mountain House said in their prehearing conference statement they had no cross.

MR. GROOVER: But I reserve the right to cross any testimony that they gave orally today and I have one question in that regard.

HEARING OFFICER CELLI: I'll let you do your one question. Go ahead.

MR. GROOVER: In your testimony, you stated that

your land use analysis and methodology was first you looked at this project in relationship to the CEC land use requirements. Then you checked with Alameda County and Contra Costa County and received advise from both of those counties and reviewed their land use as well. Was there some reason you did not include San Joaquin County or Mountain House community land use policies either? Is there some reason you included Contra Costa and excluded the communities that are closest to in project?

MS. WORRALL: I actually -- no, I did not exclude Mountain House community at all. I reviewed the environmental documents that were prepared and the zoning and for the Mountain House community. The actual use of the land is going to take place in Alameda County so their laws naturally are applicable.

MR. GROOVER: Understood. But you said your methodology included Contra Costa County. So I'm asking why Contra Costa County looked at and took the time to do that and you didn't take the time to do San Joaquin County or actually the land use for Mountain House. I just want to know the difference in your methodology.

MS. WORRALL: I did actually may be -- I was trying to be kind of broad because I was hearing and I was kind of going on. But I did look at Mountain House community and also the reason why I looked at Contra Costa

County is because Byron Airport is in Contra Costa County. The compatible Zone D extends into the project site and so I want to review their policies and check that off. But I did look at Mountain House community indeed. And it's also written in my SSA, too.

HEARING OFFICER CELLI: Thank you. Mountain House, Rajesh Dighe, any questions for these questions regarding land use? Staff witnesses on land use?

MR. DIGHE: So regarding the ECAP policies, I heard (inaudible) I'm wondering did you actually go to all the other policies of the ECAP?

MS. WORRALL: Oh, yes.

MR. DIGHE: In what way do you review these policies?

MS. WORRALL: I reviewed each and every policy. I've gone through the ECAP many, many times. And I've reviewed each policy for its applicability to the project and what the project is proposing.

MR. DIGHE: Did you find any inconsistency between the policies and how did you resolve that? Did you actually go back to Alameda County and review their (inaudible)?

MS. WORRALL: If I had any questions as far as interpreting policies, I communicated with Alameda County and to kind of answer any questions and I know they're

part of the live references and I know the docketed items in the Commission. I looked to their determination and explanation for definition of some terminology and took that into consideration when looking at interpreting in my analysis the policies and applicability and potential impact or inconsistency with the policies.

MR. DIGHE: So do you agree then maybe a small infrastructure or large infrastructure project

MS. WORRALL: I would --

MR. DIGHE: Maybe I (inaudible). Small or large infrastructure project.

MS. WORRALL: Well, it's a peaker plant. And it's considered -- I would consider it limited infrastructure, which is allowed in the ECAP.

MR. DIGHE: So what is a large infrastructure?

MS. STENNICK: Excuse me, Mr. Dighe. Are you asking us to give you a definition of what a large infrastructure is?

MR. DIGHE: I think the answer was it is a limited infrastructure. So my question is you probably must have analyzed and you made a decision it's a limited infrastructure. And I understand that's what the policy says. And Alameda County said it's a limited infrastructure and then it came to the review for the CEC staff. Do you agree it's a limited infrastructure so you

probably could have compared with some other projects? So can you give some examples around small limited and large infrastructure?

MS. WORRALL: As I just said just a little earlier, I relied on county's definition because these are their policies how they determine or how they consider large or small, whether they consider the project limited infrastructure or not. And based on their letters, the May 20 letter and the September letter indicated that the project is consistent with policies the ECAP and which I seem to remember pertains to the limited infrastructure.

MR. DIGHE: Yes, but I thought the whole idea was to review their statements about what is large and what is limited. So let's say -- they say it's limited and then you just agreed upon it or I'm just trying to understand why is it a limited infrastructure? Why is it called a limited?

MS. WORRALL: Okay. I looked at the footprint of the project, the ten acres with respect to the 158 acres on the parcel. I also considered the fact that the project is a peaker plant that is designed to kick into full operation in less than ten minutes in times of peak demand such as the summer sometime when you can have brown outs. So versus, say, a base load facility that would probably have more operation hours and also looked at the

number of hours that the Commission license would limit the facility to. And I considered all that as well to determine that yes, it's a limited infrastructure. It's not a large project.

MR. DIGHE: If it's a limited infrastructure in the letter May 2010 from the Alameda County Director Chris Bazar, why does he state it is MEP not easily consistent with ECAP but with judicious use of planning and mitigation it could be made? I think it's probably the general section. I should have wrote it down. Did you actually analyze why the statement of it's not easily consistent with ECAP? So what is the judicious use of planning and mitigation mean?

MS. WORRALL: Yes, actually, I sent an e-mail to Bruce Jensen inquiring if -- because the letter also referenced the proposed -- the applicant's proposed mitigation, i.e., the reseeding of the construction lay down area on the property plus the permanent water supply for the cattle. I asked Bruce Jensen if what kind of mitigation are you looking for, what would be necessary. And he said the applicants. And it's in the documented items as well. And I also referenced it in my staff supplemental staff analysis that the reseeding and the water supply, permanent water supply meet their needs as far as providing mitigation in order for consistency with

the ECAP and specifically the large parcel agriculture land use designation. And that's what it was in reference to.

MR. DIGHE: Did you question Alameda County about why this specific land which was approved by Measure D for big open space and for agriculture purpose was specifically being proposed for MEP?

MS. WORRALL: I'm sorry. I'm not sure I understood the question. You're talking about open space.

MR. DIGHE: My understanding of Measure D is to keep this land open and preserve the agriculture. So did you actually question Alameda County around wouldn't it actually go against the water approved Measure D and how was the -- I mean, first question is do you actually question that?

MS. STENNICK: It's our understanding that Measure D, which was a voter approved initiative in 2000, amended the ECAP and in amending the ECAP made allowance for public infrastructure.

HEARING OFFICER CELLI: Mr. Dighe, I just want to check in with you. How many more questions do you have?

MR. DIGHE: I have two more questions.

HEARING OFFICER CELLI: Thank you.

MR. DIGHE: Does that mean if you violate Williamson Act, yes or no? According to you, do you feel

that MEP violates the Williamson Act?

MS. WORRALL: Violates the Williamson Act?

MR. DIGHE: Yes or no.

MS. WORRALL: No.

MR. DIGHE: Does MEP comply with all the FAA regulations and laws?

MS. WORRALL: The FAA?

MR. DIGHE: Yes, the land use.

MS. STENNICK: Excuse me. Did you say MEP or FAA, sir?

MR. DIGHE: Does the MEP project right on this specific land -- and since the Byron Airport is close by, what all the land use around aviation, all the laws and regulation analyzed and does it comply with everything just specifically for land use I'm talking about.

MS. WORRALL: I looked at the Contra Costa County Airport Land Use Compatibility Plan and the policies for zone D and specifically with an eye to land use and impacts for land use. And as I've presented in my supplemental staff assessment, it is the project is compatible with the policies that I determined applicable.

MR. DIGHE: Can I question one of the intervenors just related to specifically around aviation?

HEARING OFFICER CELLI: I'm sorry. Say again?

MR. DIGHE: Can I question Mr. Andy Pilot around

the same --

HEARING OFFICER CELLI: You know what? The way we work is we call one party at the time, applicant, staff, intervenor one, two, three, four. And we will call their witnesses when it's their turn. So you can ask call pilots witnesses when they're on the stand questions. But not right now.

MR. DIGHE: You just remind me. I might forget.

HEARING OFFICER CELLI: I'm not going to remind you because I can't really prosecute your case for you.

MR. DIGHE: That's okay.

MR. WHEATLAND: Although, Hearing Officer Celli, I would like to have a discussion about friendly cross before we allow intervenors to cross other parties whose position is not adverse.

HEARING OFFICER CELLI: We'll talk about that. Thank you. Mr. Wilson, did you have questions of these witnesses?

MR. WILSON: Yes. I would like -- I would like to -- Mr. Sarvey asked a question. It was so long ago because I have a couple of follow up questions if you would repeat the question. So this is in regards to Exhibits 300, 301, and it is in regards to the determination that Contra Costa County Airport Land Use Commission made relative to the power plant and its

location. So there would be termination of inconsistency with the Contra Costa County Airport Land Use Compatibility Plan on the proposed Mariposa Energy Project.

Now, the statement or language I was looking for you right now, what was your answer to that that you reviewed -- you reviewed and then you came to a conclusion.

MS. WORRALL: Yes. I reviewed Contra Costa County's Airport Land Use Commission letter dated October 2010, and I looked through there to see if there was any determinations with respect that would have any role with respect to the land use policies in their compatibility plan and I didn't see anything that touched on any of the specific policies.

MR. WILSON: Okay. So I'm looking at an October 14th determination letter. Is that what you're asking?

MS. WORRALL: Yes. That's what I was looking at, yes.

MR. WILSON: So you determined that. Did you write a letter to the Contra Costa County Airport Land Use Commission to notify them of that?

MS. WORRALL: No, I didn't.

MR. WILSON: Did you notify Caltrans Aeronautics of your decision? What would you consider the --

HEARING OFFICER CELLI: I'm going to tell everyone to back off for a minute. You need to -- you're doing a fine job of asking good questions, but you need to let the witness answer your question before you ask your next question. So just let her finish her answer.

MR. WILSON: First question, what's the answer? Question was: Did you send a letter or notify Contra Costa County Airport Land Use Commission in any way of your decision?

MS. WORRALL: No, unless they looked at the SSA.

MR. WILSON: Did you notify Caltrans Aeronautics of your decision and why?

MS. WORRALL: I didn't, because they have jurisdiction of air space with respect to transportation and I wasn't coordinating that effort.

MR. WILSON: So if the Contra Costa County Airport Land Use Commission makes a determination, there are certain laws and regulations that have to be followed for and this could be considered as an override or overrule. What in your opinion do you think you do?

MS. STENNICK: Alameda County would be the agency of jurisdiction. We sought out information from Contra Costa County --

HEARING OFFICER CELLI: How many more questions do you have, Mr. Wilson?

MR. WILSON: I'm waiting for the answer, per your instructions.

HEARING OFFICER CELLI: I thought I would inquire while I had some dead air.

MS. WORRALL: In reviewing the letter, I didn't determine any land use related -- as it relates to the policies in the ALUCP. They talk about the plumes. I was reading the ALUCP and the policies related to land use, there's nothing in there with respect to plumes or -- so I don't necessarily think I overruled them because I didn't see anything in there offering their determination with respect to the specific policies with regard to land use.

MR. WILSON: Okay. So Exhibit 300 on page 4-12-33 --

STAFF COUNSEL WILLIS: Objection. 300 is not part -- is not her testimony. It's 301.

HEARING OFFICER CELLI: I couldn't hardly hear you. Actually, Mr. Groover, I'm going to ask you both to turn your mikes off if you're going to whisper. I didn't hear.

STAFF COUNSEL WILLIS: I'm going to object. Exhibit 300 is not her testimony. It's Exhibit 301.

HEARING OFFICER CELLI: 301.

STAFF COUNSEL WILLIS: So if we're going back to that, we're not in the right place.

HEARING OFFICER CELLI: 301.

MR. WILSON: We'll do 301. There is a reference to -- you've just testified that you've determined that there isn't a hazard. Does talk about plumes. Doesn't talk about plumes. However, in your same section, you then refer to traffic and transportation Trans 7 and Trans 8 where you're going to prevent pilots from flying over that area. So you've made a determination on your own. You've now made reference back to transportation which we haven't covered yet and you're saying that pilots can't fly over that area.

STAFF COUNSEL WILLIS: I'm going to object. First of all, it's argumentative. Second of all, you're talking about traffic and transportation that's a topic that will be coming up hopefully sometime tonight. These witnesses did not analyze aviation impacts. They are land use witnesses.

MR. WILSON: It is in the land use section. It's refer --

STAFF COUNSEL WILLIS: It's referencing.

HEARING OFFICER CELLI: There you go. So it's a fair question if it's in the land use section. So I'm going to allow you to ask the question. But it was a rather long question and I'd like you to just kind of get to the question.

MR. WILSON: It was a long question, but I'm looking for a short answer.

STAFF COUNSEL WILLIS: Mr. Celli, just for clarification, the section says that these issues are discussed in the traffic and transportation section and references Trans 7 and Trans 8. I don't -- that's different than her making -- providing an alternative subsidies. She's just referencing where else in the supplemental staff assessment this actually -- the analysis appears.

HEARING OFFICER CELLI: He can ask questions on what she wrote in this section and if there's a question that goes beyond her expertise, he'll have to indicate as such. So let's get on with the questioning, please.

MR. WILSON: So you made reference to Trans 7 and Trans 8. Is this a -- are you thinking that's a mitigation?

HEARING OFFICER CELLI: Oh, I'm sorry. I didn't get that the question had to do with Trans 7 and Trans 8. Trans 7 and Trans 8 are conditions specific to transportation and traffic transportation.

MR. WILSON: But they're referring back to Trans 7 and Trans 8 saying that -- referring in one statement we have the CEC staff saying that it's not a problem. Plumes aren't addressed. Plumes aren't the problem with

aviation. Then in another paragraph they refer back to the mitigation of preventing pilots from flying over the plume.

HEARING OFFICER CELLI: So here's what the big picture looks like. A land use people are doing an analysis and they are referring to conditions that were apparently drafted and created by the traffic and transportation people. And they're saying we're referring to these things in traffic and transportation. That doesn't (inaudible) with traffic and transportation expertise I'm afraid. So now that I understand the context, I think that I would sustain the objection as irrelevant. So go ahead.

MR. WILSON: Okay. So then in conclusion on what the Contra Costa County Airport Land Use Commission determined, you didn't site any reasons yourself as to why you overruled the Contra Costa land use determination.

MS. WORRALL: I didn't overrule. There was a lot of information with respect to land use policy in the ALUCP as referenced in the ALUCP --

MR. WILSON: It doesn't say if they made a determination.

HEARING OFFICER CELLI: Let her finish.

MS. WORRALL: I'm sorry. What was the last?

MR. WILSON: Regardless, they made a

determination and you have to inform --

MS. STENNICK: Sir, their determination spoke to airport hazards to airport traffic and pilots. That is handled in the traffic and transportation section. The land use section nearly referenced Conditions of Certification and traffic and transportation which would with the implementation of those conditions would make the project consistent with surrounding land uses based on the applicable land use plans.

MR. WILSON: The Contra Costa Airport Land Use Commission is a State agency authorized to make a determination. You need to do that. You didn't do it. You didn't notify them.

HEARING OFFICER CELLI: We need a question actually.

MR. WILSON: She answered the question.

HEARING OFFICER CELLI: Do you have any further questions?

MR. WILSON: No, I don't. Thank you very much.

HEARING OFFICER CELLI: Thank you.

Mr. Miller, are you still on the line on behalf of Jass Singh? He's not on the line. Okay. Mr. Singh, did you have any questions with regard to land use for staff witnesses?

MR. SINGH: Yes. For the land use (inaudible) of

the resident properties around the area, is there any rules, regulations and Legislature what would be the minimum radius that (inaudible) should take place from the power plant?

MS. WORRALL: I'm sorry. I'm not sure --

HEARING OFFICER CELLI: You need to speak right into your mike.

MR. SINGH: The development of the residential properties, is there any rules, regulations or Legislature that you have to follow that will not permit any residential properties within that much radius of the power plant?

MS. STENNICK: Mr. Singh, are you talking about residential uses adjacent to the power plant?

MR. SINGH: Yes.

MS. WORRALL: And with respect to restrictions of --

MR. SINGH: Right.

MS. WORRALL: -- putting in new residences adjacent to --

MR. SINGH: Yes. Are there any rules or regulations that dictates that residences will not be developed with this much radius of the power plant?

MS. WORRALL: Well, the ECAP and the actual property zoning and the zoning around the project property

it's zoned for primarily large parcel agriculture and not residential. So that would restrict.

MR. SINGH: So basically -- but did you look into all those -- I'd like to understand the ECAP and all of that. But is there any definition of the compliance there that residential properties (inaudible) within so much radius of the power plant or any public utility or (inaudible) or whatever, you know.

MS. STENNICK: Are you talking about public health and safety issues regarding proximity of residential uses the a power plant?

MR. SINGH: Right.

MS. STENNICK: That information is in the public health and safety section of this document. We did not address public health and safety issues.

MR. SINGH: No. No. Miss, I'm not asking --

HEARING OFFICER CELLI: Mr. Singh, can you wait one second? A couple of things.

First of all, Ms. Willis, when you shake your head no -- I'm sure you don't mean to do this -- but it looks like you're trying to indicate something to your witnesses. So I'm going to ask that you not --

STAFF COUNSEL WILLIS: Well, it just depends on if it's in their section or not. They should have just asked if it was public health. We do have someone here

from public health.

HEARING OFFICER CELLI: I understand. It looks like you might be communicating with your witnesses. I'm sure that's not what you mean to do.

Mr. Singh, you see how your mike is off to the side, you can't see my mike, but I have it like right on my face like this. If you can pull it right in front of you and speak right down the tube of that microphone, we'll be able to hear you much better.

MR. SINGH: Okay. Can you hear me now?

HEARING OFFICER CELLI: I need more --

MR. SINGH: Okay. So you know these are the experts for land use. I'm trying to determine is there any compliance, rules, regulations, legislation that within what radius from the power plant the residential development should happen?

MS. STENNICK: I'm sorry. I'm going to ask you to repeat that again, please. Are there any applicable laws, ordinances, regulations, and standards federally, State, or local which would --

MR. SINGH: Which -- which determines like at what distance from the power plant residential community can develop. (inaudible) the residential community cannot develop.

MS. STENNICK: The guiding principle for setbacks

in the large parcel agricultural area would be in the zoning code if there are any setbacks. I'm not sure. I'd have to take a look at Alameda County zoning code for that particular zone.

MR. SINGH: Okay. Did the staff took an expert on agriculture experts to take their concentration and to take their advise in determining whether there was a violation of agriculture plans or not?

STAFF COUNSEL WILLIS: Mr. Celli, I'm not hearing any of Mr. Singh's questions at all. And that was part of my shaking. I don't know what he's asking.

HEARING OFFICER CELLI: Mr. Singh, it is kind of hard to hear you up here. You're not coming across on that mike. If you look up here, you see that I have the line of the mike right runs down the line of my nose on my face. And I need you to speak right into your mike like that. Speak loudly. Go ahead.

MR. SINGH: Would the agricultural experts were considered in considering the Mariposa plant, did the staff consulted agricultural experts?

MS. WORRALL: I consulted with the Department of Conservation.

MR. SINGH: So is it the right department to get the answer that they are the right expert on agricultural land?

MS. WORRALL: I am sorry. What was the question?

MR. SINGH: So I'm sorry. You know, English is not my first language.

HEARING OFFICER CELLI: One moment. Are you asking did they consult with an agricultural expert?

MR. SINGH: Right. And if they consulted with (inaudible).

HEARING OFFICER CELLI: So I think you're posing an objection it was nonresponsive. What I'm going to ask them is to answer the question did you consult with an agricultural expert. That's the question.

MR. SINGH: Yes or no.

MS. WORRALL: Yes.

MR. SINGH: And who was it? What was the party with whom you consulted?

MS. WORRALL: Was Brian Leahy of the State Department of Conservation.

MR. SINGH: Is the Department of Conservation the right party to be consulted for agricultural use?

MS. WORRALL: With respect to use of agricultural land?

MR. SINGH: Right. Is it the right party?

HEARING OFFICER CELLI: That would be a yes or no question.

MS. STENNICK: It would be one agency that we

would confer with, especially because the land was under Williamson Act contract. And that was the primary --

MR. SINGH: And so (inaudible) hypothesis you're drawing, right, is it the hypothesis you're drawing?

MS. STENNICK: I'm saying that was most obvious -- well, you said agricultural expert is that what you said.

MR. SINGH: Yeah. Right.

MS. STENNICK: We already know that the land is marginally useful. It's not prime agricultural land. It's not supporting row crops or tree crops or vineyards. It's used for grazing. If it were agricultural land with a high value, then we would have done -- we would have consulted quite a different type of analysis on this particular land. If they were taking 300 or 500 acres out of prime agricultural land out of production, the analysis that we would have performed would have been very different. However, we're looking at ten acres of marginally useful land that's currently being used for grazing.

MR. SINGH: But there should be some limitation that if they use experts (inaudible) of the land then it violates some of the things. (Inaudible).

MS. WORRALL: I'm sorry?

MR. SINGH: What is the percentage that

(inaudible) the 158 acres of land and ten acres are being used for the power plant, what percentage (inaudible) it is in compliance, not in compliance it is violating this and that?

MS. WORRALL: The percentage of use of land in terms of determining compliance consistency --

MR. SINGH: Right.

MS. WORRALL: -- with Williamson Act --

MR. SINGH: Yes.

MS. WORRALL: -- and large parcel as it's zoned and general plan land use designation, there is no indication of percentage requirements. There is the floor area ratio, which Alameda County spoke of earlier.

MR. SINGH: Okay. So you're saying there is no percentage. But how you determine that ten acre is allowed in 158 acres and 20 acres is not allowed. There should be some matrix, right?

MS. STENNICK: Any kind of threshold for numbers or acres would be contained in the Alameda County zoning code. That is what we looked to because the project is situated in Alameda County. Alameda County's general plan, their zoning code and any other of their planning documents would be applicable to this particular site.

MR. SINGH: Okay. So let's talk about the zoning code. So that means you must have (inaudible) Alameda

County zoning codes and said okay they are in compliance. The zoning code they are within -- so trying to determine like what type of analysis you do with Alameda County's (inaudible) and say okay here you go and then you did reviewed the zoning codes. You reviewed the (inaudible) and methodologies and come to the conclusion that they comply.

MS. WORRALL: I look to the land use designation, the zoning designation, the ordinances. I looked at the uses permitted on the zoning code. It's agricultural district 100. So that's the minimum acreage of 100 acres is required. I saw that in the ordinances electrical generation is permitted as long as the findings could be made if Alameda County were the permitting agency findings of the conditional use permit could be made.

MR. SINGH: So let us say if the power plant would generate 500 megawatt in the same land of ten acre with 158 acre complete site would you give them the permission -- I'm trying to assess the numbers of what your analysis are based on 200 megawatt plant. Okay. Is in compliance and 500 megawatt is not in compliance. So I need to find out if metrics analysis, miss.

MS. STENNICK: We would have to take a look at what the environmental impacts of a 500 megawatt power plant are or were compared to a 200 megawatt. And we

would do the same analysis that we did -- we meaning all Energy Commission staff would do the same analysis that they did for a 200 megawatt as we did for a 500 megawatt. If the analysis for a 500 megawatt, for example, showed that the noise levels would be in an increase of what the county allowed, then we would have to either provide mitigation or we would have an environmental impacts. That's a hypothetical. We analyzed a 200 megawatt power plant.

MR. SINGH: Miss --

HEARING OFFICER CELLI: Mr. Singh, let me ask you this. How many more questions do you have?

MR. SINGH: Sir, I'm trying to provide -- the answer I'm asking for the land use, but they're giving me environmental talks on it.

HEARING OFFICER CELLI: I'm just asking right now for time purposes how many more questions do you have to ask?

MR. SINGH: I'm trying to determine how much analysis to do or just take the file and move the file from one table to the other and sign it. Because this is a (inaudible) minority community --

HEARING OFFICER CELLI: My question is how many more questions?

MR. SINGH: I have two more questions.

HEARING OFFICER CELLI: Two more. Okay. Thank you. Go ahead and ask your questions.

MR. SINGH: So let's stick to the land use, not go to the determination made in the environmental how much impact (inaudible) and trying to see zoning analysis. If this plant is 200 megawatt, 100 foot fingerprint percentage that will go for 200 megawatt which is 158 acre ten acre parcel, all these things I need those analysis that you have done, and these should be on your fingertips since you are experts.

MS. WORRALL: The -- as stated in the zoning code with respect to what the four findings that would be necessary to be made by the appropriate jurisdiction for approval of the conditional use permit, none of the four findings -- one second. None of the four findings have any kind of qualifications of size. There's no indication -- you know, this size is okay, larger is not okay. So there's no size specificity written into the four findings for conditional use --

MR. SIMPSON: What page are you on?

MS. WORRALL: Excuse me. What was your question?

MR. SIMPSON: What page are you on?

MS. WORRALL: 4.12-25.

MR. SIMPSON: Thank you.

MS. STENNICK: The zoning code -- and

unfortunately we don't have a copy of the Alameda zoning code here, but the zoning code would speak to allowable uses, uses with a conditional use permit, ancillary uses and design guidelines would address a particular zoning code in terms of the setbacks, lighting issues, numerous issues. If we had the code here, we could probably answer your question very quickly.

The key thing for large parcel agriculture is that they have a minimum requirement of 100 acres and this project certainly -- it's on a 158 acre site. So that right there indicates that the project is compatible with that aspect of the zoning. Then there's the matter of the findings that Alameda County would have made were they the permitting agency, which we consulted with the county and made part of our analysis here.

MR. SINGH: So --

HEARING OFFICER CELLI: Mr. Singh, last question, go ahead.

MR. SINGH: Right.

So this is my determination again. I would like to believe -- anyway, I'll -- conditional use permit, can you explain me some of the things that are written in the conditional permit by Alameda County?

MS. STENNICK: I'm sorry the question --

HEARING OFFICER CELLI: Conditionally what is

contained in a conditional use permit by Alameda County?

MS. STENNICK: We can only speak to the particular zone of which the project is situated. The county has numerous zoning designations. A conditional use permit would be, for example, conditions of a local agency would apply to a project to reduce any impacts, any environmental impacts to a level below significance, which I believe we have done in this project.

MR. SINGH: Can you at least give me three items which basically require the conditional use permit and if those are violated then Alameda County will not (inaudible). This is my last question. Have you rendered conditional permit of Alameda County?

MS. WORRALL: I cannot do that because I did not analyze -- I only analyzed what would pertain to the proposed project and proposed zoning. I didn't look at other uses --

MR. SINGH: Is that what it is called a conditional use permit? That's all, Mr. Celli.

HEARING OFFICER CELLI: Thank you, Mr. Singh.

Sierra Club California, any questions of this panel?

MR. CARLTON: Yes. You testified that this is a public use, the MEP is a public use.

MS. WORRALL: Public, quasi public use.

MR. CARLTON: What's public about it?

MS. WORRALL: The electricity that is generated would be provided to the public.

MR. CARLTON: So the only public thing about it is the fact that product gets used by the public which is through (inaudible).

STAFF COUNSEL WILLIS: I'm going to object. Argumentative. And she's already been asked this question and answered it in previous cross-examination.

HEARING OFFICER CELLI: Overruled. Go ahead and answer the question, please.

MS. WORRALL: The provision of electricity is a service for the public.

MR. CARLTON: So is a provision of groceries. Are grocery shores a public use?

MS. STENNICK: I have to pay for my groceries, Mr. Carlton. I don't know if you get yours provided to you, but I have to pay for mine.

MR. CARLTON: Do you have to pay for electricity for PG&E?

HEARING OFFICER CELLI: I'm going to interpose my own objection because this is argumentative. You know, all of that kind of information will show up in your brief. Let's get to the facts.

MR. CARLTON: Okay. ECAP Policy 13 provides the

county shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the initiative. How is this MEP not in excess of that needed for permissible development consistent with the initiative?

MS. WORRALL: I look to the PG&E's request for offers for electrical resources. The Commission's licensing restricts the operation of the plant to a specific number of hours. It's a peaker project that is used in the time -- in times of high electrical demand. And so -- and the electrical plant would not encourage any growth inducing repercussions.

MR. CARLTON: But did PG&E consider what was needed in eastern Alameda County?

STAFF COUNSEL WILLIS: I'm sorry. Could you repeat your question? Did PG&E consider --

MR. CARLTON: You said you relied on PG&E's need analysis. Did PG&E's need analysis refer to eastern Alameda County?

MS. WORRALL: I didn't look at a need analysis. I looked -- I saw that a PG&E had placed a request for offers for procurement of energy resources -- flexible energy resources that are able to start up in less than ten minutes used for peaking demand to meet the high demand.

MR. CARLTON: High demand where? In eastern Alameda County?

MS. STENNICK: That's really outside of the area of our analysis, Mr. Carlton.

MR. CARLTON: Well, I'm asking you about ECAP Policy 13 and why this is not in excess of that needed for per miss able development consistent with the initiative?

STAFF COUNSEL WILLIS: And I'm going to object. It's been asked and answered twice now.

HEARING OFFICER CELLI: Overruled.

The question is why is the MEP not in excess -- I am sorry. Finish the --

MR. CARLTON: In excess of that needed for permissible development consistent with the initiative.

HEARING OFFICER CELLI: That's the question.

MS. WORRALL: I -- like I said before, I did -- I looked at the PG&E request for offers for energy facilities, energy resources. I noted also actually the applicant's power purchase agreement with PG&E fulfilling that need. I also noted that Alameda County had stated in their May 20 letter that even within the growth constraints of the ECAP that significant energy resources are needed.

MR. CARLTON: Was there any indication that there were not or inadequate sufficient resources for

development in Alameda County?

MS. WORRALL: Not from the evidence that had been submitted and the information I had gathered.

MR. CARLTON: Okay. Thank you.

Policy 13 allows infrastructure such as pipelines, canals and power transmission lines. Is the peaker plant subjected like a pipeline, canal, or power transmission line?

MR. WHEATLAND: I object. He's reading the statement incomplete. I think he should read it in its entire context.

MR. CARLTON: You want me to read all of Policy 13?

HEARING OFFICER CELLI: Actually, I ask that you not. And I'm going to sustain the objection. The objection is based on argumentative. A power plant is a power plant. It's not a transmission line. It's not a canal and it's not whatever else you listed. So that speaks for itself. I understand that.

MR. CARLTON: Okay. Thank you.

So the pipelines, canals, and power purchase transmission lines which have no excessive growth inducing effects in the east county area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the initiative, are

there permit conditions to ensure that no service can be provided beyond that consistent with the development allowed by the initiative?

MS. STENNICK: Are you referring to Policy 13? I'm sorry.

MR. CARLTON: This is Policy 13.

MS. STENNICK: Okay. May I take a look at what the wording says?

MS. WORRALL: Well, the permit conditions to ensure that no service can be provided beyond that consistent with the development allowed by the initiative, the permit conditions would be the Commission's restriction in terms of operating hours and Conditions of Certification that would become part of the project.

MR. CARLTON: Thank you.

Still on Policy 13. Policy 13 provides infrastructure shall include public facilities, community facilities and all structures and development necessary to the provision of public services and utilities. How is a peaker plant necessary to the provision of public services and utilities?

STAFF COUNSEL WILLIS: I need to object again. They've answered this about two or three different -- from different intervenors. I know this particular intervenor didn't ask the question, but it's starting to feel

cumulative that they've repeated and repeated why they've created their testimony.

HEARING OFFICER CELLI: I think it's a fair question, but I think if it's been gotten to before, then the witnesses should be able to rattle it right off. So let's hear from the witnesses quickly, please, the answer to the question.

MS. WORRALL: Can you repeat the question again, really briefly? Sorry.

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

MS. WORRALL: Well, I would look to the -- again, the have PG&E's request for offers or energy resources. The electricity provided would go to the public and you know, consider it is providing public utilities, public services to the public, provision of electricity.

HEARING OFFICER CELLI: How many more, Mr. Carlton?

MR. CARLTON: Two more. And Mr. Mainland has one. My two are very short.

How does the loss of ten acres of grazing land

meet ECAP purposes of preserving agriculture and open space?

MS. WORRALL: Are you talking with respect to policy 52 or --

MR. CARLTON: Referring to ECAP purposes of preserving agriculture and open space.

MS. WORRALL: Well, the applicant and actually the proposed Conditions of Certification that I've included in my analysis would require that the applicant reseed the construction lay down area with an improved seed mix over that is currently provided. Also, the lifetime long term provision of water for the cattle for livestock, something that's not currently there that would also increase the use of the grazing land.

MR. CARLTON: Okay. So you're saying that putting down a few more grass seeds is providing a pipe for water is sufficient mitigation for permanent loss of ten acres of valuable grazing land for those corresponding greenhouse out there.

STAFF COUNSEL WILLIS: Objection --

HEARING OFFICER CELLI: Objection sustained. I think Mr. Mainland was one question. Go ahead, Mr. Mainland.

MR. MAINLAND: Am I coming through? Test.

HEARING OFFICER CELLI: Stay up really close.

MR. MAINLAND: Ms. Worrall, with regard to sources (inaudible) determination of public need, one of them (inaudible) statement they need more electricity. Do you know what the basis is for that counter determination was? Did you require into that?

MS. WORRALL: No.

MR. MAINLAND: This morning we heard, did you not, that the planning people from the county said they need no determination or analysis themselves but made the determination (inaudible) was outside agencies and services. Did you know that?

MS. WORRALL: I think I remember something to that effect being --

MR. MAINLAND: Would it be incumbent on CEC staff to inquire further into need if these sources they're relying on are (inaudible)?

HEARING OFFICER CELLI: Mr. Mainland, when you're speaking, speak directly down the pipe of that microphone.

MR. MAINLAND: Testing.

HEARING OFFICER CELLI: Perfect. Right there. Stay right there. That's perfect.

MS. STENNICK: Mr. Mainland, can you repeat your question, please?

MR. MAINLAND: Yes. Well, the latest question was would it not be incumbent for CEC staff to inquire

more deeply into the need when you're relying on derivative sources?

MS. STENNICK: Would it not be incumbent upon staff to -- I am sorry. I'm having a hard time hearing you.

MR. MAINLAND: I'm sorry. Can you hear this?

MS. STENNICK: Yes.

MR. MAINLAND: My question was given the fact that the statement of the county was itself derivative and your determination was based on that derivative statement, shouldn't you have inquired more deeply into the issue of need that the county statement (inaudible).

MS. STENNICK: I'm not sure which statement you're suggesting the county is -- which alleged derivative statement are you referring to?

MR. MAINLAND: The county determination that your witness quoted. Your witnesses quoted it several times.

MS. STENNICK: Are you referring to --

MR. MAINLAND: She looked at the county's statement they need more electricity and therefore this project serves a public need.

MS. STENNICK: That statement was from the ECAP which is the document that we used in addition to PG&E's request for proposals and the power purchase agreement. What they're not -- I'm looking for some specific

language. If you can just bide with me, sir.

HEARING OFFICER CELLI: Mr. Mainland, let me ask you this, because we're kind of actually -- Mr. Carlton said that you have one question. We're about five questions into your questioning and I just wondering if you can kind of get to the heart of what it is you're trying to get to and ask that question.

MR. MAINLAND: While they're trying to answer the other question, if I could just pose one more question, please, Mr. Chairman, and that is did you not consult other agencies and sources which point to the existence of the large and growing glut or surplus of generation capacity in the PG&E area and would that not have been a relevant item in your trying to determine whether there was a public need for extra electricity?

MR. WHEATLAND: Objection. Facts not in evidence.

HEARING OFFICER CELLI: And compound. It's a lot of questions in one. See if you can get it down to a bite sized piece.

MR. MAINLAND: There are other sources and agencies you might have consulted in determining whether there is in fact a glut of energy and is growing in the PG&E area of electricity generation. Would those not have been legitimate and reasonable things to include when you

consider them for the use of public need or not?

STAFF COUNSEL WILLIS: I need to object.

HEARING OFFICER CELLI: Overruled. Why did you do the analysis? Why didn't you do the -- in other words, he's asking why didn't you ask a bunch of other agencies that you might have or should have or could have.

MS. STENNICK: One of the findings required by Alameda County for a conditional use permit, one of the four findings is is the use required by the public need, which is different from performing a needs analysis which is done in another section of the document.

HEARING OFFICER CELLI: Okay. Is that Mr. Mainland?

MR. MAINLAND: Yes.

HEARING OFFICER CELLI: Thank you.

Mr. Simpson, go ahead.

MR. SIMPSON: Thank you. Maybe we should go right from that last question is the use required by the public need. I think question here is really is this use in this location required by the public need? Is this use of this technology in this location required by the public need?

MS. STENNICK: Well that's -- unfortunately, the county wasn't as thorough as you are Mr. Simpson. All it says is is the use required by the public need, which is

under Section 17.54, which identifies the four findings necessary for approval of a conditional use.

MR. SIMPSON: But this conditional use is site specific. So the question is is this use needed in this location. It's not a question I need a gas station before I go home. But I don't need it to be right next door to here.

MR. WHEATLAND: Is there a question?

HEARING OFFICER CELLI: My sense is that the question is: Is there a need to have the power plant sited exactly where the MEP is sited or proposed to be sited now?

MR. WHEATLAND: If that's the question, I'd object as irrelevant because that's not what the county LORS is requiring.

STAFF COUNSEL WILLIS: And I'm going to object. As was stated over and over again, the staff did not do a needs analysis.

HEARING OFFICER CELLI: Which is kind of the question's answer.

STAFF COUNSEL WILLIS: May I finish, please. They're looking at a conditional use permit that's outlined by the county and stepping into the shoes of the county in determining that which is different than the Energy Commission or PUC looking at a need for a power

plant in a certain location.

HEARING OFFICER CELLI: Is -- I think the answer he's looking for is whether he did the analysis or not.

MS. WORRALL: I did not look at the -- any alternative sites or if the use is better proposed elsewhere or -- that wasn't part of my analysis was analyzing the project as proposed.

MR. SIMPSON: Thank you. So if -- does the county have to authority to do a conditional use permit for this project?

MS. WORRALL: Any authority?

MR. SIMPSON: Does the county have the authority to do a conditional use permit for this project?

MS. WORRALL: No.

MS. STENNICK: The county's authority is superceded by the California Energy Commission on this type of a project.

MR. SIMPSON: Is that question or no?

MS. STENNICK: That is a -- the county can give an in lieu of permit. They can advise Energy Commission staff. There's no requirement in the Warren-Alquest Act that local jurisdictions issue any permit when the state -- when basically the Energy Commission staff have to as our attorney said step into the shoes of the planning staff and ensure that all Alameda County and this

particular example all Alameda County's laws, ordinances, regulations and standards are (inaudible).

MR. SIMPSON: So that's what you do, you ensure that their laws, ordinances and standards are met in respect to conditional use permit if that would have been required by the county?

MS. WORRALL: Yes, we look at all the laws, ordinances, regulations and standards applicable to the project and any kind of conditional use permits that would have been issued if the county were permitting the project. We look to see if the project was consistent with all these regulations, applicable regulations. And write up our -- you know, analysis and conclusions and submit it to the Committee for review and then put it along in the process.

MR. SIMPSON: So the CEC process would be at least stringent as the conditional use permit process. And if it weren't, you would do a (inaudible) of the conditional use permit? Is that correct?

MS. WORRALL: One moment for a second.

MS. STENNICK: Are you asking -- are you asking -- I guess I'm sure, Mr. Simpson, what you're asking. Are you asking if our process is similar to what the county would do? Is our site process --

MR. SIMPSON: Yeah. Is the CEC process more

stringent than a conditional use permit?

MS. STENNICK: I would agree it is more stringent because we take a look at all kinds of technical areas beyond land use, including facility design.

MR. SIMPSON: So this process wasn't consistent with the conditional use permit process, would the CEC have to do an override to (inaudible) the project?

MS. STENNICK: The question isn't is it consistent with the conditional use process. The question is does the Mariposa Energy Project, is it consistent with all applicable local, State, and federal laws, ordinances --

HEARING OFFICER CELLI: Actually, the question he asked was if there was --

MR. CARLTON: Regulations and standards.

HEARING OFFICER CELLI: The question was whether there was an override, if there was an override, would -- I want to -- because I'm not sure you got your answer.

MR. SIMPSON: If the project was not consistent with the conditional use permit process of Alameda County, would it require an override?

MR. WHEATLAND: I'm going to object to the question. He's talking about process. And I'm not sure whether it's process or the LORS.

MR. SIMPSON: LORS.

MR. WHEATLAND: And not process?

HEARING OFFICER CELLI: Overruled. I'm going to allow her to answer that question. Go ahead.

MR. WHEATLAND: I'm just asking what is the question? Is it process or LORS?

HEARING OFFICER CELLI: The question is whether if there was a conditional use permit required and -- I am sorry. Let me step back. If a conditional use permit was required and there wasn't one issued, would that require an override? Did I faithfully --

MR. SIMPSON: That will work.

HEARING OFFICER CELLI: Let's try that. That's a simple yes or no question. If there was a requirement for conditional use permit and the requirements for the conditional use permit were not met, would it require an override by the Energy Commission?

MS. STENNICK: The Committee would have to make that decision.

MR. SIMPSON: Really?

HEARING OFFICER CELLI: Well, let's move on, Mr. Simpson.

MR. SIMPSON: Okay. In your opinion is this a small facility?

MR. WHEATLAND: Objection. Vague.

HEARING OFFICER CELLI: Overruled.

MS. WORRALL: I'm sorry. Might I answer it, the question?

HEARING OFFICER CELLI: The question was is this a small facility. And I imagine you would say small compared to what. And Mr. Simpson is going to say what, Mr. Simpson? Go ahead.

MR. SIMPSON: Was there a response?

MS. STENNICK: Is this a small facility?

MR. SIMPSON: In your opinion is this a small facility?

MS. STENNICK: Compared to what?

MR. SIMPSON: You might have been coached on that one. Let me skip that for a minute. Is the RFO on the record, PG&E's request for offers?

MS. WORRALL: I know included in my list of references. I don't know if it has been disconnected. I can't remember.

HEARING OFFICER CELLI: That's something you can look on the evidence itself, Mr. Simpson.

MR. SIMPSON: Okay. Are power plants an industrial use?

MS. STENNICK: That question depends upon which jurisdiction it and which zone they are proposed in. They can be a conditional use as we have seen some several counties. They can be an industrial use as we have seen

in urbanized industrial situations.

MR. SIMPSON: Is it a manufacturing facility?

MS. WORRALL: No. Not to my knowledge, no.

MR. SIMPSON: Okay. Do you know the percentage of land that will be covered?

STAFF COUNSEL WILLIS: I've going to object. That question has been asked quite a few times.

HEARING OFFICER CELLI: It has been asked. And I don't think we got a answer to it. It may be in the record. Oh, Mr. Wheatland.

MR. WHEATLAND: You asked us to look it up for you. And what we were able to find is that is a table that is in the AFC, which is Exhibit 1. This is Table 5.13-1. And that provides the width and length of each of the structures on the site. So one is 50 by 30 and one is 20 by 10. Now, unfortunately, that table does not give a grand total if you added them all up. But Mr. Curry here is very diligent and he's done that exercise. And the total combined four area of all the structures that are reflected in Table 5.13-1 is 7,280 square feet.

HEARING OFFICER CELLI: And but we didn't take it to the level of what percentage that is?

MR. WHEATLAND: Well, as a percentage of the entire parcel, that is substantially less than .01 percent of the parcel.

HEARING OFFICER CELLI: And if we were all good in math, we all would have divided the bigger number into the smaller number and that sort of thing. But there you have it.

MR. WHEATLAND: That's about the equivalent of three Mountain House homes.

HEARING OFFICER CELLI: 480 did you say?

MR. WHEATLAND: 7,280 square feet. It's about three residential homes.

HEARING OFFICER CELLI: Mr. Simpson, go ahead, please. And how many more questions do you have, Mr. Simpson, just so I can gauge the time?

MR. SIMPSON: About six-ish.

HEARING OFFICER CELLI: Let's see if we can move with alacrity.

MR. SIMPSON: Does the county have a noise ordinance?

MS. WORRALL: I am sorry. What does say?

MR. SIMPSON: Does the county of Alameda have a noise ordinance?

MS. WORRALL: I would suspect it does, but I did not look at the noise ordinance.

MR. SIMPSON: I see. Did you do any soils reports to determine that this was not the primary agriculture land? (inaudible) or review soil report?

MS. WORRALL: I went to the Farmland Mapping and Monitoring Program and --

MR. SIMPSON: The what?

MS. WORRALL: The Farmland Mapping and Monitoring Program, FMMP and I looked at the soil classification and I know there was a resource. I can't recollect at this point that talks about -- I have it bookmarked. And that talks about the types of land that is considered -- soils that are considered prime and I remember that the Mariposa project -- the parcel was not considered prime as I checked that out. Also as far as any kind of more discussions about soil would be in the technical study for the soil analysis.

MR. SIMPSON: I see. You mentioned that you reviewed the Department of Conservation's letter regarding the Williamson Act, the July 6th, 2009, letter that you mentioned earlier.

MS. WORRALL: Yes.

MR. SIMPSON: And is this the Department of Conservation's determination of consistency?

MS. WORRALL: (inaudible) their reasonings why they would consider the project consistent, but they did defer the more -- the final decision -- they deferred also to Alameda County because the contract -- Williamson Act contract is between Alameda County and the private

property owner.

MR. SIMPSON: I see. So the Williamson Act consideration is a county determination or a CEC determination? Who makes that ruling?

MS. WORRALL: As far as any actions to be taken on the contract, it's the county's.

MR. SIMPSON: So it's not -- the CEC doesn't have authority over the Williamson Act?

MS. WORRALL: The Williamson Act or the Williamson Act contract?

MR. SIMPSON: Well, the determination of whether this project is consistent with the Williamson Act. Who has that authority?

MS. STENNICK: I am sorry. Could you repeat yourself, please?

HEARING OFFICER CELLI: Who has the authority over the determination of whether this project complies with the Williamson Act.

MR. SIMPSON: Thank you.

MS. STENNICK: Well, since the contract is with the county, the county is the one who can make or break the contract, along with the land owner if they submit a notice of non-renewal. We cannot force Alameda County to -- we have no jurisdiction over Alameda County's contract with the current land owner. That's clearly

outside of our authority and purview.

MR. SIMPSON: Did you make a determination if this is consistent with the Williamson Act?

MS. WORRALL: With the Williamson Act, yes.

MR. SIMPSON: Okay. Almost done here.

HEARING OFFICER CELLI: Thank you. And we would appreciate if you wrap it up because we have to get some other business done before we break.

MR. SIMPSON: Can you still build a house on this parcel?

MS. STENNICK: Again, the large parcel agriculture zoning designation would I believe the county addressed that earlier. I think it's -- one house per 100 acres.

MS. WORRALL: However, would probably be the county's determination based on the existing conditions.

MR. SIMPSON: I see.

Do you believe that this project would discourage residential development (inaudible) area?

MS. WORRALL: I'm sorry. I didn't hear your question.

MR. SIMPSON: Do you believe that the project would discourage residential development in the immediate area?

STAFF COUNSEL WILLIS: Objection. Calls for

speculation.

HEARING OFFICER CELLI: Overruled.

MS. WORRALL: Well, the zoning would prohibit it from land use designation would prohibit, you know, multiple houses of multiple residents. It's based on property size and zoning.

MR. SIMPSON: That wasn't really my question. I asked if the zoning is 100 acres per house (inaudible) houses per (inaudible) sort of thing were available. But my question is do you believe that this project may actually discourage new residential housing in the immediate area whether it be one house or four?

MS. STENNICK: I think in order to answer that I would be speculating on -- that sounds like an opinion.

MR. SIMPSON: Well, I think it's a land use question.

MS. STENNICK: In order for there to be housing development or residential development in proximity to the project, the county would have to change their general plan in their zoning code.

MR. SIMPSON: Well, I think we already established that you can build one house on 100 acres. Does this discourage that?

HEARING OFFICER CELLI: I think it's clear that if you build a power plant there, you're not going to

build a house on the same spot. It's going to be one or the other; right?

MR. SIMPSON: Is there a limit to how many power plants you can build on those parcels?

MS. STENNICK: I believe the county answered that earlier.

MR. SIMPSON: Does staff have an opinion of if there is a threshold of how many plants could be built on this facility before it impedes on the Williamson Act or other LORS?

MS. STENNICK: Again, could you please repeat your question?

MR. SIMPSON: I'll give it a try. Okay. The concept that ten acres of this 158 acre parcel doesn't appear to significantly compromise long term productive agricultural capability, is there a threshold? Can we build two plants there? Can we use 20 acres? Can we use 40 acres? Where is the limit that it impedes on agricultural use or other LORS?

MS. STENNICK: Are you referring to the cumulative -- potential cumulative effect of developing agricultural lands? Is that what you're referring to?

HEARING OFFICER CELLI: If I may, it sounds to me like what you're asking is is there a limit on how many power plants you can put on this particular parcel?

MR. SIMPSON: That's what I'm trying to ask.

HEARING OFFICER CELLI: That's the question. Let's see if we can get the answer.

MR. SIMPSON: I'll be about done then.

HEARING OFFICER CELLI: Is there a limit on how many power plants could be built on this parcel?

MS. WORRALL: Well, again, I would of course look to the zoning and the land use designation. Land use designation refers to the floor to area ratio. So that would limit the amount of built out area.

MR. SIMPSON: I see. So it would be limited by that .01 percent of 150 acres?

MS. WORRALL: Right. That's the zoning area I saw with --

MR. SIMPSON: So they used 7,000 square feet .01 of -- (inaudible).

Last question I think. When PG&E's contract expires in ten years, would this still be considered a public facility?

MS. STENNICK: I can't answer that question.

MR. SIMPSON: Thank you.

HEARING OFFICER CELLI: Thank you, Mr. Simpson. I appreciate your being on your game today.

Ladies and gentlemen, before we proceed -- oh, I'm sorry. Mr. Wheatland, did you have any questions? I

didn't mean to ignore you over there.

MR. WHEATLAND: No, you were quite right in ignoring me. And the reason that is is that rule 1212 in the Commission's rules of practice and procedure provides that parties have the right to cross-examine opposing witnesses. And since we have no position adverse to the staff in this proceeding, these witnesses are not opposing witnesses. It would be inappropriate for me to ask any cross. So I have no questions.

HEARING OFFICER CELLI: Touche, sir.

So with that, these witnesses are excused. And at this time I'm going to ask whether before we get to the intervenor's witnesses because I know Mr. Sarvey, I believe you're going to testify on land use.

MR. SARVEY: (Inaudible).

HEARING OFFICER CELLI: He's present. He's not on the phone.

MR. SARVEY: He's here today.

HEARING OFFICER CELLI: That's right. Before you do, I want to -- yes, we have to get to public comment in seven minutes. So in the next seven minutes what I'd like to do is take in evidence. I neglected to ask applicant first if there was a motion with regard to land use.

MR. WHEATLAND: Yes. I would like to move into evidence the land use exhibits that were described in the

applicant's exhibit list that was previously distributed to the parties. Those are the land use portions of Exhibit 1, 4, 5, 6, 9, 11, 12, 13, 19, 20, 32, 38, 41, 42, 43, 45, 49, 54, 61 and 67.

HEARING OFFICER CELLI: Thank you. Any objection to the admission of Exhibits 1, 4, 5, 6, 9, 11, 12, 13, 19, 20, 32, 38, 41, 42, 43, 45, 49, 54, 61 and 67 from staff?

STAFF COUNSEL WILLIS: No.

HEARING OFFICER CELLI: Mr. Sarvey, any objection?

MR. SARVEY: No.

HEARING OFFICER CELLI: Mountain House, Mr. Groover?

MR. GROOVER: No.

HEARING OFFICER CELLI: Thank you.

Mr. Dighe?

MR. DIGHE: No.

HEARING OFFICER CELLI: Mr. Andy Wilson?

MR. WILSON: No objection.

HEARING OFFICER CELLI: Mr. Jass Singh?

MR. SINGH: No objection.

HEARING OFFICER CELLI: Sierra Club, California?

MR. CARLTON: No.

HEARING OFFICER CELLI: Mr. Simpson?

MR. SIMPSON: No objection.

HEARING OFFICER CELLI: Thank you.

At this time, land use exhibits applicant's 1, 4, 5, 6, 9, 11, 12, 13, 19, 20, 32, 38, 41, 42, 43, 45, 49, 54, 61, 67 are admitted into the record.

(Whereupon the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: And staff, did you have any additional exhibits to move into evidence?

STAFF COUNSEL WILLIS: I would like to move at this time the land use section in Exhibit 301, the supplemental staff assessment.

HEARING OFFICER CELLI: 301 only essentially?

STAFF COUNSEL WILLIS: Yes. Only 301. The rest of the exhibits would be part of the supplemental staff assess.

HEARING OFFICER CELLI: Folks, what I'm going to do is admit the staff assessment and the supplemental staff assessment, because we can't really operate without that. So 301 is received in its entirety as was 300 and 301. So we won't have to go through that each time.

(Whereupon the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: Now, you've all been troopers. There's a lot of parties here. This is going to be a little day, a little longer than I wanted it to go I'm afraid. We should be doing air quality now. What we're going to do at 5:00, in four minutes according to my computer, is take public comment? Let me just see a show of hands. How many people are here to make a public comment. Keep your hands up. Eight. How many on the phone? So five and eight. That's great. That's a very manageable number of people.

This gentleman here who stated -- I should say for the record since you're not on the microphone, a member of the public said more people are coming from the town of Mountain House. Do you have any sense of how many people?

UNIDENTIFIED SPEAKER: (Inaudible.)

HEARING OFFICER CELLI: So two dozen is about 24. So it looks like we've got quite a few people and we have some limited time to do this. And we're going to -- I actually brought from home my egg timer because I'm going to have to limit how much time. I'll have to do the math and figure out how much time people can have to speak. But I'm going to ask members of the public whether you're on the phone or here if person. If somebody said something that you wanted to say rather than going through

the whole thing. You can say, "What that person said I stand behind and I agree with," because we need to get everybody in here and get as many comments as we can.

Mr. Lamb, did you have a question?

MR. LAMB: On the public comment I know a lot of people in Mountain House the majority of the town is a commuter town. So I know getting here at 5:00 is going to be difficult. And there's very little parking out. I don't know if parking is illegal out on that area or not. So I know that's a complication.

HEARING OFFICER CELLI: We have a couple officers here. Maybe --

UNIDENTIFIED SPEAKER: (Inaudible).

HEARING OFFICER CELLI: Thank you, officer.

MR. CARLTON: When is the land use hearing going to resume?

HEARING OFFICER CELLI: After public comment.

Now, I'm trying to get public comment done -- isn't there food outside?

MR. SIMPSON: I'd like to make a motion that we adjourn after public comment.

HEARING OFFICER CELLI: We don't have the time for that. We have to keep moving on I'm sorry to say. Need to get to air quality. We should have been in the middle of air quality by now. So I've been awfully

generous with the amount of time people have have been cross examining, and I guess I'm going to have to pull out my egg timer now.

So with that, let me just go off the record for one moment.

(Off record.)

HEARING OFFICER CELLI: Is Dr. Leo Huang here? Hi. Come on up to the podium.

Yes, we're on the record. This is the time for public comment. I'm going to ask people to limit your comments to about -- I'm going to ask you to keep it down to about three minutes because we want to make sure we can hear from everybody.

Go ahead, Dr. Huang.

MR. HUANG: My name is Leo Huang. H-u-a-n-g, last name. I'm Mountain House resident two and a half years. I love Mountain House. I'm here specifically to oppose this project. I am a chemist, a scientist. I have a doctor's degree. I know the gas energy is a (inaudible) energy. We can do better other than gas. To me, use gas to convert to energy is (inaudible). I say we should look at better energy, like solar energy (inaudible) in this nation or in this world. Okay. That's my point. I'm highly oppose this project.

HEARING OFFICER CELLI: Thank you, Dr. Huang, for

coming and for your comments.

Susan Sarvey was here earlier. Hi. We've already heard from Susan Sarvey. And thank you. Thank you for your comments earlier if I didn't say that. I was trying to get you back to work. Welcome back.

MS. SARVEY: I'm here for air quality.

HEARING OFFICER CELLI: I have Dr. Celeste Farron.

MS. FARRON: Correction. That's Director Celeste Farron.

And I would like to clarify though I am a director in Mountain House Community Service District. I am here as a resident. We have our intervenors on behalf of Mountain House that are here, Mr. Groover and Mr. Lamb that represent Mountain House. I, like the other residents here as intervenors and the other residents here, represent myself.

That being said, I have a statement from our general manager that I'd like to read by proxy. If that's not allowed, I'll read it as my comment since I share the same sentiment. He was here earlier. He is actually the one that had the -- I was the one that had the statement for when Ms. Sarvey came up. There was a mix up.

HEARING OFFICER CELLI: Do you want to read it into the record?

MS. FARRON: Yes, please.

HEARING OFFICER CELLI: It will be part of the comment.

MS. FARRON: Thank you. And then I have a comment of my own as well?

HEARING OFFICER CELLI: Please.

MS. JENNINGS: Speak more into the microphone.

HEARING OFFICER CELLI: Speak directly into the mike. Right into that microphone.

MS. FARRON: Is that better?

HEARING OFFICER CELLI: Not really. You need to really boom out there.

MS. FARRON: A statement from the Mountain House Community Service District General Manager or me if you don't allow by proxy. Fire response. The Mountain House Community Service District contracts with the Tracy Fire for fire and emergency services. The fire station located in Mountain House is the closest station to the Mariposa energy project.

As stated by the Mountain House Community Service District intervenors earlier, the response time from Mountain House is about 20 minutes faster than the next closest station in Alameda County. The greatest number of calls are for personal medical emergency which affect worker safety. Fire and Hazmat calls will also require

quick response times. Although the Mariposa Energy Project is talking to the Tracy Fire on this issue, the Mountain House Community Service District would like to make sure that the CEC staff and Board will make sure that our resources are fairly compensated for our new responsibilities due to the Mariposa Energy Project. We made the same management for the East Altamont Energy Project, CalPine, several years ago and the CEC conditioned their license to provide Tracy Fire mitigation money for the extra services. Although the two projects are different and make arguments for not mitigating the cost, the Mountain House Community Service District resources are in reality -- the reality is we are the first responders. The Mountain House Community Service District General Manager requests that the CEC make the Mariposa Energy Project compensate Tracy Fire for their projected costs.

Thank you.

I would like to also --

HEARING OFFICER CELLI: Director Farron, was that from --

MS. FARRON: Paul Semsibaugh.

HEARING OFFICER CELLI: That was Mr. Semsibaugh's comment?

MS. FARRON: Right. Also he called Tracy Fire

today and they will -- I wanted to point out that the agreement between the two counties to provide service one to another is not a contractual agreement. And Tracy Fire will be here tomorrow to testify at 2:00 during the public safety portion of the comment part of the meeting. So that will be Chief Brammel that will be here tomorrow at 2:00.

HEARING OFFICER CELLI: Boy, wouldn't it be great if we're actually talking about worker safety by then. Go ahead with your own statement.

MS. FARRON: And my comment today is I wanted to comment that the Alameda County officials opened their prepared statement with we have been working with the Mariposa Energy Project for said amount of time. Although they are here at the request of the CEC, so say they are not anyone's witnesses is contrary to statements in their -- comments in their opening statements we have been working with the MEP as well as statements identifying themselves as the host county and the host community. I would like to ask the CEC to take these statements into consideration and acknowledge that the Alameda County officials -- acknowledge them to actually having a leaning toward being a specific party's witness, at least to a degree as they themselves have testified to an ongoing working relationship.

And those are my comments. Thank you for your time, Mr. Chairman.

HEARING OFFICER CELLI: Thank you. And thank you very much for coming down. Thank you for reading Mr. Semsibaugh's statement. I really do appreciate your comments. So thank you. Look forward to hearing from fire people as well.

Next I have Catherine Kutsuris.

I am sorry if I mispronounce people's names, by the way. People do it to me all the time. Being Italian is not easy.

MS. KUTSURIS: That's okay. You did very well.

Catherine Kutsuris, and I'm the Director of the Contra Costa County Department of Conservation and Development.

The County Board Of Supervisors in -- the Contra Costa County Board of Supervisors in October took a position in support of the Mariposa Energy Project for a number of reasons. Their letter is dated October 4th, 2010. It has been provided to you.

Again, they did take that position for a number of reasons, but two particular items I'd like to call to your attention as part of the Board's decision, they both found that the project is consistent with the county general plan as well as found it was consistent with the

Byron Airport Master Plan. As you may know, Contra Costa County is both the owner and the operator of the Byron Airport. So it is the Contra Costa County Board of Supervisors a decision in that matter is very important and that was articulated in their letter to you.

On behalf of both the County Department of Conservation and the staff for Contra Costa County, I just want to ensure that we are available to answer any questions that you may have either by myself or if I can't answer it, any members of our staff we will ensure that you get answers to your questions.

And finally since I think I have one minute left, I would like to say from one public agency to another, I've been in this business for unfortunately when I say decades now, it's over two decades. And I do want to give a compliment to the Energy Commission specifically your staff. I think I have worked on a variety of projects or had an occasion to interrelate to your staff a number of times over the past 15 years and without exception they have always been professional, competent, and always at the other end of the telephone. I'm not quite sure how they pull that off. But as one public agency, I very, very much appreciate their efforts. Thank you.

HEARING OFFICER CELLI: Thank you. And I want to thank you for those comments, particularly because when

you read a letter as you mentioned in the record, it makes so much of a difference to have somebody come in, a human being, come and say we stand by that letter.

MS. KUTSURIS: Happy to do so. Thank you.

HEARING OFFICER CELLI: Next I have Brian Stotz. Is Brian Stotz here? Hi.

MR. STOTZ: Hello. I'm a Mountain House resident and I oppose this plan, because -- I'm speaking into it.

HEARING OFFICER CELLI: Much better.

MR. STOTZ: I'll start over. I'm Brian Stotz. I'm a Mountain House resident, and I oppose this plan, because every time I investigate dangerous toxic chemicals, I find that it becomes a parts per million basis. And some agency says a thousand parts per million or ten parts per million is dangerous. And every time I read these articles, the number goes down. There's less parts per million that are dangerous. And we have a lot of children that will be growing up in Mountain House that will be exposed to some parts per million from this plant. And I just ask anyone in here if you have a child, do you want them exposed to additional parts per million?

Thank you.

HEARING OFFICER CELLI: Thank you. And I do have a child and I don't want her exposed to more parts per million. Go ahead.

I have Mary Piepho from the Contra Costa Board of Supervisors.

MS. PIEPHO: Good afternoon -- or good evening. My name is Mary Piepho. I'm a Contra Costa County Supervisor representing District 3 on the Board of Supervisors. District 3 does include the Byron Airport. And welcome. In fact, you are in District 3 today.

Our county has worked many years to plan and implement expanded uses of the Byron Airport. We do see great potential for the facility both through additional general aviation as well as potential cargo uses in other economic opportunities. It is one of Contra Costa as most important resources and we are most protective of and also excited about. We're proud of the airport as exists today and are optimistic about its future.

For more than a year, we have reviewed the proposed Mariposa Energy Project with a focus on its interrelationship with the Byron Airport. Through numerous meetings, public hearings and exchange of information we've become very familiar with this proposal. I was fortunate to have the opportunity to work with local pilots and fly over the site carefully and considering the potential impacts and benefits of Mariposa on Byron and Contra Costa County.

Earlier in 2010, as Catherine indicated earlier,

we did write the applicant with a list of specific issues and areas of potential concern for us in response the applicant provided us with significant information -- voluminous I think is a better description. Our professional staff made a thorough review of all the materials, including the FAA's determination of no hazard to air navigation for the project structures, stocks, and thermal plumes.

Based on that process, the county is very satisfied that the project is compatible with the Byron's airport operations and master plan and will not adversely affect airport operations. Prior to the Board of Supervisors consideration of the project the county's planning Commission and the county's Byron Municipal Advisory Council independently reviewed the project and supported it as well.

Given that the project applicant has safely addressed our concerns regarding potential impacts to the Byron Airport and given that the area will receive economic benefits from the project in terms of local spending and local high wage jobs, the Board of Supervisors has voted -- again Catherine indicated their unanimous support of the Mariposa Energy Project on September 28th.

Contra Costa County is respectfully asking the

CEC to approve the Mariposa project and allow its many benefits to be realized by the people of our county. Thank you.

HEARING OFFICER CELLI: And thank you, Supervisor Piepho. Thank you for coming down.

MS. PIEPHO: I put a phonetic spelling in there to make it easy.

HEARING OFFICER CELLI: I saw that. Made all the difference. That's great. Thanks for being here.

Are we out of blue cards? Got it. Is Jason Yao here? Hello. Come on up. I'm going to ask everyone really -- shoot your voice right down into the microphone.

MR. YAO: My name is Jason Yao. I'm a resident from Mountain House. I totally object this project. And the reason for that -- first of all, I did some research myself. Mountain House master plan was approved 1994. I just wonder where is the Mariposa project at that time.

Secondly, and (inaudible) there are key dates with the project for the Mariposa project and I don't know (inaudible) with the certificate does that date stop (inaudible) for that or they approve for that. That's what 2009 -- June 15, 2009, which was Mountain House is already exists and August of 26th, 2009, and the Commission accept the AFC. I don't know what the AFC is.

HEARING OFFICER CELLI: The AFC is the

application for certification.

MR. YAO: Okay. So in other words, it's that air document was adequate?

HEARING OFFICER CELLI: Deemed adequate.

MR. YAO: So my question for that, okay, to build a power plant to a community of 44,000 in two-and-a-half miles did they include that plan in their application? And also last year I received an e-mail for calling. So I called it and I actually there were doing some walk through -- I think internal walk through. They talk about the lizards across the street. So they care about the lizards.

So my question in two and half miles waste, emission, pollutant and what is the impact to the people who live in Mountain House? I own house in Mountain House. I intend to retire here, enjoy my life. And also there are three elementary schools, now they are full with kids. So what is the impact for pollutant to the kids?

And also (inaudible) and I came here I listen to the hearing, okay. So I hope the CEC will give the represent from Mountain House a fair (inaudible) express himself and also because many people live in Mountain House they are professionals. They work during the day and many of them there are minorities. And they have a problem the read English. So I would also suggest the CEC

will give them the fair opportunity to have document translated into the different language. I understand English is the main language in the United States, but I think in California the minority, they got to have the privilege to have their native language to be translated and give to those people. Thank you.

HEARING OFFICER CELLI: Thank you, Mr. Yao.

I wanted you to know the whole reason we're having these hearings is to answer your questions. We don't know what the impacts are. When we get all the evidence in, we will know and then we'll make a determination based on what the facts are.

MR. YAO: Thank you.

HEARING OFFICER CELLI: Thank you.

Ms. Avery, did you want to make a comment?

MS. HAVENER: Havener. Yes, I do. Thank you. My name is Katherine Havener. I'm a Mountain House resident. I'm so honored to be able to talk to you for a minute.

I brought my three children and I think you've definitely heard from a number of us that is something to be concerned about. And it is.

Before I moved to Mountain House, I led a group called the Holistic Moms' Network in the Tri Valley. So something that's very important to me as a parent is to

protect my children from chemicals and toxins. And I feed them organic food and we don't use household chemicals. And I do everything I possibly can to keep them healthy and whole and safe.

I have no control over whether this power plant is built. But you guys have control over whether this power plant is built. You have control over whether my children are going to be poisoned by tons and tons of chemicals. And that scares the living hell out of me.

I live two and a half miles away from this power plant, and I do not want my children poisoned.

And I please beg of you to look at the evidence. If there is going to be this horrendous toxic load to please stop this from happening. It effects real numbers. We're not just talking numbers. You're going to hear a lot of numbers. It affects real people, real lives. I don't want my children to have asthma or lung cancer or what have you. And I don't want that for myself.

So thank you for the opportunity to speak.

HEARING OFFICER CELLI: Thank you. We don't want that for you either.

Irene Sundberg. Is Irene Sundberg here? Hi. I'm sorry. There is a lot more information here. It says former Tracy City Council member. So please go ahead.

MS. SUNDBERG: Thank you. I am Irene Sundberg,

former City Council member.

HEARING OFFICER CELLI: I need you to speak right into the microphone.

MS. SUNDBERG: Okay. I'm here today because I'm not very happy with some of the conditions that are happening here. As a counsel member and a previous counsel member, some of the things that happened here earlier I was also a member of the intervenors when they placed the Tracy Peaker Plant. And in doing so, I learned how the things run and how the squeaky wheel works and how the Commission works a little bit. And I was very disappointed today when you treated the intervenors and told them they could not re-examine. Recross-examine. They were told they could not do that. In every hearing that I have been involved in from the Tracy peaker plant, the Tesla plant, the east Altamont plant, they have always been allowed, absolutely allowed to intervene and to recross-examine. I don't know what's going on here today, but I don't like it.

I commend the gentleman here from Mountain House to have the nerve to come to a hearing as an intervenor and English as a second language you were very rude to him and unkind.

I just got off the phone not long ago with one of the aids from the Governor's office. I told them that I

felt you were ram-rodding this hearing through and I do. I believe there's what you're doing. The applicant hassle the rights and the rest of us have none. That's wrong. And it's been wrong for years and it's still going to be wrong today, tomorrow, or any day in the future.

I'm ashamed of the Commissioners that I see up there today. And I know your job is to make this run fairly and to represent everyone here. And you need to remember that.

I'm also here to talk a little bit about mutual aid. It was mentioned earlier and I believe that we do not have a mutual aid between Alameda County and Mountain House and Tracy. Our mutual aid contract does not cover reimbursement for the gas that our trucks spend. It doesn't reimburse us for paint when we get called out on a job. And it also doesn't reimburse us for the manpower and the hours that are spent.

We need a Hazmat truck here in the area. We keep putting in these plants, the peaker plants, east Altamont, here today Mariposa, and we want approval for that, but yet we don't want to fork out any dollars. They don't want to fork out any dollars. It's approximately $550,000 to put a Hazmat truck on the ground. Gee, east Altamont would pay half. Mariposa would pay half. Mariposa fronts the money up front. And east Altamont when it comes on

(inaudible) can fork the other half over. I know you can handle that.

Our city just recently in November approved a quarter-cent sales tax because, guess what? We don't have enough money to pay our firemen and for police protection. We understand in Tracy what it is to protect our people. What we were hired for, what we do there is to protect our residents. The residents of Mountain House I believe were never told, many of them, that they wind up with east Altamont or this project, Mariposa, in their backyard. Let alone their children be raised with PM2.5 and we all know that's a disaster to have happen.

I spent six months just recently living in Mountain House. What a peaceful community. Yes, it is highly, highly integrated with all kinds of different people and I have to tell you it is one of the nicest communities I have ever lived in. And I appreciate these people coming out today and standing up for their rights of what they think is right for them and their community.

As I said, I really do hope that you think about the fact that this area needs a Hazmat truck. This is not the first time I've asked for a Hazmat truck. And I'll be back probably tomorrow to listen to see what our chief of the fire department has to say. But I know that it's impossible to have a Hazmat truck put on the ground and we

need that. Thank you.

HEARING OFFICER CELLI: Thank you, Ms. Sundberg.

People who are standing or sitting if you wanted to make a public comment, I need you to fill out one of these blue cards that's available from the public advisor who's not currently in the room, but when she comes, in I'll point out who she is. But if you want us to call your name, we need the blue card.

Next I have Jeremiah Bodnar. Is Jeremiah Bodnar here. Mr. Bodnar? Let him know I'm going to call someone else. Tell him to come in and I'll call him next.

Kishor Batt? Kishor Batt. I'm going to let Mr. Batt speak and then you'll be next. Mr. Batt, speak directly into the microphone so we can hear you.

MR. BATT: Okay. Good evening. I live in Mountain House. And couple of weeks ago we are going around the community spreading the awareness about the plant because a lot of people don't know about the plant. There is nothing in the news media about the plant. So people don't know. And one thing we came across was lot of empty houses like in foreclosure. And we notice that. And actually they have a number of -- there are a lot of empty houses in Mountain House. Those are in foreclosures. And they have a number of new stories in the media (inaudible) about Mountain House being the

epicenter of the foreclosure crisis in the country. Actually, originally Mountain House was planned to be a community of 40- to 50,000 people. And it has only 10,000 residents right now.

HEARING OFFICER CELLI: How many?

MR. BATT: About 10K. Since it is not fully developed, current residents are paying for the debt to develop the community as well as the utilities. So we have usually high utility bills and property taxes. Because it's not developed. Now my fear is if the power plant comes, the community will never develop into a full community. And current residents will not be able to rent their houses or not sell their houses and they have the pay higher rents, higher utility bills. So -- and property taxes. This will cost the community as a whole millions of dollars. So I don't think it's a good idea to look at a plant 2.5 miles from a community that was planned few years back before the power plant was even proposed.

Thank you.

HEARING OFFICER CELLI: Thank you, Mr. Batt. Thank you for coming in.

And now Jeremiah Bodnar was here earlier. There you are. Go ahead.

MR. BODNAR: I want to --

HEARING OFFICER CELLI: Please speak right into the microphone so we can hear you.

MR. BODNAR: I want to speak specifically to a few aspects of the supplemental staff assessment. So these things you heard before. But you're familiar with the Berkeley study that's been brought up here and entered into evidence. Looking at the staff response to that, I was particularly disheartened by the way in which it was treated. Of course, the worry for us as Mountain House residents is that a degree to which our housing value is going to be affected. As you know the result of the Berkeley study was that between an area of zero to four miles you have with some diminishing effects as the distance from the power plant increases. But up to a distance of about four miles that you have between the six to diminishing at past four miles a zero percentage loss equity values for houses. This was addressed briefly in the supplemental staff assessment.

But the evidence was brought forward some studies from I think '93, 2004, all of them were earlier studies than the one that was done at Berkeley just recently. One of them was actually a reference to just a specific power plant and the effect it had on local community. So I think we really need to challenge the staff assessment as it's been put forward because given the results of the

Berkeley study, which you can look at the science yourself is much more of a scientific study than the once that have been done previous to it in 2010 we would predict given the location of our community something like if you're going to be considered a four percent loss in housing values for the Mountain House community on average given that we have something like, let's say, -- Jim, how many homes? About 3,000, let's say they're worth about 300,000 a piece, you're looking at maybe around $12,000 per home. Multiply that if you get into 30 or $40 million.

We can expect given the best scientific findings to be sucked out of our community with nothing coming back to us. That's very worrisome. The responses that were given in the supplemental assessment are just not satisfactory. The reports that were sited were actually on power lines. Studies on the effects of power lines and also from very less scientific organized studies.

One of their suggestions in the supplemental assessment was that within five years these effects go away. For us, that might matter. But the average American sells a house every five to seven years. So if you're thinking about a turnover rate, that's literally like 30 or 40 million pulled out of our pockets and not just our equity. I think this really needs to be re-looked at. The supplemental assessment isn't

satisfactory.

I guess when it comes to the Measure D study you guys have been doing this a lot and I probably used my three minutes. But thank you for your time.

HEARING OFFICER CELLI: And thank you very much for your comments.

And I did read that study. So just so you know.

MR. BODNAR: And please take a look at the supplemental studies that are used to by staff to try to counter this because they're not nearly as satisfactory.

HEARING OFFICER CELLI: Is Richard Clark here from the Contra Costa Planning Commission?

Come on down, Mr. Clark.

MR. CLARK: Good evening. My name is Richard Clark. I'm the Contra Costa Planning Commission. I'm in my 23rd year. When this project first came to our attention, we were concerned about its impact on the airport and on other issues. So we asked the applicant to bring a presentation to us and have our staff review it. After reviewing a great deal of material that was provided to us and which we then forwarded onto the Board of Supervisors, we voted unanimously in support of the project. Obviously, there are concerns about the availability of energy. We like the fact that this project will be available to supplemental the renewable

energy sources from may from time to time not fully be (inaudible).

We looked very hard at the issues raised by the proximity of the project to the airport, even assuming that the runways of the airport were some day going to be extended. And even with the extended runways, we were totally convinced that there would be no incompatibility between the project and the airport. The airport is something that's very -- resource there's very important to us in Contra Costa County. We do everything we can to nurture it and expect it in the future to play an even larger and more important role.

Subsequent to our findings, we notice that the FAA made findings that were the same as ours. We believe that the project is going to be appropriate because it's near the source from natural gas resources and that it's going to be a safe distance from people and from commerce and specifically from the airport.

So I thank you for the opportunity to bring this information to you. Thank you.

HEARING OFFICER CELLI: Thank you very much. And we appreciate hearing from the Planning Commission. And, folks, this woman who's coming up now with the blue cards is Jennifer Jennings, our public advisor. And if you wish to make comment, see how she's handing me these blue

cards. They have your names on them and we call you in the order that we receive them so that we can hear your comments. If you want to make a comment, we need to know who you are. So please see Ms. Jennings and fill out a card for her. Thank you.

Next, I have Peter Lieu. Is Peter Lieu here? Peter Lieu. I'll call on you.

Hui Chen. H-u-i Chen. I'll call you again.

Bing Zhang, B-i-n-g, Zhang. I'm sorry if I'm mispronouncing people's names. I'm doing my best.

How about Tina Zihui. Oh, good. Thank you. Come on forward. Please speak loudly into the microphone, please.

MS. ZIHUI: I'm resident of the Mountain House.

HEARING OFFICER CELLI: I need you to bring it down. Bend it down to your mouth

MS. ZIHUI: I'm a resident of Mountain House. And (inaudible). I and my friend have a power plant here so we (inaudible) because we think the power plant will effect our health probably because of the air pollution. Also it effect our house value. So we don't like this plant. That's it.

HEARING OFFICER CELLI: Thank you. Appreciate your comments.

Hui Chen, did you come back? Hello.

MS. CHEN: Hello. My name is Hui Chen. I live in Mountain House for three and a half years. I know this is a community. Most family they have young kids. And so my main concern about how this is going to put our kids health at big risk. And also decrease house value it's going to ruin our community. That's the reason. I'm against this power plant.

HEARING OFFICER CELLI: Thank you for your comments.

Did Peter Lieu come back? Or Bing Zhang. Oh, come on up. Again, I am sorry if I don't pronounce your name right.

MS. ZHANG: My name is Bing Zhang. I live in Mountain House for four years. Before four years ago, nobody tell me there near Mountain House they built power plant. So when I heard somebody were being built power plant nearby my house, I am very, very strong against it because it's not good.

HEARING OFFICER CELLI: Thank you. Understood.

Did Peter Lieu come back?

How about Melissa Machado? Is Melissa Machado here? Please step forward and speak loudly into the microphone. Everything you're saying is being transcribed into the record. There's going to be transcribed so we need to be able to clearly hear you, so speak directly

into the microphone.

MS. MACHADO: Hi. My name is Melissa Machado. I was a member of the originally lottery process in purchasing my home in Mountain House in 2003. Before purchasing my home, I did a great deal of research into the community and in making the decision for my first major investment. I had my dream come true when I moved here in finding the community that it has become since and my experience is with it in the past eight years and in growing my family and having two children in the mean time.

I would like to voice my concern today and my disapproval of the power plant placement. This project is concern for me because of the quality of air and the loss of property value that we may obtain considering that our value my current value is under $300,000 from what I currently purchased my home. I could not -- could not deal with any more of a loss. And I would not have an option to do anything like sell my house and move somewhere else in case this project were to go through. I feel as though our community is at a great loss with the approval of this project and that I hope that our voices can be heard and that's it. Thank you.

HEARING OFFICER CELLI: Thank you very much. We heard your voice. And if you want to stick around, we're

going to be hearing air quality in a little while as a topic area. So thanks for your comments.

Did Ken Tan -- Ken Tan?

MR. TAN: Good evening. My name is Ken Tan. Last name is T-a-n, Tan. I'm a resident of Mountain House. I've been living here for about four years now and I came up here to strongly oppose the Mariposa project. And the primary reason being that I questioned the hearings being in Contra Costa County where -- while the people of living in San Joaquin and Alameda County are the ones who are most effected by this. So that's my primary concern. And I strongly, strongly object to it.

HEARING OFFICER CELLI: Thank you for voicing that. Appreciate your appearance. Is Matt Mullen here? Did you used to play for the Oakland Raiders or is that Miller? Something like that. Matt Mullen, come on up.

MR. MULLEN: Lots of Bay Area sports stars. We got Chris Mullen. I spell it differently. I'm Matt Mullen. I'm a Mountain House resident. I'm here to oppose this construction of this power plant. My question is in the Questa Village of Mountain House across the street from Questa School where my kids go. And --

HEARING OFFICER CELLI: I need you to speak a little louder and speak right into that microphone, please.

MR. MULLEN: So I'm Matt Mullen. I live in the Questa Village, which is the closest village to where this power plant is being constructed, and my kids go to school there too. So we're pretty close to that two and a half mile.

I'm here to oppose the power plant construction. I'm concerned about air pollution where my kids play and go the school. I, myself, do my running and biking and stuff right out here on Bruns Road and Kelso Road. And I'm concerned about air quality and pollution when I'm out doing my activities with my friends. I've looked it up and I understand that 200 megawatts is a relatively small plant on a scale compared to most of the plants in the state. But I'm not sure I trust it will stay that way. Maybe there will be an upgrade and expansion. And that small 200 megawatt plant we built maybe turns into a gigawatt plant and starts encroaching on our town. So I'm here to oppose the project and I hope you take my comments into consideration.

HEARING OFFICER CELLI: Thank you. Thank you for making your voice heard and participating in this public forum.

Is Chandra Paladugula -- I'm sorry if I mispronounce your name.

MS. PALADUGULA: You did good.

HEARING OFFICER CELLI: Please speak right into that microphone very loudly.

MS. PALADUGULA: Thank you for the opportunity. Actually I'm from Mountain House community. I was (inaudible) here. The main thing here is when any business comes it's mutual benefit. But economy is going down. (Inaudible). And now putting a power plant in the backyard now is one of the worst (inaudible) I see. Because here if you're putting something here like the community which was planned for (inaudible) homes I think but it's a great community. (Inaudible) in the Bay Area many people cannot afford the homes. (Inaudible) they make good money. And that money is really coming through the (inaudible) Mountain House, which is part of San Joaquin and Alameda County. I (inaudible) and make payments so giving money to community like ours (inaudible). Putting this in the backyard of someone (inaudible) businessman it looks like you're (inaudible) but it's not like that here. One thing is it's not open land because it is bad for the community one thing.

Second thing is the money. Like I was trying to make a point here you don't lose and we don't lose our money and our values here. And that's the main thing I was concerned about. (Inaudible) going again the plan good -- for the power plant I really request one thing

from you guys. (Inaudible) San Joaquin County and Alameda County (inaudible) six feet, six feet wide which makes the great wall of Mountain House. Thank you.

HEARING OFFICER CELLI: Thank you for your comments.

Is Jon Rubin here? Come on up, Mr. Rubin.

MR. RUBIN: Good evening.

HEARING OFFICER CELLI: Thank you for speaking into the microphone. I can hear you very clearly when you do that.

MR. RUBIN: I've been a resident of Mountain House for almost seven years. And I am worried about the image that people would have if there was a power plant put so close to Mountain House. Whether it's (inaudible) or based on rational reasons, people don't like the idea of living near a fossil fueled plant. I like to think of the comparison to a graveyard. If a developer was to come in and say they're going to build a graveyard near Mountain House, I guarantee a lot of people would be opposed to that, would be turned off to the idea of living in a town that has a graveyard on the border. And there's no scientific rational for that. You can't have a scientific study that says, well, there's no such things as ghosts or homes are not going to be haunted because there is a graveyard.

But still, people there is an emotional and a scientific side. And emotional side is going to say, well, I don't want to move to that town. And that's going to bring the home values down. And that's the worry I have with this power plant. You can present all the scientific evidence supporting the safety of this plant, but still people are going to have an image that it's dangerous to their health and they're not going to want to live here.

We're moving into an age where we're developing more green energy. I've heard a proposal to put a solar farm Mountain House. I think that would have a lot better image for people. Not the same dangerous pollution image that people have with fossil fuel plant. I think people would support that. And if a plant like Mariposa needs to be built somewhere in this location, at least put it outside a four to six mile radius where it's going to effect our home values.

The other position I take on this is I'm not a current pilot but I formerly took flying lessons. And when I did move to Mountain House I liked the idea there was an airport about five miles away that I might potentially use some day. And my worry -- I agree with the CalPilots said, it's scarey, the idea of having a power plant which is going to have a super hot plume of

air coming up to I think it was about 800 feet and as a former student pilot, there's a lot of things you have to worry about on both take off and landing. And that's an additional worry that any pilot really doesn't need near the approach path.

And I see the blinking red lights out in the hills where the plant is going to -- if it gets approved where it will be built and those blinking lights very close to where that plume would be. So that's going to be a potential hazard. And what I've seen in a lot of areas where airports were built along time ago and then neighbors or something walls were built around them, actually people forget which came first, the airport or the neighborhood. And then opposition gets built up against the airport. It's like why is there an airport in such a dangerous location either for the residents or the pilots. And then the movement builds up to close the airport.

So my fear is putting this power plant in that location will eventually need to the closure of Byron Airport and same thing I said about the solar farm. I think people would prefer to have an airport five miles away from Mountain House than a power plant only two and a half miles away. That's my statement.

HEARING OFFICER CELLI: Thank you very much, Mr.

Rubin, for your statement.

Is Aaron Pennington here? Come on down. You're a Giants fan. People ask me how I do this work and I tell them I'm a Giants fan. I can handle torture.

Mr. Pennington.

MR. PENNINGTON: My name is Aaron Pennington. I'm a resident of Mountain House, California, and I'm here to oppose the Mariposa power plant. Part of my concerns, obviously, are health concerns for my family. Raising a family of four children. And it doesn't seem that we exactly know what sort of hazards that this plant is going to produce. So my question is how is the information being compiled and how is it being presented to the people of Mountain House?

HEARING OFFICER CELLI: That's a great question. Thank you for the question. Thank you for being here. And the answer to your question is there is going to be -- and everybody should know this. The reason we're doing this is because we're taking in evidence and we're building a record. And in the record will be all of the evidence. The applicant, Mariposa Energy Project, has the burden of proofing that this project is safe, it has no environmental impacts, it has no public health impacts. Staff's job and the California Energy Commission staff verifies that information. Somebody I think -- I don't

remember what it was. It might have been Mr. Wong talked about the data adequacy process.

But at some point staff determined that there was enough information that they could actually go off now and do their analysis. When we get what's called the FSA, that's Exhibit 300 and the supplemental staff assessment, that's their analysis of all of the proposed features of this power plant.

Okay. Now we take this evidence in and at the close of the hearings, what will happen is the Committee will hunker down, go through the evidence and write what's called a PMPD, which stands for the Presiding Member's Proposed Decision. That comes out -- let's say in about a month and a half or two months or something like that from now and the notice goes out that says the PMPD is available. And if you want notice of all, all you need to do is go on the Internet and there is a little spot and you go to the Mariposa website that says do you want us to e-mail to you notices having to do with anything have to do with this power plant and you'll get e-mails when something is posted having to do with the Mariposa Energy Power Plant. Then there is a 30-day period for the public to comment on the PMPD. And after that the PMPD, the proposed decision, goes before the full Commission of five Commissioners and they will make a determination whether

to adopt the proposed decision or not to. And the decision will either recommend in favor or against licensing this power plant. And that's our process. So that's why we're doing what we're doing.

And you are an integral part to this. I want you to understand, members of the public, that when you write these PMPDs, when I write these PMPDs, we actually put in -- we have to by law address and consider your comments. So they will be addressed and considered in the PMPD. So that's the flow. So thank you.

MR. PENNINGTON: Thank you for your answer.

HEARING OFFICER CELLI: Is Chris Gray here? Mr. Gray.

MR. GRAY: Good evening.

HEARING OFFICER CELLI: Go Bears.

MR. GRAY: My name is Chris Gray. I'm Chief of Staff for Supervisor Scott Haggerty for Alameda County. I've been his Chief of Staff for this district for the last 26 years. Supervisor Haggerty wants to thank you for having these public hearings. It's okay you're in Contra Costa County. You're very close to the three county border and you have good facilities here. So I understand that.

Supervisor Haggerty not only represents this districts where the plant will be located if it's

approved, he represents Livermore and Pleasanton and the Tri Valley area.

I'm also here tonight speaking on behalf of the Alameda County Fire Chief, who is responsible for providing fire protection and some of the services that have been addressed by other speakers here tonight. Both of these will be supported by letters that I will be getting you shortly. I had a dental appointment this afternoon so I wasn't able to bring them with me today. But you should have them tomorrow. So I do need to find out how to get those to you and get them into the proper record.

HEARING OFFICER CELLI: I can tell you that you can either bring them in or you can submit them at any time between now and whenever the PMPD is published.

MR. GRAY: Thank you. First of all, I'd like to say Supervisor Haggerty when he first heard a peaker plant was being proposed for an area in his district had a lot of questions. We've had several meetings with the proponents of the plant. We've made sure that environmental health in our area of public works, the planning department, the fire department were very involved and satisfied. And do their due diligence the make sure that the safety and the other concerns that they need to regulate and be prepared for in Alameda County are

taken care of. Supervisor Haggerty is also the past Chairman and a current member of the Bay Area Air Quality District. So he had a number of air quality health questions that needed to be addressed.

Saying that and doing our due diligence over a long period of time, we have become very satisfied with the plant. We feel this is the best type of peaker plant safety wise, health wise for this area that they are addressing the impacts in Alameda County. And we appreciate that. So we are speaking in favor of approving the plant at this time.

It's a very difficult economic times and I think it not only provides jobs for the people in this area, but they do it providing an environmentally safe project. Alameda County, as you probably know, has won many national and State awards for being probably the greenest county in the United States. We've not only recycling wise but green building ordinance wise, solar power wise. We have the largest wind power, windmills in the United States in Alameda County. We're very proud of our record on these issues and we take them very seriously. And our Board has many policies supporting green power and balance and energy. So we try to bring balance to Alameda County on that. There are more solar plants that are being proposed and other plants repowering in Alameda

County and we're going to continue down that road.

I just want to say this part of our country also has un parallel infrastructure to provide these plants, not only the water but the PG&E substation, et cetera. So it's a logical place for this project to go. And I have to say the Mariposa worked very closely with the community, with the regulated agencies to try to make sure that all of their concerns have been addressed. So if you have any questions of our office, we would be happy to try to answer those as well.

HEARING OFFICER CELLI: Thank you very much. Greatly appreciate it. Thank you to the Supervisor for comments. We do appreciate that.

MR. GRAY: Thank you. And I'll be submitting letters on behalf of the fire chief as well as the supervisor.

HEARING OFFICER CELLI: Thank you.

Did Peter come back? Peter Lieu? I'm trying.

Is Steve Ormonde?

MR. ORMONDE: Hi. Good afternoon. Can you hear me okay?

HEARING OFFICER CELLI: Try to speak right into the microphone.

MR. ORMONDE: Is this better?

HEARING OFFICER CELLI: Perfect.

MR. ORMONDE: My name is Steve Ormonde. I'm a third year Mountain House resident, fourth generation Tracy resident. I'm also an underground subcontractor. We put in sewer and water lines. So I know a couple things. I know sewer flows downhill. And in this windy part of Tracy, Mountain House, everything flows downstream.

I don't know -- I like other residents of Mountain House have just discovered this Mariposa proposal very recently. So I haven't had much time to listen or research. But I'm just here to voice my opposition to the Mariposa project. And sitting here listening to the proponents obviously they're all from Contra Costa County, Alameda County. But over on the other side, the quick ten minute bike ride, the ones brunting all the side effects -- I don't want to repeat -- air pollution, declining property values, I just couldn't sit here and not say anything. So I just thought I would turn in my blue card and speak my mind.

Because I couldn't go on another day, you know, as this plant gets built that I didn't get up and speak and say something about it to oppose it.

You know, with the economy and everything hitting the houses, killing our schools, I just want the Commission to consider Mountain House as it's going to be

built into its fullest, hopefully 45-, 50,000 people with all the schools. There's already three. Hopefully four, one in my village, Altamont pretty soon, and a proposed high school in the next two years. I hope the Commission considers the schools, the children, the downstream. I know it's 2.5 miles is really close. But everyone who lives in this area knows June, July, August you know we have five seasons in Tracy, winter, summer, spring, and then there is a windy season. It's going to flow down stream and I just don't want to open up my windows and have a nice breath of pollutant air.

Thanks for listening.

HEARING OFFICER CELLI: Thank you. Thanks for participating.

Did Mathew Van Der Voort come in?

MR. VAN DER VOORT: Good evening. I represent myself, my family, good citizens of Mountain House. And --

HEARING OFFICER CELLI: Can I ask you to speak really loudly into the microphone so we can hear you better?

MR. VAN DER VOORT: So I'm representing myself, my family, good citizens of Mountain House and any other local community members that oppose the Mariposa project.

My main grounds for that is that even though in

this great society with all of our modern technology, we have to weigh the risks against the negative consequences of progress. I think there is a long trend where the benefits and the risks need to be shared by the recipients. The Alameda County might employ people at this point and the electricity generated will be to Alameda residents, but all the negative consequences are going to effect Mountain House and the surrounding community. The decline in property values, the pollution, and we share none of the benefits but we take on all of the negative consequences. And I strongly urge you to consider that that disproportionality and reject the proposal.

Thank you.

HEARING OFFICER CELLI: Thank you, Mr. Van Der Voort. Thank you for coming.

Is Naresh Singh -- please come forward.

MS. SINGH: I just moved to Mountain House three months ago.

HEARING OFFICER CELLI: Ms. Singh, I need you to speak loudly and speak right into the microphone, please.

MS. SINGH: Hi. Like I just moved into Mountain House three months back. And for me it was really tough to decide whether I should buy a home here or not because I have to make -- pay for everything (inaudible) I have to

drive four hours every day. And considering the taxes are here, considering the water bills here and (inaudible). Even then (inaudible) because it was a nice community. When we consider this power plant (inaudible) probably we already have so factors to consider for buying here (inaudible) buying home there. What I'm trying to say is (inaudible) people see there are (inaudible) the power plant is (inaudible) in light of the homes right but here it look likes the Mountain House homes (inaudible). What I'm saying is (inaudible) it should be Mountain House (inaudible) so they don't feel like they are left behind. That's what I have to say. Thank you.

HEARING OFFICER CELLI: Thank you, Ms. Singh. Thanks for being here.

I have a Travis Miller. Is there a Travis Miller in the room? But you're not the same Travis Miller as Travis Miller who's representing the Sierra Club?

MR. MILLER: Not the Sierra Club, no.

HEARING OFFICER CELLI: Okay. It just so happens we have an attorney named Travis Miller who's on the phone.

MR. MILLER: They pulled me in just recently. I'm one the and same.

HEARING OFFICER CELLI: Oh, Singh's attorney.

MR. MILLER: I'm not really serving as his

attorney. I'm actually a Mountain House resident myself. They pulled me in here just at the last minute.

HEARING OFFICER CELLI: I'm sorry. But you are the Mr. Travis Miller?

MR. MILLER: I am the Mr. Travis Miller.

HEARING OFFICER CELLI: Good. I just wanted to get clear on that. Go ahead.

MR. MILLER: Recent resident. I just moved out to Mountain House here in September. I'm an environmental attorney as you mentioned. Also an environmental scientist by training and trade and asthmatic which is all the reasons why I relocated out here. Cleaner air, a place to get outside the city, some of the effluent discharges, I specialize in Clean Air Act permitting. So I know what happens when these facilities come into town.

I think probably the most notable thing I'd mention as is as you look around here, you're going to see a lot of folks from Mountain House. It's a very close community to where the power plant is anticipated to be. And it's also the community where most of the basically the burden is going to be placed. You're going to have Alameda County who's going to have potentially a nice source of power if the plant is used to its capacity it's going to be located right on their border probably within a couple feet and all of the emissions discharges are

going to flow right into Mountain House, which already has some Clean Air Act issues as is.

The reason why it's concerning is that it's a beautiful community. We moved out here. It's one of the most diverse communities I've ever seen. The people from all ethnic backgrounds living in an area where established school is their top priority. The people out here live for their children. They don't even have a grocery store yet. But we have some of the best schools in the state.

And the people out here are dedicated to building the community. It's only been in existence since 2006. We weren't even on the 2000 Census. These people are new. They're pioneers. It's one of the newest cities in America. And we're really trying to make a go of it. So when you see something like this that can honestly kill a brand-new city, it's concerning. And I think that's why you see such a strong showing here from the Mountain House residents. This is our livelihood. This is what we dream of. This is our American dream. And we'd just like the opportunity to make it a reality.

HEARING OFFICER CELLI: Thank you. And I wanted to ask you, you're going to stay with us for the remainder of the hearing representing Mr. Singh; is that correct?

MR. MILLER: I will indeed.

MR. WHEATLAND: Can I just ask so I'm clear? I'm

Gregg Wheatland. I'm an attorney for the applicant. Are you an attorney licensed to practice in California?

MR. MILLER: No. I'm an attorney licensed to practice in Wisconsin. I serve in the corporate respect here. I moved out just in September. I was called in mostly to serve as an expert regarding the Clean Air Act.

MR. WHEATLAND: That's the other question I have. Are you here to represent Mr. Singh or just to be a resource on his behalf?

MR. MILLER: Mostly a resource on his behalf.

HEARING OFFICER CELLI: I think that's acceptable.

MR. WHEATLAND: That's fine. It's acceptable to me. I just needed to understand the relationship.

HEARING OFFICER CELLI: Very good. Thanks for the clarification.

Thank you again for being here.

And Teresa Nava-Anderson. Are you present? Thank you for being here. And please speak loudly into the microphone.

MS. NAVA-ANDERSON: I am Teresa Nava-Anderson. I am also a resident of Mountain House. And I think the former speaker said everything that I wanted to say.

I wanted to also encourage you when you look over the economic report that everyone keeps talking about, to

look very carefully at the home values in that report, because there's not much to lose in those homes, which is not the same as Mountain House. And I know in the last couple of years we've many of us have lost significant amount to our homes. So another 12,000 is a lot added onto say perhaps half a million or more that some people have lost. It just keeps adding up as do all of the pollutants and other things that tell me that this project so close to my home is not a fabulous idea.

HEARING OFFICER CELLI: Can we get rid of that telephone? Okay. Thanks. Go ahead. I'm sorry.

MS. NAVA-ANDERSON: I know from Alameda County's perspective and from Contra Costa County's perspective it's not that significant. There aren't that many people that live near the plant. I feel like there is a baby crying near me.

San Joaquin doesn't seem to have much of a voice in the way that the counties work as far as California and power plants go. But our people do have a voice and we have real lives and we have real children. And you know please consider the fact that the heavy toxins fall first and they'll fall right on our neighborhood. And on windy season they'll certainly fall right on our schools. Thank you for your consideration.

HEARING OFFICER CELLI: And thank you for coming

and making your comments.

Is David Ang -- David Ang? David Ang, A-n-g. Okay.

How about Jerry Yuki? Is Jerry Yuki here?

Peter Lieu? Are you Peter Lieu?

MR. LIEU: Yes.

HEARING OFFICER CELLI: Come on down, please.

MR. LIEU: Sorry. Good evening. My name is Peter Lieu, L-i-e-u.

I just (inaudible) I am Mountain House -- I live in Mountain House almost a full years. So I like Mountain House. Mountain House is so beautiful and new house. But I have (inaudible) one, I don't like the power plant close by Mountain House, one. Two, I like my family is lucky. I like my children is healthy. Right now it's not health and not lucky. So I don't like it, the power plant.

Number three, nobody told me where you can build power plant and the plant for everybody. So I cannot agree (inaudible). Thank you.

HEARING OFFICER CELLI: Thank you. Thank you for your comments, Mr. Lieu.

Now, ladies and gentlemen, I just have a few more of these left and then I'm going to take people on the phone. If you're here and you wanted to make a comment, I'm going to ask that you fill out a blue card and see

Ms. Sadler here will take your card and she'll hand it to me. And then I'll get to call you up to make your comments. So please -- these are in addition to -- okay. Thank you.

So if you did want to make a public comment, please fill out a blue card, as did Ron Gawer. He's a pilot. I'm sorry -- is it Roy? Roy or Ron?

MR. GAWER: Ron.

HEARING OFFICER CELLI: Ron. Is it Gawer?

MR. GAWER: Gawer. Ron Gawer.

HEARING OFFICER CELLI: My apologies.

MR. GAWER: It's okay. My handwriting is bad. Sorry.

I just want to say that I am a pilot. I have an airplane at Byron Airport. I have a plane based out of there. I'm opposed to the facilities both of them being -- both of the facilities being built in the flight path to the airport. More specifically, you know, I find that if we're on approach to facility and there is multiple traffic like, for instance, gliders coming in and I have to give way to them, turn to the right to do a 306, I can end up being over one of those facilities. And I would be concerned about, one, flying over them if it actually becomes prohibited, and two, the uplifting plume. So I'm opposed to it.

HEARING OFFICER CELLI: Thank you. Thank you for your information. Let me ask you this, Mr. Gawer. Do you ever fly gliders or are you just an engine plane?

MR. GAWER: Engine pilot. I'm not a glider pilot.

HEARING OFFICER CELLI: Thank you.

Is Dan Costin here? Come on up, please. Mr. Costin, I'm going to ask you to speak right into that mike very loudly so we can all hear you.

MR. COSTIN: I think I can do that.

My name is Dan Costin. I'm representing myself and my family. I'm no expert. I don't claim to be a scientist. Everything that I've read and have researched in my limited ability in doing that I definitely oppose this. I am probably not somebody who's going to be here for the next 20 years. I've been (inaudible) for two years. I'm in a job that will eventually move me around in the next five the ten.

This is a great community. They've got something they're building here that will -- that is surviving the current economic problems that we're facing globally within the nation, however you want to look at it. But this community is rallying together and it's survived that. It's struggling, yes, but as a community I think that we will pull through.

I think if we put this plant here, it's going to be difficult for this community to become what it should be, what it wants to be, what it can be. And I really do believe that this is potentially a community killing project.

Again, with my limited scientist side of thing, I guess, looking at cap and trade and different things, this plant goes in, it's already planning ongoing into the trade with other plants further west and looking at that. In the area we're in with the wind we have, with the pollution that's already in the area, we are starting out at the point where we're saying this plant is going to put out more particulars, pollutants whatever you want to call it than what is ideal for any plant. That's why we're doing the trade. That's great for people west. That's great for Alameda which is again where the power is going to. But it's not great for us. And I really have nothing new to add because it's been said several times for sure.

But again we are struggling. We are going to struggle with all the negative effects of this plant while everybody else shares the benefits. Again, I probably won't be here, but this is a community that I would love to stay and raise my kids in, I would love to see survive. If this plants comes, it's going to be tough. It's already tough. It's going to make it that much more tough

for this great community for these great people here to survive the area they're in. So that's all I have. Again I express my opposition to the plant.

Thank you.

HEARING OFFICER CELLI: Thank you very much.

Now, folks, in order for us to resume pretty quickly I'm going to need people to speak quickly and efficiently so I can get all of your comments in before we resume taking testimony.

Is Ravikiam Kertsidi here? I'm sorry if I'm saying it wrong. Forgive my mispronunciation.

MR. KERTSIDI: I am Ravikiam Kertsidi. I am representing for myself and my family. I live in Mountain House community. This is a great community. I love it. I (inaudible) two years back. I work in Pleasanton. I have several opportunities to buy homes in Pleasanton. I like the communities. Very beautiful. I don't want to see this kind of activity nearby in my community. This is going to be an (inaudible) effect on my families.

Just an example. When I moved next door, my next door neighbor said like after three months he put his house on sale. I asked what the reason. And he said I heard there is a plants coming in Mariposa. He has five kids. And I said "Oh, you're scaring me." I said you're moving. He said, yes, I'm moving if I get -- so that's

what the effect of our communities. Please try to help us. I strongly oppose this project.

Thank you very much.

HEARING OFFICER CELLI: Thank you. You're opposed to the project. We hear you.

Shirley Yao. Shirley Yao.

Again, folks, if you're just coming in for the first time, I'm going to ask that you can quickly get to the point so we can hear the rest of the testimony. Go ahead.

MS. YAO: I'll try. If you'll allow me to speak Chinese, maybe I can do better.

HEARING OFFICER CELLI: You need to change the microphone and put it right into your mouth and speak loudly.

MS. YAO: Is this better?

HEARING OFFICER CELLI: I still can't hear you.

MS. YAO: How's that?

HEARING OFFICER CELLI: That's better.

MS. YAO: My name is Shirley Yao. I'm a resident of Mountain House. I consider myself as pretty new here and we move here about a year ago. And when we move here, we were told also do some research and saw website where Mountain House has been established couple years ago and this town has the potential to become a city of tomorrow.

Okay. I don't know what all the power plant, the risk of the power plants to the peaking on the residents. I believe that this power plant has been built here and this town will become -- I can envision that this town will become -- will become a ghost town from the city of tomorrow become a ghost town. So I totally against this. Let alone the risk applied to other residents here.

And also I heard that Alameda County when they decided for this project, they said they don't need the consensus of the adjacent county. Is that correct? That's my question. I'm not clear about that.

HEARING OFFICER CELLI: Excuse me one minute. Mr. Singh, Mr. Singh, what is that? Oh, that's your computer. I just want to mess up our microphones.

I'm sorry. Go ahead.

MS. YAO: Okay. Did you hear my question?

HEARING OFFICER CELLI: No. Go ahead.

MS. YAO: I heard that when they have this kind of project whatever potential location, they say they don't need the consensus of the adjacent county. Is that correct? Because this is so close to the San Joaquin County, I don't -- I don't think it -- they should have at least courtesy to have the consensus from the county.

HEARING OFFICER CELLI: We're going to hear that. We're going to find out what's in the record and it will

be up to the attorneys and the parties to tell us.

MS. YAO: I appreciate that.

HEARING OFFICER CELLI: Thank you.

That was Ms. Yao.

Mike Klinkner, are you here?

MR. KLINKNER: Yes.

HEARING OFFICER CELLI: Come on up, please. Speak loudly into the microphone.

MR. KLINKNER: My name is Mike Klinkner. I'm a resident of Mountain House. I've lived there for seven years and a former Board member of Mountain House. Also a former Board member of the East Bay Clean Cities Coalition, Alameda County. And I'm not going to go over all the things that everybody else has gone over, but I do agree with all them. I think we're definitely getting the short end of the stick. I am against the power plant.

HEARING OFFICER CELLI: I hear you loud and clear. And I want to just say that one of the things that really resonates up here that we're really clear about is that this is a very close knit community. People love living in Mountain House and people are close to this potential power plant. And people are very concerned about this and they are opposed to it. And they are concerned and fearful really of whatever impacts it may have and that's what we're going to find out. So but I

want you to know that's very loud and clear up here. So I appreciate your input. Thank you.

Is David Ang here? Mr. Ang? A-n-g, Ang. David Ang?

Okay. How about Jerry Yuki. Did Jerry Yuki come back? Y-u-k-i.

Okay. Hari Dara, come on down.

MR. DARA: My name is Hari Dara. I live in Mountain House. I'm representing family of four. We all living in Mountain House.

HEARING OFFICER CELLI: Please speak loudly into the microphone.

MR. DARA: We love living in Mountain House and we strongly believe that the power plant is going to make it -- make living here very bad experience, because we all suffer allergies and my son has asthma, and I think this is only going to make it worse for all of us.

And our community is already suffering with foreclosures and (inaudible). And this is going to make it really bad for the whole town. So we strongly oppose the power plant.

HEARING OFFICER CELLI: I heard you. Thank you very much.

Is Jonathan Ridpath --

MR. RIDPATH: That's me.

HEARING OFFICER CELLI: Hello, Mr. Ridpath.

MR. RIDPATH: I'll be short. I'll be succinct.

I'm Jonathan Ridpath, Mountain House resident. We don't want a power plant here. I don't want a power plant here. It will ruin our community. Thank you.

HEARING OFFICER CELLI: Thank you for your very succinct delivery.

Is Judi Ridpath here? I have a feeling we're going to hear something similar to Jonathan Ridpath.

MS. RIDPATH: Yes. My name is Judy Ridpath, resident of Mountain House. My husband.

And I agree with all the other things this people had said. I'm totally opposed of this in every way that's possible. We just want to thank you.

HEARING OFFICER CELLI: You were completely opposed. Thank you. I got it.

Is Xin Wang here?

MS. WANG: My name is Xin Wang. I am Mountain House resident.

HEARING OFFICER CELLI: One moment, please. We're having some technical difficulty here.

Do we have a clue what that source of that is?

One moment. Ms. Wang, we're getting -- oh, wait. Did it go away? It went away. Whoever did whatever they just did, keep doing that because or don't do it. Now the

echo has gone away. If you hold the microphone really close and speak very loudly, please

MS. WANG: Can you hear me?

HEARING OFFICER CELLI: Yes.

MS. WANG: My name is Xin Wang. I'm Mountain House resident. (inaudible) Mountain House three years. I love my community. So (inaudible) because I don't want any pollution or (inaudible) really close to our community and (inaudible) I don't want my kids get any (inaudible). So totally I object. Thank you.

HEARING OFFICER CELLI: Thank you. Is Weikun Guo here? I am sorry again if I mispronounce the names. I'm doing my best.

MR. GOU: You're almost right. My name is Weikun Gou. I'm a resident of Mountain House.

Today, I'm here because I object this power plant to be here. We all love our community. We don't want our community to be polluted and (inaudible) all of the world many cities because of the pollution many people get many cancer and everything. We don't want to be one of them. So I totally against of this project.

Thank you.

HEARING OFFICER CELLI: Thank you.

Is Wentao Li here. Please speak into the microphone very loudly.

MR. LI: Hello. I'm Wentao Li. I'm Mountain House resident. I've been here about four years.

Please stop power plant. Please save our childrens. Please save our counties. Because we love here. Stop pollution.

HEARING OFFICER CELLI: Thank you for your comments.

Now I'm going to couple more here and then we'll go to the phones. People on the phone, thank you for hanging in there. We're getting to you.

Venkata Mylavarapy. Is Venkata here? Please come forward. I'm sorry. If you can pronounce your name for me --

MR. MYLAVARAPY: It's Venkata Mylavarapy.

HEARING OFFICER CELLI: Say again.

MR. MYLAVARAPY: Venkata Mylavarapy.

HEARING OFFICER CELLI: And could you speak really loudly into the microphone?

MR. MYLAVARAPY: Yeah. Is that better?

HEARING OFFICER CELLI: Come close to the microphone.

MR. MYLAVARAPY: Better now?

HEARING OFFICER CELLI: Much better. Thank you.

MR. MYLAVARAPY: Okay.

HEARING OFFICER CELLI: Go ahead.

MR. MYLAVARAPY: So we definitely want to oppose the Mariposa plant because of its close proximity to the Mountain House residential community and very concerned about the pollution it will have in the area. I don't want to have to raise my kids in a polluted environment. That's my main concern.

HEARING OFFICER CELLI: Got it. Thank you, sir.

MR. MYLAVARAPY: That's all I have to say.

HEARING OFFICER CELLI: This next one, is Yegneswara here? Yegneswara, please come forward. And if you could help us with the pronunciation of your name?

MR. UPADHYUALA: Yegneswara Somayajulo Upadhyayula. You can call me Somo. I have a short name too.

HEARING OFFICER CELLI: Please go ahead.

MR. UPADHYUALA: Thank you. This proposed project is very near to my residence, just three miles away. And the pollution it could have -- I don't want to be near to there. And we already have some problem in the water at this point in time in the area and I don't want to add any more to that list. So I oppose this project.

HEARING OFFICER CELLI: Thank you for your comments.

Now, ladies and gentlemen we're going to turn to the telephone people. I'm going to first ask for Jason

Gonce, G-o-n-c-e. He's no longer here.

Is Jeff Iam on the phone? Please, go ahead.

MR. GONCE: I'm Mr. Gonce.

HEARING OFFICER CELLI: Oh, Mr. Gonce, good.

MR. GONCE: I'm a Mountain House resident. I've been here for three plus years. I've listened to most of this webcast, and I simply just want to reiterate everything that I've heard that we are not looking forward to the pollutants for our children. And we're very concerned about a power plant that is potentially not green and on the border of our civilization. So that's what I would like to put forth. Thanks.

HEARING OFFICER CELLI: Thank you. Thank you for your comments.

Is it Jeff Iam or Jeff Lamb? Jeff Lamb. Okay. Jeff Lamb, are you on the phone? Jeff Lamb?

I have a Matt, like Matthew. Matt with no last name. Are you on the phone? Matt is gone.

How about JHD?

Patrick?

MR. COLLINS: I'm Patrick Collins.

HEARING OFFICER CELLI: Patrick, what was your last name, please?

MR. COLLINS: Collins, C-o-l-l-i-n-s.

HEARING OFFICER CELLI: Did you get that, Mr.

Petty? Okay. Good. Go ahead.

MR. COLLINS: I would just like to (inaudible) I believe the residents of Mountain House believe (inaudible) particularly the property values (inaudible). That's all I wanted to say.

HEARING OFFICER CELLI: Okay. Thank you, Patrick, for your comments.

I believe we have taken all the public comment. If I'm wrong about that and you're on the phone, I'd like to hear who's on the phone and who wishes to make a public comment.

MR. ANDERSON: My name is Robert Anderson.

HEARING OFFICER CELLI: Mr. Anderson, please, you have the floor. Go ahead.

MR. ANDERSON: Okay. I just called in so I don't know what's been said so let me just make one more comment. I'm the one who submitted the economic report that went into the record regarding the study on power plant siting and home values. I think there's been a lot of confusion about what that study does and doesn't say. Can you hear me okay?

HEARING OFFICER CELLI: I hear you fine. You're the author of that study?

MR. ANDERSON: I'm not the author of the study. I'm the one who found it and submitted it to the

Committee.

HEARING OFFICER CELLI: I see. Okay.

MR. ANDERSON: Although I did speak with the author of the study. So some people have been looking at that data and coming to conclusions which I think are indefensible, but let's just do a quick back-of-the-envelope calculation. I think you can get the basic point that I was trying to make by submitting that document. I don't know if you have that in front of you. Do you?

HEARING OFFICER CELLI: No, sir. We're a long ways from getting to that document.

MR. ANDERSON: Well, on page 3, actually it's Figure 3. I don't know what page it's on there is a chart that shows the expected loss in housing value based on this national comprehensive data that's a function of distance from the plant, right. So if you look at that and just as an approximately number the two and a half mile mark, which is I hear the number you've batted around. And you look at the average expected loss of housing value, you'd see about six percent. And if the median home value of Mountain House is something like $300,000, now, you can quibble over that to some plus or minus small percentage, but it's about that. That's $18,000 per homeowner in the development of Mountain

House. There's about 3200 homes out there. Again, that may be off by a small number but that's about it.

And some people are trying to look at that and say that $18,000 per person is not a significant loss of welfare to live out there. I just find that incomprehensible to suggest that the loss of $18,000 per home out there times 3200 is over $50 million to our community.

Now, people can say that, well, there's some uncertainty about that, and that's fine. I accept that. But when it comes to the economic welfare of the citizenry, don't we typically make conservative assumptions when it comes to, say, air quality and biological resources and all these other factors that go into the siting of a plant and make the conservative assumptions (inaudible) stewards of the community. So that's my basic comment.

If you look at what that data says, I don't see how anybody can say it's insignificant. And, in fact, if people want to say it's insignificant, my response to that is that's fine. $50 million is insignificant amount of money or $18,000 per household, then those people who claim that should have no problem writing a check for that amount if it's insignificant. So I don't think -- the people that say it's insignificant can have it both ways.

Either it is significant and that should be taken into account. And if it's not, then it should be mitigated financially.

So that's my comment.

HEARING OFFICER CELLI: Thank you very much for your comment. Now I believe we have completed the public comments. I'm looking over --

MR. KUMAN: My name is Anil Kuman.

HEARING OFFICER CELLI: Go ahead. State your name on the phone. Could you spell your name?

MR. KUMAN: A-n-i-l.

HEARING OFFICER CELLI: Anil. Hello. What is your last name?

MR. KUMAN: Kuman.

HEARING OFFICER CELLI: K-o-h-r?

MR. KUMAN: K-u-m-a-r.

HEARING OFFICER CELLI: Kumar, K-u-m-a-r. Okay. Go ahead. You have the floor.

MR. KUMAN: Thanks for the opportunity to make point. (inaudible) and I just want to support all of the opposing the power plant near our community here in Mountain House.

HEARING OFFICER CELLI: Thank you. Is there anything further?

MS. DEL ROSARIO: Hello.

HEARING OFFICER CELLI: Hello. Who am I speaking with?

MS. DEL ROSARIO: Hello?

HEARING OFFICER CELLI: Yes, hi. Please state your name.

MS. DEL ROSARIO: Yes. My name is Receliza Del Rosario.

HEARING OFFICER CELLI: Can you spell that, please.

MS. DEL ROSARIO: My last name is Del Rosario, D-e-l, R-o-s-a-r-i-o.

HEARING OFFICER CELLI: Del Rosario. I didn't get your first name.

MS. DEL ROSARIO: Receliza, R-e-c-e-l-i-z-a.

HEARING OFFICER CELLI: How do you pronounce your first name?

MS. DEL ROSARIO: Receliza.

HEARING OFFICER CELLI: Thank you. Go ahead.

MS. DEL ROSARIO: Okay. I currently live in New Jersey and am planning to relocate to Mountain House. As a matter of fact, we found a house in late January. And just put money into escrow yesterday. The house was (inaudible) and I am very, very concerned about the power plant.

I have a two-year-old and four-year-old, and I

was looking online about the information about this power plant and it really makes me reconsider moving out there. So I'm following this very closely and I'm sure I'm not the only one who would think about not moving to Mountain House if this power plant goes up.

HEARING OFFICER CELLI: Thank you. Anything further?

MS. DEL ROSARIO: Just that I think Mountain House is a beautiful community and why don't they build this power plant somewhere else? (inaudible) that are good in size in this power plant goes up. (inaudible) seen the schools and seen the children? That's why I want to move there. But if the power plant goes up, I don't think I want to move to the county there and I don't want to live in the same county (inaudible) this power plant.

HEARING OFFICER CELLI: Okay. Well, thank you for your comments.

Is there anyone else on the phone line who wishes to make public comment at this time?

MS. OWENS: Yes.

HEARING OFFICER CELLI: What's your name?

MS. OWENS: Irene Owens.

HEARING OFFICER CELLI: I'm sorry. I need the door to be closed back there. I did not hear your name.

MS. OWENS: I-r-e-n-e?

HEARING OFFICER CELLI: Irene.

MS. OWENS: Yes. Last name, Owens, O-w-e-n-s.

HEARING OFFICER CELLI: Okay. Ms. Owens, go ahead.

MS. OWENS: So we're from (inaudible) moved to Mountain House about two years ago. Our family opposes the power plant. We hope and pray this doesn't pass. And I hope and pray also the people who are going to make the choice think about ourselves and the family and think about what if they lived 2.5 miles away from (inaudible). I hope they take that into account (inaudible) if that were to happen to them, how would that feel? (inaudible) what kind of impact would that have on their choice. And that's my comment.

HEARING OFFICER CELLI: Well, thank you for those comments. Is there anyone else on the telephone who would like to make a comment at this time?

Hearing none, I have Satya Sinha. Is Satya Sinha here? Come forward. And I'm going to ask you to speak very loudly into the microphone, please.

MS. SINHA: Good evening. And thank you for giving me a chance to put my point across. Many, many people have -- I don't really have any more to add to what already has been said and I would like for my name to be included in the list of people who are opposing the power

plant here.

HEARING OFFICER CELLI: And it will be. So thank you for your comments

MS. SINHA: Thank you.

HEARING OFFICER CELLI: Thank you for participating. And I want to thank all of you from Mountain House and the surrounding communities, people from Contra Costa, and Alameda we've heard from. Everyone who participates in this process helps us understand a little more what this is about. We appreciate that.

With that, I'm going to conclude the public comment segment of our day. I'm going to ask Mr. Sarvey if Mr. Sarvey is around -- Mr. Schneider, you might as well come on up and get comfortable up here. And I'm going to have to get your lawyer. And everyone else. If anyone can pop their head out the door, we need all of the intervenors to come forward now. We're taking testimony. We need the Mountain House people. I need Rajshe. I need Randy Wilson. I need Sierra Club folks. I need Rob Simpson. Come on in.

MS. SARVEY: Excuse me. If you speak in public comment, are you ever allowed to speak in public comment again? Just the one time? Because I spoke on land use and I didn't know we were going to talk about the airport issue. And I put in a public comment card and I was never

called.

HEARING OFFICER CELLI: Let me speak to that. We actually broke from our taking testimony to let you speak this afternoon.

MS. SARVEY: I understand that.

HEARING OFFICER CELLI: Which we were not inclined to do.

MS. SARVEY: And I appreciate that you did that so I could go back to work.

HEARING OFFICER CELLI: And that's why we took you early.

I did see your name, but since we gave you so much time already and I thought you made your point very clearly --

MS. SARVEY: I appreciate that.

HEARING OFFICER CELLI: -- I didn't think we really needed to hear more. I'm going to request that if you wish to make another public comment that you hold off. We have to go all day tomorrow, too.

MS. SARVEY: I understand that.

HEARING OFFICER CELLI: And it would make most sense -- see, we just don't have the time right now to take a comment after every section. So it would be better to give us your entire comments in one comment if you will than piecemealing it out because --

MS. SARVEY: This is the first proceeding I've ever been involved in that had this problem. We always spoke in each section in every other one. I wish you would have told me that you wanted to hear my air quality --

HEARING OFFICER CELLI: Actually, our public advisor told you that on the phone as I was informed and you had a conversation with her on the phone asking --

MS. SARVEY: I did not understand when I spoke earlier. So I will not be allowed to speak any more tonight; correct?

HEARING OFFICER CELLI: I would rather -- if you wouldn't mind, I'm not going to have any more public comment today. We are going to have public comment tomorrow.

MS. SARVEY: At 5:00 o'clock?

HEARING OFFICER CELLI: Yes. Tomorrow at 5:00 o'clock.

MS. SARVEY: So everything that gets discussed today and tomorrow you want all the public comment then and you will not cut people off because they have to go through each section in that one public comment?

HEARING OFFICER CELLI: Well, I will cut people off if they go too long. So I'm going to ask that you make your comments very efficiently.

MS. SARVEY: So how long are you going to give people to speak approximately? For how many seconds?

HEARING OFFICER CELLI: Did you see tonight how it sort of went? I actually didn't have to cut anybody off

MS. SARVEY: But we only had one section tonight, land use.

HEARING OFFICER CELLI: No, actually people were here to comment on every thing because obviously people were talking about things like their --

MS. SARVEY: Public health and safety.

HEARING OFFICER CELLI: So the point I want to make is this: I will set times as needed. People did a great job tonight. I want to thank everybody for --

MS. SARVEY: I agree.

HEARING OFFICER COTE: -- for self-regulating really coming from a place of being concerned in terms of getting everybody's comments in. People were very good about that.

MS. SARVEY: I just was going to ask is there a map of the thermal plumes for all the plants that have been approved already that we could look at and maybe alleviate some of this concern? That's what I was going to ask.

HEARING OFFICER CELLI: Not that I've seen.

MS. SARVEY: Well, I think staff should prepare a thermal plume map that shows (inaudible) that planes will take. Thank you.

HEARING OFFICER CELLI: Thank you for your patients, Ms. Sarvey. Because you know, really what we want to do is we want everybody to comment. But I also have to balance that with getting the evidence. So that's what I'm trying to do.

MS. SARVEY: I understand.

HEARING OFFICER CELLI: Thank you.

Yes, Mr. Carlton. They've left.

MS. JENNINGS: Hearing Officer Celli?

HEARING OFFICER CELLI: Yes, Ms. Jennings, go ahead.

MS. JENNINGS: We still have one more person.

HEARING OFFICER CELLI: Please, our last commenter, go ahead.

MR. YE: My name is Frank Ye. I just come back from my --

HEARING OFFICER CELLI: Could you spell your last name, please?

MR. YE: Yeah, Y-e. Just come back from my work. Take two hours to come back. You know what? Why I commute four hours a day for the work I live in Mountain House. This is a nice community. But put a power plant

here just destroyed our homes, destroyed our whole community. I think this -- I think from the point of view of the resident of the (inaudible) this is not a responsive action. So I strongly oppose this power plant. And just protect our (inaudible) protect our homes, protect our environment.

HEARING OFFICER CELLI: You're opposed. Thank you. Thank you for your comments. Thank you all for your comments.

MS. JENNINGS: We do have a couple more.

HEARING OFFICER CELLI: Can you bring forward the blue cards so we can call them?

Please state your name, sir.

MR. SHAB: My name is Pramid Shab. I live in Mountain House. Pramid is P-r-a-m-i-d. And last name is S-h-a-b.

HEARING OFFICER CELLI: Did you get that, Mr. petty? Good.

Go ahead.

MR. SHAB: So as a citizen concerned for Mountain House, I wanted to express that we as citizen I've been living in Mountain House since seven years, and if the power plant comes in, then I have to make my exit plans. I don't want to breathe any more carbon dioxide, any more gases that emit out from this place. And just want to

make sure that the citizens can mitigation and provide -- ordinate measures or ordinate locations outside Mountain House that would be appreciated.

HEARING OFFICER CELLI: Thank you. Thank you for coming.

Was there anyone else? Is Smitha here? Is Smitha you? Please come forward and make your comments. We need you to speak directly into the microphone very loudly, okay? Thank you.

MS. UNNIKRISHNAM: Hi. My name is Smitha Unnikrishnam. I'm a Mountain House resident. I have been in Mountain House for more than four-and-a-half years. We came into Mountain House right about the time real estate had started crashing. And we saw the worst. It was so bad. We were depressed so badly that we had to go through some stuff personal times too. We saw all our neighbors leave. They literally just left. Streets were empty. And I even talked to some newspaper reporters who came and told us that do you know that this is the epicenter of foreclosure and that's when we came to realize that, oh, my God, this is probably the worst place to be in United States at the moment. But we decided to ride it and stay put, because we love this community. It's just the best. We could have left, but we chose to stay because we see good future here.

People are nice. Everybody came together and we made our schools someplace that we are proud of, you know. Teachers and the community folks, everybody came together.

So I don't want -- I don't want anything to cripple the little progress we have seen here. It's very important that we are at least able to stand on our feet and after that we can (inaudible). But at this point in time, it will be quite crippling if we see another downturn. And we don't want to go through that stress again. As a mom and as a wife and as a resident, everything, it's too much to deal with, the past three years have been quite bad. That's all I want. And I hope that you consider this when you make your decision.

HEARING OFFICER CELLI: We will. And thank you for your comments. And let's all hope that the worst is over.

At this point now, I see that we're ready to go forward. Ms. Willis, you had a question.

STAFF COUNSEL WILLIS: Yes, Mr. Celli. Before we move forward, I have staff here for both socioeconomics and (inaudible) given the amount of time it's been taking for land use, do you anticipate we will actually get to those topics (inaudible)?

HEARING OFFICER CELLI: Let's let socioeconomics go, but we'll keep traffic here.

STAFF COUNSEL WILLIS: Thank you.

HEARING OFFICER CELLI: Now, let's get our witnesses sworn. If you would do the honor, Mr. Petty.

(Whereupon the witnesses were sworn.)

MR. SCHNEIDER: Yes, I do.

MR. PETTY: If you have not already done so, please state and spell your name for the record.

MR. SCHNEIDER: My name is Dick, D-i-c-k, S-c-h-n-e-i-d-e-r.

MR. SARVEY: And my name is Robert Sarvey, last name is S-a-r-v-e-y.

HEARING OFFICER CELLI: Thank you.

MR. SIMPSON: I'd like to object to the public comment opportunity.

HEARING OFFICER CELLI: I'm sorry?

MR. SIMPSON: I need to make an objection to the public comment opportunity that the CEC brings forward in these proceedings, particularly this one tonight. When the public comes in and there is no information about the project, there's no AFC, there's nothing for them to derive any basis for their comments.

HEARING OFFICER CELLI: What's your objection?

MR. SIMPSON: My objection is there's no presentation to the public what this is about, to tell them what's going on, to demonstrate the value or

liability of this project. There should be a presentation to the public. There should be at least a copy of the AFC or some diagram, some image of what we're proposing, what the impacts are. The speaker cards don't have a spot for somebody to put their address on.

HEARING OFFICER CELLI: So your objection is that there is an in adequate presentation for the people to be able to comment?

MR. SIMPSON: And there's no opportunity for you to respond to these comments because there is no address on the public comment cards.

HEARING OFFICER CELLI: All right. Objection is noted.

Now, Mr. Sarvey, how did you want to proceed since you're both a witness and a party?

MR. SARVEY: Well, in this case, the witness is right here. But I took the time to swear myself in because later on I'll be a witness. So I figured I'd save a little time.

HEARING OFFICER CELLI: Now, you've already submitted your testimony, Mr. Sarvey. So we really don't need to rehash that. You're just making yourself available for cross; is that right?

MR. SARVEY: Well, I actually don't have any testimony on land use. It's Mr. Schneider's testimony

I'll be presenting right now.

HEARING OFFICER CELLI: Very good. Why don't you go ahead then. Proceed.

DIRECT EXAMINATION

MR. SARVEY: Mr. Schneider, would you state your name and your qualifications for the record, please.

MR. SCHNEIDER: My name is Dick Schneider. I was conceivably author of Measure D. I was one of the architects of the measure. Measure D is the voter initiative that amended the East County Area Plan of Alameda County. And it's the East County Area Plan is the component of the general plan that governs this area.

HEARING OFFICER CELLI: Did we receive your resume or CV?

MR. SCHNEIDER: Yes.

HEARING OFFICER CELLI: Are the parties willing to stipulate to this -- Dr. or Mr. Schneider?

MR. SCHNEIDER: Mr. Schneider.

HEARING OFFICER CELLI: Mr. Schneider's expertise with regard to land use?

STAFF COUNSEL WILLIS: Yes, we would.

HEARING OFFICER CELLI: Applicant?

MR. WHEATLAND: Yes.

HEARING OFFICER CELLI: You are an expert. We can move on to the next question. We don't need to take

up any time because we've now got you're an expert. And you know what, Mr. Sarvey has provided us testimony and your CV or your resume. And therefore that's going to go into the record. So we don't need to spend time on that. Let's go ahead.

MR. SARVEY: Mr. Schneider, since you submitted your testimony, has there been any developments that you need to make the Committee aware of?

MR. SCHNEIDER: Well, I want to make one comment and then I'll mention the other developments. I think in general great deference is given to the county for interpreting its own policies and plans. But such deference is far less appropriate here when the policies were enacted by a voter initiative and in reaction against prior policies. So I hope that you'll give me the opportunity to explain the origin of the key policy that has been mentioned many, many times during the day.

The new development I was made aware of last week, I got a call from Alameda County Planning Director Albert Lopez who told me that the county has received quiries if not applications for two large solar power plants in the same vicinity, 100 acre plant and the thousand acre plant. So there are many new power projects being proposed in this area. That's something that I was not aware of up until about a week ago.

MR. SARVEY: There's been a lot of discussion tonight about Policy 13 and as one of the conceivably authors, could you please provide us with the actual intent of the draft ares of this policy, please?

MR. WHEATLAND: Hearing Officer Celli, I'm going to object to additional direct testimony of this witness. He has submitted his written testimony. They had an opportunity to provide rebuttal testimony and did not. But I would object the further additional direct testimony at this time. They are not following the rules that were set forth by the Committee.

HEARING OFFICER CELLI: Let me ask if I may inquire, Mr. Sarvey, how many questions of direct testimony do you have for Dr. Schneider?

MR. SARVEY: I had two.

HEARING OFFICER CELLI: Okay. I'm going to let him get his two questions in and then we'll move on. Go ahead, please. Mr. Schneider. I'm sorry.

MR. SCHNEIDER: Thank you.

Policy 13 is the policy governing infrastructure. And I think it was Mr. Dighe earlier today asked Mr. Martinelli how do you reconcile the policies in the East County Area Plan to protect agriculture with developmental needs, needs to serve development. And Mr. Martinelli replied, well, it's a balancing act.

The designers of Measure D wrote Policy 13 from scratch to accomplish just that goal. And the policy has several components. The guiding components, the first sentence, the county shall not provide more authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the initiative.

That means consistent with development in eastern Alameda County, which is the area governed by the initiative. It means not capacity to serve PG&E service territory, all of Alameda County, northern California or the state as a whole. And the reason for this restriction was to balance the needs to provide infrastructure for the residents of eastern Alameda County with the need to preserve land for agriculture because excess capacity, excess infrastructure has forecloses the protection of the agricultural and open space resources.

Now, in a different section of that Policy 13, we said --

MR. WHEATLAND: Hearing Officer Celli, excuse me, Mr. Schneider. I'm going to raise my objection again. It may be two questions, but this is an extended lecture. And this is additional material that should have been provided in his direct or rebuttal testimony. And I would object to him introducing new arguments and information at

this late stage.

HEARING OFFICER CELLI: Well, what I was asking for the parties was surrebuttal. How is this surrebuttal, Mr. Sarvey?

MR. SARVEY: We're not providing surrebuttal. We're just providing background to Mr. Schneider's expertise and the intent of the voters who voted for this initiative overwhelmingly. And I heard staff introduce their land use witnesses earlier and we had some testimony from them that wasn't surrebuttal testimony. So I assumed it was appropriate. But if it's not, we can cut it off right now, Mr. Celli.

HEARING OFFICER CELLI: What I'd like to do is get -- first of all, you have a motion with regard to the testimony you've already supplied. Let me get your exhibits for land use. Do you remember what exhibit numbers those are?

MR. SIMPSON: I am sorry. I can't hear.

MR. SARVEY: 402 and 414.

HEARING OFFICER CELLI: Is there any objection to 402 and 414 from staff being admitted?

MR. WHEATLAND: No objection.

HEARING OFFICER CELLI: That was no objection from applicant?

MR. WHEATLAND: Yes.

HEARING OFFICER CELLI: Any objection from staff?

STAFF COUNSEL WILLIS: No objection.

HEARING OFFICER CELLI: No objection?

Okay. That was 408 and --

MR. SARVEY: 402 and 414, Mr. Celli.

HEARING OFFICER CELLI: 402 and 414. Sorry. There is a big echo here.

There beings no objection, Exhibits 402 and 414 are admitted into the record.

(Whereupon, the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: Now, my recollection is that's Mr. Schneider's testimony.

MR. SARVEY: That's Mr. Schneider's testimony and East County Area Plan is Exhibit Number 414.

HEARING OFFICER CELLI: That's the actual --

MR. SARVEY: That's the actual text of the plan.

HEARING OFFICER CELLI: Okay. If there's nothing further I would allow the two parties to cross.

MR. SARVEY: The witness is available.

HEARING OFFICER CELLI: Thank you. First applicant. Or actually, no. I'm going to start with staff. Any cross-examination of these witnesses by staff?

CROSS-EXAMINATION

STAFF COUNSEL WILLIS: May I ask a quick clarifying question? You testified that there are two large solar plants on 100 acres and a authorize acres. Could you please tell me what the megawatts of each of those plants are that are proposed?

MR. SCHNEIDER: I am sorry. I couldn't understand what the actual question was.

STAFF COUNSEL WILLIS: I am sorry. You just testified that there are two large solar plants being proposed on 100 acres and 1,000 acres. Could you tell me what each plant what the megawatt acknowledge of each plant is proposed?

MR. SCHNEIDER: I can't because the phone call from county planning department only mentioned the acreage that would be covered but not the capacity of those plants.

STAFF COUNSEL WILLIS: But they would be under the county's jurisdiction?

MR. SCHNEIDER: Correct. In eastern Alameda County.

STAFF COUNSEL WILLIS: Okay. Thank you.

HEARING OFFICER CELLI: Anything further from staff?

STAFF COUNSEL WILLIS: No. Thank you.

HEARING OFFICER CELLI: Cross by applicant.

MR. WHEATLAND: I have no questions on the written testimony that was submitted. I do have one area of question regarding the testimony that was provided this evening.

Mr. Schneider, you mentioned several potential new solar projects in the county. Are you aware also that the county approved on January 13, 2011, a three megawatt solar project?

MR. SCHNEIDER: Yes, I am.

MR. WHEATLAND: I have a document I'd like to distribute.

HEARING OFFICER CELLI: Is this an exhibit that we --

MR. WHEATLAND: Yes. This would be -- this would be cross-examination exhibit. It would be the applicant's next exhibit in order, which I believe will be Exhibit Number 69. We reserve 68 for our rebuttal testimony on the pipeline issue. So I'd ask that be marked for identification as Exhibit Number 69.

HEARING OFFICER COTE: So marked.

MR. SARVEY: Is there any reason why you couldn't have submitted this in advance, Mr. Wheatland? Is this new? Recent?

MR. WHEATLAND: Yes. Because until tonight, you haven't mentioned any additional projects. If we're going

to talk about additional projects in the area, I'd like to be sure that all of them are included.

MR. SARVEY: Because this was dated January 13th and today is February 25th. So I'm wondering --

HEARING OFFICER CELLI: It was not until tonight that Mr. Schneider mentioned that there would be additional projects. And if we're going to talk about additional projects, I'd like to be sure they're all included.

MR. SARVEY: And you just to happened to have anticipated he was going to raise this? Is that why you had this all prepared, sir?

MR. WHEATLAND: I anticipated Mr. Schneider --

HEARING OFFICER CELLI: So let me stop this right now. All communications from all of the parties go to the Committee only and then when we give you permission you ask questions of witnesses. There is no cross talk. So let me make this clear. I'm going to assume, Mr. Sarvey, that you object to Exhibit 69.

MR. SARVEY: Only because -- yes, I object.

HEARING OFFICER CELLI: Okay. And the basis of your objection is it's untimeliness?

MR. SARVEY: It's untimely. This document says January 13th on it, and the applicant had plenty of time to introduce this. And he's actually got it titled

applicant's cross-examination. So he was aware this was a document that the Committee should be aware. He should have introduced it. He had plenty of time to do it.

HEARING OFFICER CELLI: So all of that goes to the timeliness of the submission of the evidence. Now offer of proof, Mr. Wheatland.

MR. WHEATLAND: Well, Mr. Schneider has mentioned that there is additional solar projects that are being considered in Alameda County. And we would like to be sure that there is a complete record both of the projects that are being proposed and the manner in which the county approves those projects.

And the next question that I would be asking Mr. Schneider is whether he's seen this document before.

HEARING OFFICER CELLI: I'm going to allow it. Objection is overruled.

Go ahead, Mr. Schneider.

MR. SCHNEIDER: No, I have not.

MR. WHEATLAND: I have no further questions.

MR. SARVEY: Can I have a moment to review the document if we're going to be cross-examined on it?

HEARING OFFICER CELLI: Please take a moment. And that was a little garbled and I wanted to make it clear that the record was there was a question by Mr. Wheatland as to whether Mr. Schneider has ever seen

Exhibit 69 before. And the answer was no, he has not. Do I have that correct, Mr. Schneider?

MR. SCHNEIDER: I actually would need to read through it to see. But at first I didn't recognize it. But I'll read through it if you'd like.

HEARING OFFICER CELLI: Please take a moment.

I just wanted to be clear, because everybody was talking over each other at the same time. So I want to reiterate that we need to speak one at a time. Let the parties take a look at this. And there was no further cross from applicant; is that correct?

MR. WHEATLAND: That's correct. If he has not seen this document before, then I have no further questions of Mr. Schneider.

HEARING OFFICER CELLI: I will allow some limited redirect, Mr. Sarvey, redirect based on this exhibit.

MR. SCHNEIDER: Let me amend my --

HEARING OFFICER CELLI: Wait. A second. There's no question pending.

MR. SCHNEIDER: Let me clarify. I was present at this Zoning Board hearing. But I don't recall seeing this resolution before.

HEARING OFFICER CELLI: Very good. So now the record is clear on that. Thank you for the clarification.

MR. SIMPSON: Can I make a motion? Mr. Wheatland

indicated it was important to have a complete record of the projects that are approved and proposed. We don't appear to have a complete record of the ten acre and 100 acre plans. Can we continue this until we have better information on this 100 acre and 10 acre plan consistent with Mr. Wheatland?

HEARING OFFICER CELLI: When we get to you, Mr. Simpson, I'm going to ask that you hold your -- I'm sorry. Hold your motion until we get around to you on this round. Just hold onto that motion.

MR. SIMPSON: Thank you.

HEARING OFFICER CELLI: What happened is -- we're off the record for a moment.

(Off record.)

MR. SARVEY: We don't have any questions.

HEARING OFFICER CELLI: Thank you. Then at this time these witnesses are excused. Thank you, Mr. Schneider. Thank you, Mr. Sarvey. Take your seat again.

Next?

MR. SIMPSON: Excuse me. Cross?

HEARING OFFICER CELLI: No, we're not going to do friendly cross. I thought we made that clear.

MR. SIMPSON: They were asked by staff and applicant that I have questions about.

HEARING OFFICER CELLI: No. This is a friendly

witness, so we're not going to allow that.

MR. SINGH: But we need the information from the witness.

HEARING OFFICER COTE: The witness's testimony is in the record. We received his evidence.

MR. SINGH: But we need the additional information related to that. And we should have the opportunity.

HEARING OFFICER CELLI: We're going to go off the record for a moment.

(Off record.)

HEARING OFFICER CELLI: Okay.

MR. GROOVER: Mr. Celli. I have an objection. The last statement before you went off the record assuming all the intervenors this was a friendly cross while you're assuming that the staff and applicants aren't and I think that's disrespectful to my position. I never joined any of the other intervenors in any joint effort.

HEARING OFFICER CELLI: That's a point well taken. The situation with the Mountain House Community Service District show is that they had submitted a prehearing conference statement that said they wanted to make no direct and no cross-examination.

MR. GROOVER: Reserving right to question any verbal testimony that was given at the hearing. I believe

that was clearly stated in what I asserted to the staff.

HEARING OFFICER CELLI: So is it your position then are you declaring that Mountain House is supportive of the project as a community service district?

MR. GROOVER: I'm just (inaudible) with your statement. I object to. I'm not stating whether I'm for it or against it. But your assumption did not give me the right to make a statement.

HEARING OFFICER CELLI: I hear you.

Do you have a position that's contrary to Mr. Sarvey or what Mr. Schneider testified to?

MR. GROOVER: I no questions. I just have an objection.

HEARING OFFICER CELLI: Sustained. Thank you for pointing that out.

Let me read 1212 of our rules of evidence which essentially Subsection C says, "Subject to the exercise of lawful discretion of the Presiding Committee Member as set forth in 1203 Sub C, each party shall have the right the call and examine witnesses which we've allowed to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding and to rebut evidence against such party and questions of relevance shall be decided by the Presiding Committee member."

Opposing -- we read this opposing language where it says to considers examine opposing witness is a party against whom you have an adverse position. In other words, you're opposed to their position. My -- all the indications have been up until now and with my regrets and apologies to Mountain House Community Service District for lumping you in with everyone else was that the intervenors were pretty much opposed to the project and that was the assumption that I operated under.

So I really in the interest of time and our intent is to allow only adverse witnesses. And this could be issue by issue. In other words, that we're not just saying you -- we're not going to slot you and say you're opposed to the project and you're against. We're really going to deal with this on an issue by issue basis. And that's the inquiry.

So with that, I see Ms. Jennings you wanted to make -- did you need to see something from the public advisor's perspective?

MS. JENNINGS: Just briefly. I've been in many hearings where the staff was not this opposition to the project where staff cross-examined the applicant's witness and vice versa. So I don't know that there has been a consistent interpretation of that section as being exclusive.

HEARING OFFICER CELLI: As it related to staff?

MS. JENNINGS: As it relates to staff and applicant especially and I've seen intervenors also examined friendly witnesses in the past I believe, witnesses of other intervenors.

COMMITTEE MEMBER DOUGLAS: I think that the fact that staff might have a document that analyzes the project (inaudible) is possible. Doesn't mean their interests might not be adverse to the applicant's (inaudible) section of mitigation that they're trying to obtain and so on. So I haven't seen staff cross-examine the applicant where there wasn't an issue in dispute. I think that's the question here: Is the cross-examination an attempt to elicit more supporting information of both parties. I believe the position or the cross-examination intended to illustrate an issue there's in dispute for the benefit of the Committee. And so that's the question I would have.

HEARING OFFICER CELLI: So with that, I guess -- let's go off the record for a moment.

(Off record.)

HEARING OFFICER CELLI: The ruling is this: The Section 1212 of Title 20 of the California Code of Regulations says that cross-examination is permitted against opposing witnesses. There's been a question raised by the parties that there is a request to

cross-examine witnesses that have been described by the applicant as friendly witnesses. The Committee has decided that there will be no friendly cross. If there is any cross to be had, then the requester needs to establish that the witness is an opposing witness. And we will do that as needed, issue by issue.

Now, with that, Mr. Lamb, you have a question.

MR. LAMB: I do. Throughout the proceedings today earlier, it seems to me this is a question of what does the word is mean in that we've had questions about the word infrastructure and public. And we've heard from the other witnesses to that effect. And we have a witness here who is involved in crafting the specific language in that intent, and what I've been trying to get at all day is what does infrastructure mean to the people who crafted the intent of that resolution. And consistently we've been told we should rely on Alameda's County interpretation. And with the evidence that we were just given, that resolution, Measure D, was passed in opposition to what the county had wanted. So the county is hostile to Measure D.

So I've been wanting to know all day from an expert who we happen to have here, what does infrastructure mean to the people who crafted Measure D. What does public mean to the people who have crafted

Measure D. And how is that weighed? And we've heard testimonial day -- so that's my concern. I would like to hear that.

HEARING OFFICER CELLI: I understand. The Committee will ask the question of Mr. Schneider to please state for the record your definition of public and infrastructure as it relates to Measure D.

MR. SCHNEIDER: Well, public facilities, the drafters of Measure D meant those owned by the public and paid for by tax revenues or assessments. Infrastructure could be not public. It could be private to serve the needs of residents. And that would not be a public facility. But it could be private infrastructure needed to serve adequately the residents of the area.

And the policy -- in Policy 13 has a definition of what infrastructure is. It has public facilities, community facilities, and structures and development necessary to the provision of public services and utilities. But that's embedded -- that definition is embedded in an express limitation on the scale needed to serve the development allowed by the initiative.

If I could add one more clarification, because there was a lot of talk about it not being growth inducing that was mentioned countless times earlier today. The issue of growth inducing had to do with these linear

conveyance systems, canals, transmission lines --

MR. WHEATLAND: Excuse me. I object. That goes beyond the scope of the question you asked.

HEARING OFFICER CELLI: Sustained.

Mr. Dighe, go ahead. What was your question?

MR. DIGHE: Yes, I want to understand the growth inducing part.

MR. WHEATLAND: Excuse me. May I object here? Mr. Dighe listed Mr. Schneider as his witness on his prehearing conference statement. I can't see how he can list him as his witness and now assert he has an adverse position.

HEARING OFFICER CELLI: That's correct. I have Mr. Schneider as the witness of Mr. Dighe, Sierra Club, I guess, Bob Sarvey and Jass Singh all are calling Dick Schneider. They're all sponsoring his testimony which we received into evidence. That was Exhibit 402 and 414; right?

MR. SARVEY: Well, actually, I'm the only one that sponsored Mr. Schneider and I submitted his testimony, his resume and declaration.

HEARING OFFICER CELLI: But in their prehearing conference statements, those other parties also stated that Mr. Schneider was their --

MR. SARVEY: Well, I think they probably

misunderstood the procedure. And I think that's easily understandable since they haven't done it before.

MR. SCHNEIDER: I've never met these gentlemen before. So I'm surprised to hear that I was called as their witnesses.

HEARING OFFICER CELLI: It seems that you ought to be able to bill them.

(Laughter)

MR. SIMPSON: I'm sorry. Before we go too far down this road, I need to lodge an objection to your interpretation of your rule 1212. While 1212 ensures that right to cross-examine opposing witnesses, it doesn't preclude, it doesn't say only.

HEARING OFFICER CELLI: No, it doesn't. But what it does say is that these proceedings are conducted under the rules as decided by the presiding member and by the Committee. And the Committee has decided that there will only be cross-examination of opposing witnesses and that's the interpretation of this Committee.

MR. SIMPSON: So my objection is overruled?

HEARING OFFICER CELLI: Overruled.

MR. SIMPSON: Thank you.

HEARING OFFICER CELLI: But noted and preserved.

Mr. Dighe, we want to know what your question was.

MR. DIGHE: So can I for the record and for clarification (inaudible) the author, co-author, the growth inducing effect which is what the (inaudible) -- applicant is objecting. It's for me as well as for the public, too. The residents who are here, because that's the only time they can understand how --

HEARING OFFICER CELLI: Okay. What is the definition of growth inducing impacts to you, Mr. Schneider?

MR. SCHNEIDER: The point about the restriction on growth inducing infrastructure is the drafters of Measure D knew there would be transmission lines, canals, gas pipelines, traversing Alameda County to serve the urban area, San Francisco, San Mateo County, et cetera. We knew those transmission facilities would be larger than the capacity needed to serve the east county area. So we put in the provision that those were permissible, provided there were conditions -- permit conditions attached so that the area could not be -- the facilities could not be growth inducing in the sense that the east county area could tap into the excess capacity of those transmission lines. It had nothing to do with the size of, for example, a power plant. Those kinds of infrastructure would be scaled only for the needs of the growth allowed under the initiative.

MR. SINGH: So I have a few questions.

HEARING OFFICER CELLI: Go ahead, Mr. Singh. I need you to really speak up into that microphone, please.

MR. WHEATLAND: Again, Hearing Officer Celli, Mr. Singh listed Exhibits 402 as one of the exhibits that Mr. Singh would be sponsoring in this proceeding.

HEARING OFFICER CELLI: He has a question. I just want to hear what his question is and then I'll know what he wants to speak to. Go ahead, Mr. Singh.

MR. SINGH: Yeah, so we saw today when we asked questions from staff experts and you have been the witness we didn't get any clarity what are the analysis (inaudible) look at the paper. Alameda County says, yeah, X, Y, Z, they accept it.

So my question is it's very important that whatever testimony has been submitted that staff understands those because what if what staff understand and what Mr. Expert want to say (inaudible) for Measure D they should be aligned. If the interpretation and their understanding is different and what the other expert has to say, so I would like to say let him speak about the Measure D, and I want to hear from the staff do they agree with what our expert says.

HEARING OFFICER CELLI: Now --

MR. SINGH: That's information we want to

explore.

HEARING OFFICER CELLI: I understand. Here's the situation. Staff was given an opportunity to cross-examine. They asked their one question. We can't do the thinking for them. So they ask the question on cross-examination they wanted to ask. So I'm not sure what else we can do for you there.

MR. SINGH: So let us say for example I do not have (inaudible) the Measure D.

HEARING OFFICER CELLI: You don't have --

MR. SINGH: I do not understand Measure D intent and many other Mountain House residents that do not understand what Measure D is. So isn't that opportunity that we can ask him explain in depth and how does the things are being evolved. Otherwise --

HEARING OFFICER CELLI: This is actually -- let me make something really clear. This isn't a class in land use. This isn't really at all an educational or informational hearing. We've had informational hearings here before. All of the evidence is presumably in the docket. People can get it. The purpose of today is to take testimony and put it in your record. And that's what we're trying to do.

So I'm not really interested in having a dissertation on Measure D today. We already received

that. That's what the testimony -- that's why we have people (inaudible) and submit their testimony early so we know what the testimony is. We've received the testimony and we're including it in the record.

MR. SINGH: Mr. Celli, for you 15 minutes and that is (inaudible) a lifetime burden these minorities will be getting until death. Is your 15 minutes important is the staff Commission 15 minutes are important then having minority getting this burden for until death. So we need to have more information of Measure D for 15 minutes. I'm not asking for hours and hours.

HEARING OFFICER CELLI: My suggestion is this: My suggestion is maybe since Mr. Schneider was a witness that you listed as your witness, you have a private conversation with Mr. Schneider. And so we're not going to take the time to do that today.

MR. SINGH: So if there is a -- I made a mistake basically and that mistake should be recognized and if you can add let me ask some of the questions --

HEARING OFFICER CELLI: What would be your question?

MR. SINGH: My question would be can you please explain --

(Interruption in the proceedings.)

HEARING OFFICER CELLI: We're going to go off the

record for a moment.

(Off record.)

HEARING OFFICER CELLI: So I finished with you, Mr. Singh? The Measure D is moved in -- is Exhibit 414 in its entirety; isn't that correct?

MR. SARVEY: No. 414 is the ECAP. It's not Measure D.

HEARING OFFICER CELLI: It's the ECAP.

MR. SARVEY: Although we could certainly offer that as an exhibit. We have a copy here and we would be glad to introduce it into the record.

HEARING OFFICER CELLI: That's fine. We can take official notice. I really don't need it. I wanted to -- I thought it was for Mr. Singh's benefit that it were an exhibit he'd be able to look at. But the determination is if it's inappropriate for the Committee to stop and educate anybody on what the law is in any regard that's an issue.

So the other thing is you have a lawyer, Mr. Travis Miller. And you can discuss Measure D with Travis Miller and he can explain to you his interpretation of Measure D. And that's the best we can do for you today.

MR. SINGH: It is not only about me, but it is about the residents as we mentioned. And in a moment --

HEARING OFFICER CELLI: Mr. Miller as your

neighbor might be willing to help some other residents out too, help them understand and explain it. But this is not the purpose today. This isn't an educational thing. We are here to take in the evidence.

MR. SINGH: By the time that your decision will come. I want to make a state here that are we in -- (inaudible) I accept this testimony now are they totally 100 percent agree what is in the testimony. It's a paper right. So you say I (inaudible) and that gives leverage to all of you guys to bypass everything. So new the question is do they (inaudible) and you say how people have been prepared here and we are asking the question. We are not getting the answers from them. And it is basically --

HEARING OFFICER CELLI: And that's litigation. You know, you get the answers you get and you do your best. And people object and you don't get the answer and we overrule or we sustain the objection. The record is always a little bit of a crazy quilt. So we're doing our best. We're not going to take this time now. And we've taken enough as it is.

MR. SINGH: This is the last thing I want to say. As you know you that you haven't (inaudible) our community is minority or not and the translation of those documents into the native language will happen or not happen. But

this is the right time that we should ask the communities and the community will we translate the documents for the Measure D. Mr. Miller cannot do that. And we are in a position until you determine we're minority or not --

HEARING OFFICER CELLI: We have so much opportunity before filing your prehearing statements to determine what you wanted to put into evidence, who you were going to call. You, yourself, said you were calling Mr. Schneider as your witness. So you knew of his existence. You had the opportunity to speak to him, call him. This was months ago. So we need to move on. And the ruling -- so your request is denied.

I'm going to go to Mr. Simpson.

MR. SINGH: So I would like to make a motion to adjourn for this hearing.

HEARING OFFICER CELLI: So your motion is denied. We're not going to adjourn.

MR. SINGH: And it is the motion from (inaudible).

HEARING OFFICER CELLI: Mr. Simpson.

MR. SIMPSON: I'm with the motion.

HEARING OFFICER CELLI: Mr. Simpson, I wanted to ask, did you have your hand raised because you wanted to weigh in on this opposing witness question?

MR. SIMPSON: I have questions for the witness.

Does that answer your question?

HEARING OFFICER CELLI: Yeah. What are your questions for this witness?

MR. SIMPSON: I'd like to know if the witness agrees with Mr. Wheatland's contention that in order to have a complete record we need more information on other approved and proposed projects like the two you referenced and the one he brought on the record.

HEARING OFFICER CELLI: That's not an appropriate question. We don't really care whether he agrees with Mr. Wheatland or not. His testimony is in.

MR. SIMPSON: It's redirect, sir.

HEARING OFFICER CELLI: Okay. But we didn't have redirect because when I asked Mr. Sarvey if he wanted to redirect he said no. So we're done with this witness. But the Committee wanted to give the opportunity to the intervenors to raise any questions if it was like a simple question like (inaudible) or what have you.

MR. SIMPSON: Well, sir, the Committee took more time preventing the intervenors from asking questions than it would have took to ask them.

HEARING OFFICER CELLI: Isn't that the way it goes. Yes. So with that, we're going to excuse this witness.

MR. SARVEY: Mr. Celli, we'd like the opportunity

to hold the record open to make a complete record and get whatever information we have on these other solar projects and enter them into the record because there was Mr. Wheatland's purpose was a complete record. So we would like that opportunity, if possible.

HEARING OFFICER CELLI: Okay. So you put on -- let's be clear. Your testimony has now been received into evidence. I have Exhibit 402 and 414.

MR. SARVEY: Yes, sir.

HEARING OFFICER CELLI: Okay. And then there was some direct that we started and we said you didn't need to go there because basically everything we had was already in writing. Gave the parties an opportunity to cross. One of the cross-examination questions had to do with this new or the only thing really came in on cross was this exhibit 69, which is draft resolution Z-11-XX of the East County Board zoning adjustments adopted at the hearing on January 13th, 2011, concerning plan 2010-00126. And frankly, since this is the first I've seen, I have no idea what its use is in the record.

MR. SARVEY: Neither do I.

HEARING OFFICER CELLI: And we gave him a moment to take a look at it. I don't know what it means. If you didn't have any further questions about this, then if you don't redirect, then we close the record on it.

MR. SARVEY: No. I'm not asking redirect. I'm just asking if we get the rest of the information. Mr. Wheatland wanted a complete record whether we could submit it. That's all.

HEARING OFFICER CELLI: I don't understand what -- is there something missing? This is a parcel document that there's more of this document?

MR. SARVEY: Of course, it's a parcel document. There's a lot of document that go with this. But we're interested on providing the information on a thousand megawatts solar farm -- thousand acre -- excuse me -- solar farm and the 100 acre solar farm. Just so the Committee understands how much conversion of agricultural lands is happening up here.

HEARING OFFICER CELLI: Yeah, we welcome that. So what I want to know is do you have a document in mind right now?

MR. SARVEY: No. We'll be contacting Alameda County tomorrow to see what we have available and we'll introduce it. And if anybody has objections, of course, we'll submit it and you'll rule on it.

HEARING OFFICER CELLI: So I want to be clear what we're accepting would be a document that establishes or purports to establish that there is a 1,000 acre solar farm going in what county? Alameda?

MR. SARVEY: It's in Alameda County, yes, sir. It's in eastern Alameda County.

HEARING OFFICER CELLI: In eastern Alameda. Okay. So that's acceptable.

MR. SARVEY: Thank you, sir.

HEARING OFFICER CELLI: Thank you. And thank you for coming in Mr. Schneider. Sorry to keep you so late.

The land use testimony and witnesses according to what I received from everybody's prehearing conference statement was Mr. Sarvey, the Sierra Club and Jass Singh CalPilots and -- CalPilots, you had a land use expert. You are the land use expert, okay. So Rajesh Dighe had Dick Schneider written down as your witness. But we received his testimony already; correct? And the same with Sierra Club, Robert Sarvey, Jass Singh.

CalPilots, your witness is just yourself on land use? Do you want to come forward -- or actually sit where you are and be sworn. Please stand actually and be sworn.

(Whereupon the witness was sworn.)

MR. WILSON: I do.

MR. PETTY: Please state your name for the record.

MR. WILSON: Andy Wilson, California Pilots.

DIRECT EXAMINATION

HEARING OFFICER CELLI: Mr. Wilson, what were

your exhibits that you wanted to put in with regard to land use?

MR. WILSON: Exhibit 704.

HEARING OFFICER CELLI: Only?

MR. WILSON: Yes, 704 has two parts to it. There's the land use and there's the aviation part of it. So the land use --

HEARING OFFICER CELLI: Is there any objection from applicant to the admission of Exhibit 704?

MR. WHEATLAND: No objection.

HEARING OFFICER CELLI: Is there any objection by staff to the admission of Exhibit 704 for identification?

STAFF COUNSEL WILLIS: We don't have a 704 on our list. Is there another number?

HEARING OFFICER CELLI: 704 on the tentative list --

MR. WILSON: Because 704 was asked by CalPilots of the applicant.

HEARING OFFICER CELLI: That's right. I'm sorry. I remember --

MR. WILSON: And he asked if I wanted to enter that as evidence.

HEARING OFFICER CELLI: 704 is the rebuttal testimony. Do I have that right?

MR. WILSON: Yes, Mr. Celli.

STAFF COUNSEL WILLIS: And we have no objection.

HEARING OFFICER CELLI: No objection. So with that, Exhibit 704 will be received into evidence as Exhibit 704.

Mr. Wilson, do you have any testimony other than what you put in as rebuttal?

MR. WILSON: No, I don't. But I would like to emphasize that the same subject was covered in land use by the staff. And this is the issue that came up with -- we have a ruling by the Contra Costa County airport land use Commission. And this ruling has just disappeared. So what California pilots is saying is that we feel that Caltrans Aeronautics has to be notified if there's any override. Contra Costa Airport Land Use Commission has to be notified and any letters or rules or laws that they felt didn't apply in this ruling, they have to be notified. And they haven't. And that's the key issue.

HEARING OFFICER CELLI: Okay. The evidence is in. Is there anything further?

MR. WILSON: No, Mr. Celli. Thank you.

HEARING OFFICER CELLI: Thank you.

So with that, I'm about to close the record on land use. Any comment on that, staff?

STAFF COUNSEL WILLIS: No comment.

HEARING OFFICER CELLI: Sarvey?

MR. SARVEY: Just that we're going to be allowed to (inaudible) document on the solar.

HEARING OFFICER CELLI: Thank you. That's correct. We're going to close the record but allowing in that additional exhibit having to do with the thousand acres of proposed solar.

Morgan Groover.

MR. GROOVER: None.

HEARING OFFICER CELLI: Mr. Dighe, any comments further on land?

MR. DIGHE: No.

HEARING OFFICER CELLI: Mr. Wilson?

MR. WILSON: No.

HEARING OFFICER CELLI: Mr. Singh?

MR. SINGH: I just want to make a -- for example, staff haven't seen the exhibit, right? They haven't read it. And --

HEARING OFFICER CELLI: That's not really true. Staff has received the rebuttal testimony. They didn't know if it was Exhibit 704.

MR. SINGH: So staff have seen that and they have read it, right?

HEARING OFFICER CELLI: I imagine so. I don't really care if they have or not.

MR. SINGH: Can you please ask them if they have

read that.

HEARING OFFICER CELLI: Staff, did you read Exhibit 704 the rebuttal testimony?

STAFF COUNSEL WILLIS: I can only say for myself, and I did. I can only say for myself, and I did. I did not testify for my other staff. But I personally read it.

HEARING OFFICER CELLI: Okay. Ms. Willis has read it and I see Mr. Hoffman is nodding his head as well.

MR. SINGH: So they have read it.

HEARING OFFICER CELLI: Apparently so.

MR. HOFFMAN: Yes, I have read it.

HEARING OFFICER CELLI: There you go.

MR. SINGH: Okay. And do you have any objection on that? Or you have objection? No. You are accepting as it is? I want to make a record on that.

HEARING OFFICER CELLI: Yeah. It's just evidence coming in, Mr. Singh. It doesn't matter whether you agree with it or not agree with it. They don't object to its introduction into the record.

MR. SINGH: Just for -- I'm not a lawyer, right. I don't understand the terminology. But I'm learning throughout this hearing.

Now, when somebody hasn't read any document, how come the person can say I don't object it. I just want to make --

HEARING OFFICER CELLI: They said they read it. And therefore they said they have no objection.

MR. SINGH: But before that they were just couldn't find the document and they were asking you. So that is my question -- just want to bring to your kind attention. Thank you.

HEARING OFFICER CELLI: Thank you.

Rob Simpson, anything further regarding land use?

MR. SIMPSON: I believe my testimony regarding property values is land use testimony.

HEARING OFFICER CELLI: I'm sorry. I didn't hear you.

MR. SIMPSON: I believe my testimony regarding property values is a land use issue.

HEARING OFFICER CELLI: Oh, that's Exhibit 1,000. Do you have a motion with regard to Exhibit 1,000?

MR. WHEATLAND: Is it socio or land use?

HEARING OFFICER CELLI: He had he was a broker. I remember it was a one page document and he mentioned he was a real estate broker and had a comment I think about property values or something like that as I recall. I didn't memorize it. I've seen it.

So at this time, are you moving that exhibit into the record?

MR. SIMPSON: Yes, sir.

HEARING OFFICER CELLI: Is there any objection to Exhibit 1,000 marked for identification to being received into the evidence by applicant?

MR. WHEATLAND: No objection.

HEARING OFFICER CELLI: Is there any objection by staff?

STAFF COUNSEL WILLIS: No objection.

HEARING OFFICER CELLI: Is there any objection by Mountain House Community Service District?

MR. GROOVER: None.

HEARING OFFICER CELLI: Thank you.

With that, Exhibit 1,000 will be received into evidence.

MR. SIMPSON: Will you check the other intervenors to see if they have any objection?

HEARING OFFICER CELLI: CalPilots, any objection to Exhibit 1,000?

MR. WILSON: No objection.

HEARING OFFICER CELLI: Okay. I didn't think. Thank you. With that, it's received into evidence.

(Whereupon, the above-referenced document was admitted into evidence by the Hearing Officer.)

MR. WHEATLAND: You haven't checked -- Hearing Officer Celli, you went around the table, but I wanted to

add two things on land use before we close it out. Okay.

HEARING OFFICER CELLI: You're echoing a little bit. I don't know if we can fix that.

MR. WHEATLAND: First, I don't have any questions about Exhibit 704, but I will have questions about Mr. Wilson's resume or statement of qualification. With your consent what I'd like to do is to be able to ask those questions when he presents his aviation testimony because he'll come back and be testifying on that matter.

MR. SIMPSON: You have a third microphone there. That's probably where the echo is coming from.

HEARING OFFICER CELLI: I think -- is that your -- do you know what that is, Mr. Petty?

MR. WHEATLAND: I'd like to ask questions about his qualifications when he takes the stand on aviation rather than do that now. And I'd also like to subject to Mr. Wilson just as a way of providing that if he was able to provide a detailed resume that would state his academic training and his professional experience in some detail it might shorten the questions that I would have.

HEARING OFFICER CELLI: Is that acceptable, Mr. Wilson?

MR. WILSON: That's acceptable.

MR. WHEATLAND: The other thing is I do intend to move into evidence Exhibit 69, but I would like the

Committee and the parties an opportunity to review it before I do that. So if I could have leave to move that in tomorrow.

HEARING OFFICER CELLI: 69 is --

MR. WHEATLAND: That's the resolution that was adopted approving the three megawatt solar project by Alameda County. It's a matter that the Committee could take notice of because it's additional document of Alameda County. I think it's relevant in two respects. One because the Commission needs to consider other energy projects that are approved and being considered in the immediate vicinity of our project.

HEARING OFFICER CELLI: We will allow it in for the same reason we'll allow Mr. Sarvey's evidence in. But my question is I don't have a signed copy. What I have is three pages long.

MR. WHEATLAND: We'll provide a signed copy.

HEARING OFFICER CELLI: How many pages is the document? Mine ends at three after additional materials will be submitted for the planning department prior to obtaining a building permit.

MR. WHEATLAND: Right. I don't believe that that is a signed copy. So I'll provide the signed adopted copy.

HEARING OFFICER CELLI: Okay. Thank you. With

that, land use subject to -- land use is closed. We're on the air quality.

MR. SINGH: Mr. Celli, I just want to say two things, very short and briefly.

HEARING OFFICER CELLI: I'm sorry. I can't even hear you.

MR. SINGH: I just want to make a comment. Now, we saw --

HEARING OFFICER CELLI: Before you do, let me just ask applicant if you can have your air quality people, your panel.

MR. WHEATLAND: We do. But can we go off the record for a moment?

HEARING OFFICER CELLI: Okay.

MR. WHEATLAND: Just to talk about scheduling.

HEARING OFFICER CELLI: Well, let's talk about scheduling on the record.

MR. WHEATLAND: My understanding there may be some air quality witnesses, particularly San Joaquin County, that may not be able to be here tomorrow. So if there are any air quality witnesses that have a scheduling constraints and cannot come forward we would be more than happy to take them out of order and put our witnesses on at such time as you have taken the witnesses that have the time constraint.

STAFF COUNSEL WILLIS: Yes, Mr. Celli. We also have the Bay Area Air District witness, and she's been here most of the day and is unable to come back tomorrow. So we had asked Mr. Wheatland if it would be possible with your consent that we switch order and have the staff's panel including the air district witness go first so she can actually get her testimony in.

HEARING OFFICER CELLI: So are we essentially taking staffer's panel first, applicant's panel second?

STAFF COUNSEL WILLIS: I think -- Mr. Wheatland, is that correct?

MR. WHEATLAND: Yes. That would be fine with us.

STAFF COUNSEL WILLIS: And then Mr. Sweeney from the San Joaquin Air District is here also, and he won't be able to come back tomorrow as well.

HEARING OFFICER CELLI: Let's get him up here and get him sworn.

STAFF COUNSEL WILLIS: And one more point of housekeeping. Do we still think we're going to get to traffic and transportation tonight?

HEARING OFFICER CELLI: We're going to do our darnedest. See how we do here. It's 8:00. Let's move with alacrity, folks.

Mr. Singh, go ahead.

MR. SINGH: Yes, now, today we saw Alameda as

well as Contra Costa County.

HEARING OFFICER CELLI: You need to really -- I can hardly hear you. Please speak loudly.

MR. SINGH: Today, we saw Alameda. And can you ask everybody to be quiet so I can ask my question? Let's make silence here so we can have a record here. Is the record being reported right now?

HEARING OFFICER CELLI: Yeah. Let's wait. Come on in. Mr. Singh had a question and I couldn't hear him because it was so loud in the room. I couldn't hear him. Mr. Singh, I really need you to speak really loudly into your mike.

MR. SINGH: So Mr. Celli, there is a request (inaudible). We saw Contra Costa County and Alameda County, they are in favor of this project, which is Mariposa project. And you can see why they are in favor because they got the mitigation money at the other end we understand that Contra Costa County their Board of Directors and the Supervisors got $800,000 as a mitigation plan if I am correct. (inaudible) they have been told they will get it if they present form X, Y, Z, during this hearing. So we need to get more information on that of what was the deal being cracked by the applicant and with the Contra Costa Board of Directors for 800,000. So I would like to make it in had the record and we need more

information on that.

HEARING OFFICER CELLI: Okay. One moment. Noted.

Let's get these witnesses sworn.

(Whereupon the witnesses were sworn.)

MR. PETTY: You may be seated. And please state and spell your names for the record.

MR. LAYTON: I am Mathew Layton, L-a-y-t-o-n.

MS. CABRAL: My name is Brenda Cabral. B-r-e-n-d-a, C-a-b-r-a-l.

MS. LEYVA: My name is Jacquelyn Leyva, L-e-y-v-a.

MS. QIAN: My name is Wenjun Qian, W-e-n-j-u-n, Q-i-a-n.

DR. ODOEMELAM: My name is Dr. Obed Odoemelam.

HEARING OFFICER CELLI: Please proceed.

DIRECT EXAMINATION

STAFF COUNSEL WILLIS: Thank you. Just as a point of clarification, Ms. Cabral is being represented today by Randi Wallach, Assistant Counsel for Bay Area Air Quality Management District, who's seated to my right.

HEARING OFFICER CELLI: I am sorry. I didn't get the name.

STAFF COUNSEL WILLIS: It's Randi Wallach, W-a-l-l-a-c-h.

HEARING OFFICER CELLI: Randi Wallach. And you're representing Wenjun Qian?

STAFF COUNSEL WILLIS: No. She's representing Brenda Cabral.

HEARING OFFICER CELLI: Sorry. Thank you.

STAFF COUNSEL WILLIS: I'd like to start with Matthew Layton.

Did you supervise the preparation of the air quality testimony in the supplemental staff assessment marked Exhibit 301?

MR. LAYTON: I did.

STAFF COUNSEL WILLIS: Did you provide a statement of your qualifications?

MR. LAYTON: I did.

STAFF COUNSEL WILLIS: Do you have any changes to the testimony?

MR. LAYTON: I do not.

STAFF COUNSEL WILLIS: And do the opinions contained in your testimony represent your best professional judgment?

MR. LAYTON: Yes.

HEARING OFFICER CELLI: And now to Jacquelyn Leyva. Did you assist in the preparation of the air quality testimony in the supplemental staff assessment marked Exhibit 301?

MS. LEYVA: I did.

STAFF COUNSEL WILLIS: Was the statement of your qualifications attached to your testimony?

MS. LEYVA: It was.

STAFF COUNSEL WILLIS: And do the opinions contained in your testimony represent your best professional judgment?

MS. LEYVA: Yes.

STAFF COUNSEL WILLIS: Wenjun Qian, did you assist in the preparation of the air quality testimony in this supplemental staff assessment?

MS. QIAN: Yes, I did.

STAFF COUNSEL WILLIS: Was the statement of your qualifications attached to your testimony?

MS. QIAN: Yes it was.

STAFF COUNSEL WILLIS: And do the opinions contained in your testimony represent your best professional judgment?

MS. QIAN: Yes.

STAFF COUNSEL WILLIS: Ms. Cabral, could you just for the record please state the agency you worked for and your position?

MS. CABRAL: I work for the Bay Area Air Quality Management District. I'm a supervising air quality engineer and I've worked for them for about 21 years.

STAFF COUNSEL WILLIS: Thank you. Tonight are you sponsoring the Bay Area Air Quality Management District's Final Determination of Compliance marked Exhibit 302?

MS. CABRAL: I am.

STAFF COUNSEL WILLIS: Thank you. Dr. Odoemelam, did you prepare the public health testimony in the supplemental staff assessment marked Exhibit 301?

DR. ODOEMELAM: Yes, I did.

STAFF COUNSEL WILLIS: And did you provide a statement of your qualifications?

DR. ODOEMELAM: I did.

STAFF COUNSEL WILLIS: And do the opinions contained in your testimony represent your best professional judgment?

DR. ODOEMELAM: Yes, it does.

STAFF COUNSEL WILLIS: And did you perform a public health risk assessment?

DR. ODOEMELAM: Yes, I did.

STAFF COUNSEL WILLIS: Could you please describe briefly how you conducted your assessment?

DR. ODOEMELAM: The assessment that was pollutants that were called non-criteria pollutants for which there are no specific what is standards, the approach is to establish, assess the emission levels and

the risks expected from them and compare those risks from levels of significance as established through methodologies. And for analysis, I established that the pollutants of concern is toxic pollutants from the facility would be emitted at levels that pose a risk that is not significant in terms of the potential for health and for can sore and non-cancer health effects. So we make no -- my recommendation would be that the risks would be low and make no further mitigation recommendations for further mitigation.

STAFF COUNSEL WILLIS: Thank you. These witnesses are now available for cross-examination.

HEARING OFFICER CELLI: Thank you. I think what we're going to have to face the reality of at this time because it's 8:16 we're probably not going to get past air quality tonight. That being the case, I think staff, you might as well let your people go who are not air quality people. Because I assume that there is quite a bit of air quality cross-examination that needs to take place continue.

STAFF COUNSEL WILLIS: Thank you.

HEARING OFFICER CELLI: So if you could go ahead and cut them loose.

Also, I have a question with regard -- before I open up cross, I'd like to take in any -- entertain any

motion to have exhibits received into evidence into regard to air quality at this time.

STAFF COUNSEL WILLIS: The only -- since I'm assuming we moved the entire Exhibit 301 then we would like to move Exhibit 302.

HEARING OFFICER CELLI: We received 301 and 302, but isn't the FDOC --

STAFF COUNSEL WILLIS: Is 302.

HEARING OFFICER CELLI: Oh, so we received 300 and 301. There is a motion at this time to receive the FDOC, Final Determination of Compliance, which is exhibit 302. Is there any other air quality exhibits that you want?

STAFF COUNSEL WILLIS: No. That actually is all of staff's exhibits.

HEARING OFFICER CELLI: Okay. Any objection, Mr. Sarvey, to Exhibit 302?

MR. SARVEY: No objection.

HEARING OFFICER CELLI: Any objection from Mountain House?

MR. GROOVER: None.

HEARING OFFICER CELLI: Any objection, Mr. Dighe? Where did Mr. Dighe go? Mr. Dighe seems to have left the room.

Mr. Wilson, any objection to the FDOC?

MR. WILSON: No objection.

HEARING OFFICER CELLI: Mr. Simpson, any objection to 302?

MR. SIMPSON: No objection.

HEARING OFFICER CELLI: Mr. Wheatland, any objection to 302?

MR. WHEATLAND: No objection.

HEARING OFFICER CELLI: Okay. 302 will be received into evidence.

(Whereupon, the above-referenced document was admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: And cross-examination begins with Mr. Sarvey. And -- I'm sorry. Go ahead, Mr. Wilson.

MR. WILSON: Mr. Celli, for the record, CalPilots let their witnesses go. If you notice I was going back and forth.

HEARING OFFICER CELLI: My apologies we went a little longer. So we need to -- folks, I just want to say that we're trying to do is strike a balance between getting the evidence inadvertently omitted an efficient manner and giving the parties a real opportunity to test the evidence and we do our best. We've gone a little long. I think the air quality is very important subject

matter. We're going to take this evidence, but I think the parties will understand that we're going to have to take that out on the back end and we're going to have to smaller tighter control on the cross-examination when we go to other issues.

And in the mean while, the parties are continue to communicate, so if we can get rid of things like worker safety and other issues where the parties are not that far a part, then please do.

So with that, Mr. Sarvey, go ahead.

CROSS-EXAMINATION

MR. SARVEY: I'd like to ask staff's public health witness. I believe you said that your analysis looked at non-criteria pollutants only and did not examine the impacts of CO, PM2.5, NO2 or anything like that; is that correct?

DR. ODOEMELAM: Not directly. But --

HEARING OFFICER CELLI: Mr. Odoemelam, I need you to please speak right into those microphones because I can't hear you.

DR. ODOEMELAM: We did not address the effects of criteria pollutants directly in our public health testimony. But typically we prepare the supplemental in addition to --

MR. SIMPSON: I can't hear you.

HEARING OFFICER CELLI: If I can have you -- what you need to do is speak right into that microphone.

DR. ODOEMELAM: We typically do not address the (inaudible) of criteria pollutants in our public health analysis. That is done in our air quality analysis. But we do prepare an analysis showing the health effects on those criteria pollutants and attached them separately to our public health analysis.

MR. SARVEY: Thank you. I have some questions on the FDOC. Exhibit 302, Appendix D, page 27 states that the Bay Area Air Quality Management District draft PM2.5 report concludes that ammonia emissions contribute more strongly to PM2.5 formation than other types of precursor emissions, including NOx. Did the report also conclude that ammonia contributes more to PM2.5 formation than SOX emissions as well?

MS. CABRAL: The FDOC did not estimate or compare the difference between SOX and a known yeah.

MR. SARVEY: I'm speaking to your PM2.5 report, your analysis that you submitted as a footnote to the FDOC and essentially I'm asking you -- what your answer is SOX is not or is --

MS. CABRAL: You asked me if the analysis compared the impact of SO2 to ammonia and I don't believe it did.

MR. SARVEY: I asked you did the report. Did the report that you site conclude that ammonia emissions contribute more to PM2.5 formation than SOX emissions only. Your report you clearly state that draft report concludes that ammonia emissions contribute more strongly to PM2.5 formation than other pollutants such as NOx is the same conclusion for SOX as well from your report? Not from your analysis.

MS. CABRAL: I don't know. I haven't read that part of the report or I don't know if the report concludes that.

MR. SARVEY: Exhibit 302, Appendix D, page 27 states during the winter season when PM2.5 may accumulate to harmful levels, Mariposa Energy Center would be downwind of the Central Valley. As such, ammonia emission from this facility would be unlikely to significantly impact Central Valley air quality. From that can we conclude that during the PM season you expect most of the emission to impact the Bay Area Air Quality Management District?

MS. CABRAL: Yes.

MR. SARVEY: Yes.

In terms of nitric acid concentration, your PM2.5 study states on page 30 that nitric acid was only able to accumulate for a remote locations over coast range,

Pacific ocean and to a lesser extent rural location near the Central Valley Rim. Is that another way of saying these areas are not nitric acid limited?

MS. CABRAL: During most of the year, I understand that the Bay Area is nitric acid limited.

MR. SARVEY: Exhibit 302, Appendix D, page 12 the district states the air district does not have the appropriate tools to include fine particular matter in its formal health risk assessment. When do you expect the district will have that ability?

MS. CABRAL: The State agency called OEHHA needs to give us a procedure or information to determine how to use fine particular in a risk assessment. So we would depend on OEHHA before we could do that.

MR. SARVEY: Thank you. On appendix D, page 20 it states the CEC staff assessment and the applicant's application for certification state that the water that is used for water injection will be de-mineralized so that the dissolved solvents are five parts per million. Water injection will not be a significant contributor to particulate matter emissions less than .14 pounds. Is that .14 pounds per turbine or all turbines operating combined?

MS. CABRAL: That would be .14 pounds per turbine per hour.

MR. SARVEY: Thank you. On appendix D, page 39 the district responds to a public comment which states that 66 percent of the project's water usage could be eliminated by the use of dry load NOx combustion. The district response is the Bay Area doesn't regulate the water use of the facility. Should the water use of the facility be included in the BACT analysis in terms of determining whether the turbine would be cost effective?

MS. CABRAL: There was an analysis -- a short analysis on the cost from the water injected turbans to the dry load NOx turbans in the response. It gave a ballpark figure on what it would cost. And what it would mean in dollars per ton reduced. It was a rough calculation. And it's true it did not subtract the cost of the water. That's a refinement that may or may not have made a difference.

MR. SARVEY: Appendix D, page 23 states that the district acknowledges that heat rate of the LM6000 PC is not only higher than the LM6000 PF gas turbine which has dry low NOx combustors. The difference in heat rates means the LM6000 PC will burn slightly more fuel and will have slightly higher greenhouse gas emission than the LM6000 PF. Shouldn't that be a consideration in your BACT analysis? Or is that also an Energy Commission issue?

MS. CABRAL: At this moment, there was no

greenhouse gas standard, no BACT standard for greenhouse gases. And while when we calculate how much more the greenhouse gases would have been, we don't regulate greenhouse gases at this time.

MR. SARVEY: Okay. Thank you. The PDOC, exhibit 302 states on Page 19, "The district has concluded that imposing a numeral emissions limit in addition to requiring BACT technologies would not be warranted given that there are no add on control devices that the facility can use to control PM emissions." Didn't the applicant themselves propose a 2.5 pound per hour PM10 limit as BACT for these turbines?

MS. CABRAL: Yes.

HEARING OFFICER CELLI: Mr. Sarvey, what exhibit did you just say that was?

MR. SARVEY: That is the same exhibit -- I am sorry, Mr. Celli. All of these questions of the FDOC would be Exhibit 302.

HEARING OFFICER CELLI: Okay. I'm sure inadvertently you called it the PDOC. I didn't know whether the PDOC was --

MR. SARVEY: I'm sorry. FDOC, sir. My mistake.

HEARING OFFICER CELLI: So the only thing going into evidence is the FDOC, right?

MR. SARVEY: Yes. And you're right. I meant the

FDOC.

Hasn't the district provided an hourly numeral emission limit as BACT for LM6000 turbines in previous BACT determinations?

MS. CABRAL: We've changed our minds on our approach.

MR. SARVEY: The district in 2002 limited the Los Esteros critical energy facility which used the same turbines the 2.5 pounds per hour and then in 2006 the district limited the San Francisco electrical liability project to 2.5 pounds per hour as BACT. And they were listed as BACT. Don't the earlier determinations, the applicant's voluntary proposal to limit the emissions to 2.5 provide a basis for the district to use this as BACT for this project?

MS. CABRAL: The district has decided that best available control technology in this case is better served by the technology and not by numeral limit. The district says that BACT in this case is due to the use of natural gas. Good combustion practice has demonstrated by the CO limited, low CO demonstrates good combustion. Best combustion practice. This facility has inlet filtration for the air that comes in. The water is mineralized. There is no hook. There is no way to lower particulate other than the technology. And therefore a numerical

limit doesn't make any sense. We've decided that we will not going with the one hour, three hour pounds per hour limit.

MR. SARVEY: The Los Esteros utility infrastructure critical energy facility has the 2.5 pound per limit as I mentioned earlier. And you have information in your FDOC which concludes that it's met that limit. Does that not achieve in practice BACT?

MS. CABRAL: The FDOC has 40 or 50 accounts of 40 or 50 tests that show an extreme amount of variability. And based on conclusions on the variability of the different tests on the same equipment essentially the same equipment and looking at the source tests you can see that there is extreme variability from running to running. It takes three hours to complete one running and the samples end up being in the milligram range. There's a potential for measurement error. So we're extrapolating a milligram measurement to a source that's going to emit around two to two and a half pounds. It's about a million -- the difference between a milligram and two and a half pounds is about a million. So considering the variability, the measurement error, the fact that there isn't much more that can be done to control particular with natural gas, we've concluded that the technology is the BACT termination.

MR. SARVEY: Exhibit 302, Appendix D, page 9, responds to a comment about the increment conception analysis for the Tesla project, which is Exhibit 412 in this proceeding. That increment conception analysis demonstrates that the maximum model 24 hour PM10 increment consumption is 140 micrograms per cubic meter and the annual average PM10 increment conception is 30 milligrams per cubic meter. Although those values exceed the (inaudible) increment for PM10, the location of the exceedances in the San Joaquin Valley, which is in non-attainment for PM10. Can you explain for the public what impact a 24-hour PM10 increment consumptions of 140 micrograms per cubic meter and an annual consumption of 30 micrograms per cubic meter has on their health?

MS. CABRAL: I don't know what you're quoting from. I know that the district did not do the impacts analysis for the PM10. The CEC did it.

MR. SARVEY: I'm referring to your testimony -- well, the FDOC, Appendix D, page 9, if you'd like to take a moment to take a look at it, that'd be nice.

MS. CABRAL: The quote -- the reason for the quote in the FDOC is merely to give a site for the conversion of 100 PGB to the 188 micrograms per cubic meter, merely to show to conversion. The rest of the document is not part of the testimony.

MR. SARVEY: I'll move on.

Staff's testimony on page 4.1-43 states the project will be permitted to operate 4,225 hours per year. Staff's testimony on page 4.1-6 says the project is licensed to operate up to 4,000 hours per year. The FDOC allows any turbine to operate up to 5,200 hours a year. Which of these numbers is staff's assessment based on?

MR. LAYTON: For what pollutant?

MR. SARVEY: Any pollutant.

MR. SIMPSON: I can't hear.

MR. SINGH: I can't hear.

MR. LAYTON: I asked for what pollutant.

MR. SARVEY: PM2.5 would be my preference. But you can answer in any pollutant you'd like.

MR. LAYTON: PM2.5 is based on 1,400 hours of operation per turbine per year.

HEARING OFFICER CELLI: Was that 1,400?

MR. LAYTON: 1-4-0-0. Yes.

MR. SARVEY: Normally, staff provides mitigation for the entire potential emissions from a project. Staff is proposing to mitigate only 33 percent of the project's potential emissions which equates to 1,400 hours of operation. If you're only going to mitigate an operational scenario of 1400 hours, shouldn't the permit limited infrastructure it the project's operation to 1400

hours a year?

MR. LAYTON: I guess what do you mean by normally? We do a CEQA analysis and we analyze the reasonable foreseeable operating scenario. In this case, for this peaker, we've conservatively picked 1400 hours.

MR. SARVEY: Exhibit 301, page 4.1-21 comparatively states another recently approved power plant project in the Bay Area, Marsh landing, is permitted to operate at a capacity of up to 20 percent, equivalent to 1,752 hours annually, which is closer to the expected capacity factor for this type of power plant. What capacity factor did staff utilize with the Marsh Landing mitigation proposal? Was it 1,752 hours or was it 1400 hours or was it 600 hours?

MR. LAYTON: I'm not aware.

MR. SARVEY: Anybody else?

MR. LAYTON: We didn't work on that project.

MR. SARVEY: Okay. Good answer.

The applicant requested and the district approved the condition to allow one turbine to operate to 5,200 hours. The entire project is licensed to operate 4,250 hours. Is it not reasonably foreseeable considering this license for the project that it could run more than 1400 hours a year?

MR. LAYTON: We do not believe it's reasonably

foreseeable, no.

HEARING OFFICER CELLI: I'm sorry. Mr. Layton, I'm having a hard time hearing you. Can I ask you to speak directly into the microphone.

MR. LAYTON: We did not think that was reasonable beyond 1400 hours.

MR. SARVEY: And how did you come to the conclusion that the project wouldn't operate over 1400 hours?

MR. LAYTON: We looked at all the peakers in the state. Simple cycle turbans. The operating capacities are anywhere from three to five percent, which is about maximum of 400 hours per year. In fact I pulled up Tracy from 2003 to 2008, Tracy has operated exactly 76 hours on average per year per turbine.

Now, that's a slight rounding down, because that's megawatts divided by capacity. Operating hours probably are a little bit more if you look at the number of hours that it might be on-line. So peaker is operating in the hundreds of hours, not in the thousands of hours. And this is common statewide. This project is proposed as a peaker and so we think the three to five percent is representative. We've conservatively bumped that up to 1400 hours and are basing the mitigation on what we think is reasonably foreseeable for this project.

MR. SARVEY: Did I understand you directly. You seed this peaker is only operated an average of 76 hours? Is that correct?

MR. LAYTON: Yes, but again, I caveated that carefully. This is based on megawatt hours divided by capacity. Actual operating hours might be online presume .1 megawatts. So it would be the number of hours is probably closer to 100 on average for getting operational the turbine from 2003 to 2009.

MR. SARVEY: When staff analyzed the 100 similar existing peaker projects to arrive at an operating scenario, did staff take into consideration the permit limits of the peakers analyzed?

MR. LAYTON: We did.

MR. SARVEY: What was the average permit limit per hour?

MR. LAYTON: They vary greatly around the state. Some of them are 8,000 hours. Some of them are about 800 hours.

MR. SARVEY: Did staff take into consideration the heat rating of the 100 similar turbines?

MR. LAYTON: We did not.

MR. SARVEY: So you don't have an answer for what the average heat rate of these 100 similar existing peeking turbines you analyzed?

MR. LAYTON: I don't have it in front of me, but I can find it for you.

MR. SARVEY: That's good enough.

What is the highest annual capacity rate of the peaker staff examined?

MR. LAYTON: I don't remember.

MR. SARVEY: What happens if the project operates more than 1,400 hours since it's permitted for 4,250 hours? Does staff have a condition to deal with that issue?

MR. LAYTON: We do not.

MR. SARVEY: Staff's testimony on page 4.1-11 states that almost all combustion related particles being including those from wood, smoke, and cooking are smaller than 2.5 microns. What is staff's estimate on the percentage of particulate matter from this project will be PM2.5?

MR. LAYTON: From what sources on the site?

MR. SARVEY: It would be staff's testimony page 4.1-11.

MR. LAYTON: What was the question again?

MR. SARVEY: I'm basically asking what staff's assumption is, what percentage of the emissions from this project -- PM emissions will be PM2.5?

MR. LAYTON: What did we say in our testimony?

MR. SARVEY: It's not in your testimony. Otherwise, I wouldn't be asking you.

MR. LAYTON: Well, generally combustion byproducts are predominantly from natural gas and predominantly 2.5. But any time a cooling tower is on site or utility equipment, the PM10 numbers might be -- contain some PM10 as well.

MR. SARVEY: So for a peaker project, that would be 99 percent?

MR. LAYTON: It would be a large number.

MR. SARVEY: Okay. I asked you earlier did staff evaluate the project's PM2.5 concentrations based on a 2.5 pound per hour limit?

MR. LAYTON: I believe the modeling was done on three.

MR. SARVEY: What condition has staff proposed that limits the project's PM2.5 emissions to 2.5 pounds per hour?

MR. LAYTON: I believe there are some conditions in the -- excuse us for a second. Offhand, I cannot find that we have placed a limit on PM2.5. We do have emissions reductions based on the calculated value. So there is a mitigation.

But I agree with Ms. Cabral that PM10 numbers are very variable and therefore 2.5 is an average number for

the year and will probably very representative what the emissions will be if there is emission that goes up to three or emission test that goes down to two on average, the number will be for an annual average around 2.5 pounds per hour.

MR. SARVEY: But you have no condition limiting hourly PM2.5 emissions anywhere?

MR. LAYTON: That is correct.

MR. SARVEY: In your analysis, you assumed I think you said 3. pounds per hour. Do you have a condition that limit the 3. pounds per hour?

MR. LAYTON: I said the modeling (inaudible).

MR. SARVEY: So there is no condition anywhere limiting the hourly emit PM 2.5 emissions from this project?

MR. LAYTON: That is correct.

MR. SARVEY: So it could be 100 pounds per hour; is that right?

MR. LAYTON: I would like to see the evidence that you could submit that would show that a turbine could operate at 100 pounds per hour.

MR. SARVEY: Well, I'm asking the questions right now, Mr. Layton.

MR. LAYTON: I didn't ask a question. I made a statement.

MR. SARVEY: Not to be disrespectful --

HEARING OFFICER CELLI: Let's not speak over each other. I'm going to ask that one person talk at a time. So go ahead, question. Go ahead.

MR. SARVEY: So there's no limit on the hourly emissions from this project from PM2.5; is that correct?

MR. LAYTON: Yes.

MR. SARVEY: Where in your analysis do you demonstrate compliance with the PM2.5 standard?

MR. LAYTON: We demonstrated a modelling compliance, is that what you're asking?

MR. SARVEY: Yes. Do you have anywhere in your analysis that you demonstrate compliance with the 24-hour PM2.5 standard?

MR. LAYTON: On page 4.1-38, what we demonstrated is that the project contributed to an existing violation of PM2.5.

MR. SARVEY: And how did you arrive at that without an hourly PM2.5 limit?

MR. LAYTON: As I said, we assumed 3.0 pounds per hour.

MR. SARVEY: Isn't it customary or required actually to compute the PM2.5 24 hour standard using the 98 percentile combined with the project's maximum emissions?

MS. QIAN: We used the maximum 24 hour average PM10 and PM2.5.

MR. SARVEY: Is that the proper way to compute the 24-hour PM2.5?

MS. QIAN: That's the conservative way of doing this.

MR. SARVEY: Is that the way EPA recommends that you do it?

MS. QIAN: EPA has a new standard that is to take a 98 percentile of daily maximum and we take basically the maximum.

MR. SARVEY: And you didn't do that?

MS. QIAN: We didn't do that.

MR. SARVEY: Why?

MS. QIAN: To be conservative.

MR. SARVEY: So you actually haven't demonstrated compliance with the PM2.5 standard; is that what you're saying?

MS. QIAN: We concluded that the project could contribute to the further violation of PM2.5.

MR. SARVEY: But without that analysis, can you conclude that the project won't cause a violation of the PM2.5 standard?

MS. QIAN: Well, the background is already above the standard.

MR. SARVEY: I'll repeat my question. Is that how you determined whether a project compliance with the PM2.5 standard?

MS. QIAN: Yes.

MR. LAYTON: It is one method. We believe it's more conservative than the 98 percentile. We do not think that if you model this and usually the 98 percentile you would show different impacts than what we show. You probably show less impacts. So we think we did it conservatively.

MR. SARVEY: Has staff reviewed the FDOC?

MR. LAYTON: I believe staff did, yes.

MR. SARVEY: The FDOC on page 56 provides for results of emission testing on said facilities utilizing the sprint LM6000 PC turbines. Five of the seven facilities have never exceeded 2.2 pounds per hour for PM10. The best performing facility, the Gilroy Energy Center has never exceeded two pounds per hour for PM10. Is that not enough to establish a BACT limit of 2.5 or 2.2 pounds per hour?

MS. CABRAL: As I said before, the district decided that BACT would be the technology and not a numerical limit. There is an annual limit based on 2.2. But that would be based on an average if you took a number of tests over time you could expect that it would average

2.2. It's probable. But for a one hour or three hour we don't think the limit is feasible.

MR. SARVEY: The CEC has permitted two recent projects, the Hanford and Henrietta, with 2.2 pound per hour limit. Doesn't that provide you enough information to provide this limit for this project?

MS. CABRAL: The district has decided that the technology is the BACT determination, not environmental limit.

MR. SARVEY: Exhibit 301, page 4.1-33 states that although (inaudible) satisfy the BACT requirements, without surrounding any PM2 or SO2 offsets, the San Joaquin Valley sought and obtained $644,503 of mitigation fee to achieve the emission reductions in San Joaquin Valley. Staff expects at least eight tons of PM -- 11 tons of PM 10 reductions to be achievable through the San Joaquin Valley Air Pollution Control District fee. Does staff expect the project to achieve that 11 tons yearly or just one time for the life of the project?

MR. LAYTON: We anticipate it will be for the life of the project.

MR. SARVEY: And what particular mitigation program do you think that you can arrive with those type of numbers?

MR. LAYTON: The settlement agreement comes with

a menu of options. So I don't know which option might be used.

MR. SARVEY: Do you know what the average life of the Carl Moyer program?

MR. LAYTON: Some of them can be very long and some of them can be very short. Some of the ag engines have been in operation for 50, 60 years.

MR. SARVEY: Does the average of five to seven years sound accurate?

MR. LAYTON: It does not to me.

MR. SARVEY: Okay. Do you propose to use the wood stove program?

MR. LAYTON: Again, as I said, it's a menu of options.

MR. SARVEY: Well, will staff be deciding that? Will --

MR. LAYTON: If you've read the settlement agreement, I guess you could answer that question.

MR. SARVEY: Pardon me?

MR. LAYTON: Have you read the settlement agreement?

MR. SARVEY: Yeah, I have read the settlement agreement.

MR. LAYTON: And what does it say?

Mr. Simpson, I'm not trying to get you. I just

appreciate the fact that --

MR. SARVEY: Mr. Sarvey --

MR. LAYTON: My vision is going, I apologize.

HEARING OFFICER CELLI: Let's continue. The questioner is Mr. Sarvey and the witness is, among others, Mr. Layton. Go ahead.

MR. SARVEY: No fun, Matt. Can't have fun.

HEARING OFFICER CELLI: Mr. Sarvey, how much more do you think you have?

MR. SARVEY: Just a couple more. I'm trying to sort through ones that are important so I don't have to ask a million more.

HEARING OFFICER CELLI: Okay.

MR. SARVEY: Page 4.1-8 of your testimony, Exhibit 301 states that each combustion turbine would use dry low NOx combusters to maintain low levels of NOx formation while ensuring complete combustion of fuel. Is this project really using dry low NOx combustors?

MR. LAYTON: Apparently we do have a correction to make. I believe it is using the water injection for NOx control.

MR. SIMPSON: I didn't hear you.

MR. LAYTON: Apparently there is a mistake in the FSA. The project is using water injection for NOx control.

MR. SARVEY: Does the Bay Area Air Quality Management District currently have PM2.5 emission reduction credits available?

MS. CABRAL: The Bay Area does not regulate PM2.5 directly as of yet. We're working on a rule the include PM2.5 as a separate pollutant. If we need to use offsets that already exist, we'll have to analyze them to see if we can determine what portion of a particular set of offsets would be PM2.5. But all of those decisions have not been made yet.

MR. SARVEY: Last question, Mr. Celli. What monitoring station is closest to the highest PM2.5 impact in the project? Do you want me to answer it for you?

MR. LAYTON: Yes, please.

MR. SARVEY: Livermore.

MR. LAYTON: Thank you.

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

MR. LAYTON: Mr. Sarvey, I did get your name correct. There are a couple of conditions that do limit the pounds per day of PM10 in pounds per year. It's not an hourly or three hour PM limit.

MR. SARVEY: Thank you.

HEARING OFFICER CELLI: There's no question.

MR. SARVEY: There's no question there.

MR. LAYTON: But it's AQ 9 and AQ 10.

HEARING OFFICER CELLI: I'm going to ask people on the phone to please put your mute buttons on because we're getting background noise. So if you're on the telephone, if you're a Web Ex participant, we love having you here. We welcome your participation, but we're going to ask you to mute your phones because we don't want to hear your dogs barking.

So we are with Mountain House Community Service District. Did you have any questions?

MR. GROOVER: One question based on the testimony. You stated that the average limit for PM2.5 I believe it was was 2.2 pounds. But that was the average over the year. Would that assume the 1400 hours of run time that we used in earlier questions by Mr. Sarvey? Or is that the 4,000 hours that are permitted. What is that average 2.2 what hourly run time does it use?

MS. CABRAL: The plant has an overall limit of 16,900. So the four turbine would be allowed to run up to 16,900. The annual limit is based on that number times 2.2.

MR. GROOVER: Thank you.

HEARING OFFICER CELLI: I just want to acknowledge and thank you for being the first person who said I only have one question and only asked one question. So thank you very much for that.

Mr. Dighe, any questions of these witnesses?

MR. DIGHE: Did the BAAQMD run the air disbursing models?

MS. CABRAL: The district ran a risk assessment model. The district did not run a model for criteria pollutants. The reason is is that it's not a PSP project, meaning a major source more than 100 tons. And therefore our rules do not require that we perform that modeling.

MR. DIGHE: But the extent of dispersion of the pollutants, what are the parameters of finding out how far the pollution is going to be effective? Did you do any study of that and CEC policies (inaudible) study on that? Like will it touch (inaudible) will it touch Lathrop?

MR. LAYTON: I'm not sure I understand your question.

MR. DIGHE: So basically I'm asking the effects of the air pollution. I'm assuming it is going to be (inaudible) as you go further away from the power plant. So was that study been done by either CEC or BAAQMD?

MR. LAYTON: I believe the applicant did modeling and the CEC did modeling, air dispersion modeling of the pollutants.

MR. DIGHE: What are the health impacts of this power plant?

DR. ODOEMELAM: What is your question?

MR. DIGHE: According to you, what are the health -- what are different health impacts of this power plant?

DR. ODOEMELAM: I'm sorry. I don't understand you.

HEARING OFFICER CELLI: The question is -- according to you, what are the health impacts from this power plant?

DR. ODOEMELAM: The health impacts from the emissions for the air toxic?

MR. DIGHE: Yes.

DR. ODOEMELAM: We judge them by in the testimony risk of cancer and non-cancer health effects. And the indices are very much below the levels of significance.

MR. DIGHE: Can you repeat what you said, the last statement?

DR. ODOEMELAM: I don't quite hear you.

MR. DIGHE: Can you repeat your last statement?

DR. ODOEMELAM: There is numbers of far below levels that staff could consider significant. Cancer risk is probably 77 in a million. It is really (inaudible) numbers. And you compare that with the background cancer risk of 330,000 in a million. So it (inaudible) numbers and (inaudible).

MR. DIGHE: What about the impacts on the health

for example as to Mountain House what are the effects of this (inaudible) can you talk about that?

DR. ODOEMELAM: (inaudible) approach to get the risk at the highest levels number or the maximum. The risk of the maximum exposure to individual and definitely screening analysis and impact is low and there's no (inaudible). So to the extent that the risk is very insignificant anyway, then we consider.

HEARING OFFICER CELLI: We're going to just take a moment. We need to break. Just so we're going to mute the people on the phone and then reopen the podium and host. And then if we want to, we can unmute everybody later. But the problem is we're getting this telephone business. So Lynn, tell me when we're back.

Okay. We're good to go. I'm sorry for the interruption.

Go ahead, Mr. Dighe.

MR. DIGHE: (inaudible) the power plant Mountain House and the Mountain House community there is a high pollen -- high pollen concentrations. Are you aware of that?

DR. ODOEMELAM: The area around Mountain House is what?

MR. DIGHE: High pollen.

HEARING OFFICER CELLI: High pollen area?

MR. DIGHE: Hi pollen. P-o-l-l-e-n.

DR. ODOEMELAM: Well, we would not measure pollen directly. I mean, pollen has health impacts that are different from the pollutants that we're dealing with.

MR. DIGHE: (inaudible) high pollen less pollutants, is there a study on that?

DR. ODOEMELAM: Study of asthma?

MR. DIGHE: Yes.

DR. ODOEMELAM: Asthma is a complicated issue, as we know. We don't quite now what -- asthma,

HEARING OFFICER CELLI: We need to speak right into the microphone.

DR. ODOEMELAM: The case for asthma is out of the reason (inaudible) pollutants in the first place. We don't know what causes asthma. We know it is based on many factors, some of which are socioeconomic conditions, racial components to it. But the present approach is to minimize pollutants from sawdust of this sort so that it will minimize potential for exacerbating asthma. But we do not specifically -- we don't know what that (inaudible) asthma so we didn't set a specific level for any sort. So the approach is to clean up the (inaudible) and to ensure that emissions (inaudible) by the technology that (inaudible) facility of this sort. But we don't set any specific levels as to that would prevent asthma, no.

That's not our approach.

DR. ODOEMELAM: So what are the long term impacts of these air pollutants on health to (inaudible) close to the power plant? Specifically for kids and for elderly people.

DR. ODOEMELAM: As I learned earlier, we divided pollutants into criteria pollutants which are the ones dealt with (inaudible) and as opposed to the non-criteria pollutants. And our findings on the non-criteria pollutants is that the levels are just (inaudible). But for the criteria pollutants, that is the reason we have specific technology requirements offsets that's offset in emission reductions and (inaudible). So we have those groups of pollutants differently.

MR. DIGHE: Can I specify that those type of pollutants that are different than you mentioned --

HEARING OFFICER CELLI: Dr. Odoemelam, if you would please speak right into that microphone. We're having a hard time hearing you.

MR. SIMPSON: I can't understand.

HEARING OFFICER CELLI: Please hold it up and speak about that far away from the microphone and we'll hear better.

DR. ODOEMELAM: On public health (inaudible) two in my analysis --

HEARING OFFICER CELLI: Can you speak right into that microphone, please.

DR. ODOEMELAM: (inaudible) any analysis to identify non-criteria pollutants for which we established the potential for impacts by comparing levels that were known carcinogen impacts with what we call RELs, relative exposure, REL. That is the approach for this pollutants. But for the criteria pollutants in the air (inaudible) is just a matter of establishing that there will be levels that do not violate specific air quality standards which are specified in air quality section.

MR. DIGHE: In Italy conference if I remember correctly, the few of the residents (inaudible) were asking for putting the (inaudible) the different facts on health categorized by the pollutants. I didn't see that in the staff assessment.

DR. ODOEMELAM: Well, we try to have a conservative we are in our analysis. For instance, as I indicated, we (inaudible) in case of the cancer risk which is the most sensitive (inaudible) that we use. We assume that the individual that's exposed at highest level would be exposed at the same spot for 70 years. That's how conservative we are in our analysis. So absent that approach and the risk is still below significance level, we'll are confident that the risk is in significant.

MR. DIGHE: So am I hearing that the risk 2.5 miles close to the power plant or seven miles (inaudible) is going to be exactly the same? Is that what --

DR. ODOEMELAM: No.

MR. DIGHE: You're stating?

DR. ODOEMELAM: No. (inaudible) but it could be significant anywhere around the project area because again we (inaudible) analyze, identify an individual which is maximally exposed. And I assume that that individual will be (inaudible) for 70 years and exposed at that level. And we establish that risk of significantly lower than what we consider significant. So we are confident that the emissions will not be of any significance.

MR. DIGHE: So worst case scenario? Is that the worst case scenario that you just mentioned?

DR. ODOEMELAM: Yeah. That an individual would be exposed at the spot that has all the pollutants at the highest level and would be exposed considerably or constantly for 70 years. That is as conservative as you can get.

MR. DIGHE: So if it's (inaudible) community I know there are a lot of people in the community specifically close friends (inaudible) with asthma issues. And (inaudible) 2.5 miles that's the reason some of the questions are thrown out there. What's the -- again my

question I think comes specifically for (inaudible). Is that something you think we should be worried about because of this problem and the pollen concentration?

DR. ODOEMELAM: Again, we try to identify the pollutants from the source. Pollen will not be from the source. That is for a different kind of control. In this case, we try to recommend -- identify to the commissioners who will make the decision that there are two types of pollutants to worry about. There are one from which there are health quality standards. Those are the ones that are dealt with in our air quality section. And there are all kinds of (inaudible); technological reduction from (inaudible). For air toxics, we're talking about the highest levels you will encounter right after emission. Beyond that it's not like NOx and the other pollutants which are (inaudible) PM10. And air toxic that will be reactive so they'll react and diminish significantly (inaudible) from the source. So when the highest level that is near the fence line (inaudible) is insignificant, it will be even less significant among your community as we get in the analysis. That is for these pollutants for the air toxics that we assess in public health analysis. And that's different from the air quality section in which there are all kinds of requirements. We are sure that on the average emissions would be lowered than significant in

terms of added to those that are already exceeded the existing thresholds.

MR. DIGHE: So if it's already lower (inaudible) why are the GHG emissions standards being stricter and stricter? What is the (inaudible) do you think? (inaudible) correlate GHG emissions and impacts? It's already really low, it's insignificant. Why are you making the GHG emissions standards stricter and stricter? What is their advantage of doing that? Why is the State doing that?

DR. ODOEMELAM: Are you addressing air toxic?

MR. DIGHE: Yes.

DR. ODOEMELAM: Well, it's technology driven. We're required best combustion practices (inaudible) area of control (inaudible). Those are the cutting edge of the technology that is required.

Of course, you would need reduction to the extent possible. So to the extent that applicant would no allowance and potential best available control technology will require them to get as low as (inaudible) and that is (inaudible) because technology (inaudible) control will have to get better and better and better. (inaudible) to follow that path is make them (inaudible) as we get more confident that we can reach those levels.

HEARING OFFICER CELLI: Allow me to interrupt for

a moment.

Mr. Petty, is this coming through okay for you? Okay. Good.

I'm still having a hard time hearing you, Mr. Odoemelam. So if you wouldn't mind, I need you to really speak right into that microphone.

How many more questions, Mr. Dighe?

MR. DIGHE: Three more.

HEARING OFFICER CELLI: Please, go ahead.

MR. DIGHE: This is probably for you. This is a (inaudible) cycle commission. If it was a combined cycle, can you talk about how much increase efficiency it would have and how would it effect pollution?

MS. CABRAL: It could work -- there's various ways this a combined cycle turbine would be different. Usually, a combined cycle turbine will run more time. Usually, it will have what's called a duct burner, which means that they would burn fuel in the turbine and they would also burn fuel in the heat recovery steam generator. And you would expect the combined cycle plant to be up much more time. As I've explained, somewhere in the FDOC a simple cycle would not be allowed to run mentioned earlier than 60 percent of the time. The combined cycle plants that we're looking at are expected to run 90 percent of the time.

So for your particular community, if it were combined cycle, I would have to conclude that there would be a higher level of pollution. But it would be more efficient and the CO2 emissions per megawatt would be less. But on a per hour basis, there would be a higher level of pollutants.

MR. DIGHE: So you (inaudible) on the peaker plant and the combined cycle (inaudible) pollutants.

MS. CABRAL: It would run longer. It would run more.

MR. DIGHE: Did you -- did San Joaquin Air Quality work with you for mitigation as far as getting the (inaudible) of pollution?

MS. CABRAL: San Joaquin District did not comment on the PDOC.

MR. DIGHE: Did they talk to you about the amount of pollution when they were putting the mitigation in place?

MS. CABRAL: I did not communicate with San Joaquin County. I did look at some of their documents, their clean air plan documents. But they did not talk to me. They were (inaudible) notice.

MR. DIGHE: Thank you.

HEARING OFFICER CELLI: I am sorry. I didn't hear the last part of your -- you said they were what --

MS. CABRAL: They were sent a letter.

HEARING OFFICER CELLI: Okay.

MR. DIGHE: What are the effects of these air pollutants on water? (inaudible)

MS. CABRAL: I can't hear you.

MR. DIGHE: It's getting late. I'm tired.

What are the effects -- let me rephrase. What are the different effects of these area pollutants on the open water bodies around the power plant? Did you do any study or did any other staff member contact you to understand the effects on the water?

MS. CABRAL: I don't know. We did not do analysis. CEC may have an answer.

MR. DIGHE: Can CEC take this question?

MR. LAYTON: We did not do that specific analysis. The concern generally is from NOx it's deposition on both the land and water what we found the nitrogen deposition is a very difficult subject. So more importantly, we require that NOx be mitigated. So the net from this project is a decrease in NOx emissions in the NOx inventory. So the effects on water will probably be diminished with the implementation of the mitigation that's required.

HEARING OFFICER CELLI: Anything more?

MR. DIGHE: I have one more question.

HEARING OFFICER CELLI: Please.

MR. DIGHE: What are the impacts on health when you use such water?

DR. ODOEMELAM: Now, the air pollution standards have (inaudible) and standards. Exposure to humans, the humans are more sensitive than animals or even fish. So standards that we set with human being in mind is most sensitive that if you establish that as adequate to protect against humans that is essential (inaudible) some levels to be less important when dealing with the air pollutants is dissolved on fish under the secondary standard. So the human is considered the most sensitive (inaudible) to use for the standards.

MR. DIGHE: Since he mentioned specifically, I have one more question.

HEARING OFFICER CELLI: Let this be your last question.

MR. DIGHE: So also I'm hearing there is an effect of these pollutants on the water bodies specifically for (inaudible) and the fish you just mentioned. Is that correct?

DR. ODOEMELAM: Theoretically, yes.

MR. DIGHE: What is that? What's the -- how does it effect?

DR. ODOEMELAM: It's not a direct impact. It

will have to dissolve into water for the fish. So you can see how to humans it's direct inhalation and we're most sensitive. So we look for the sensitive human. And if you can protect against human being, then there are impacts on plants and water and fish there is a secondary standard. So if you protect against humans with the (inaudible) so we're more sensitive than wild animals, for instance.

MR. DIGHE: So just for the record, the effects on water because of these air pollutants was not studied; correct?

DR. ODOEMELAM: The effects (inaudible) in the air pollutants and themselves. But what type of pollutants and levels (inaudible) you can imagine much of that you have to emit before you make a difference in a fish or for you to drink it when it's already dissolved. So when humans are exposed to it directly, so we're most sensitive for (inaudible) standards then (inaudible) impacts on fish when the pollutants will have to dissolve and then secondary to the fish.

HEARING OFFICER CELLI: That was the second time he gave you that answer. So anything further?

MR. DIGHE: That's it.

HEARING OFFICER CELLI: Thank you. Mr. Wilson is chomping at the bit.

MR. WILSON: No comment.

HEARING OFFICER CELLI: Mr. Singh, please.

MR. SINGH: So I'm trying to see from where to start.

HEARING OFFICER CELLI: I need you -- Mr. Singh, I'm having a hard time hearing you.

MR. SINGH: So this is regarding the simulation model. And the data collection that we made and the data input to the simulation model. I believe that all the data collection was done in Tracy with the methodology department, Tracy meteorological; is that correct?

MS. QIAN: No. As you can see on page 4.1-41, we have answered the question about the meteorological data. In the workshop in November 2010, we identified the social meteorological data as Trans 8 airport. But the meteorological data we used were from (inaudible) formerly located along Patterson Pass Road, which is half mile from the Mountain House Community District.

MR. SINGH: Okay. Patterson.

MS. QIAN: Pass Road.

MR. SINGH: It's half a mile away from here?

HEARING OFFICER CELLI: Speak louder, please.

MR. SINGH: Is it a half a mile from here.

MS. QIAN: From the Mountain House Community Services District.

MR. SINGH: And before that, it was the Tracy meteorological data, right?

MS. QIAN: The air quality data is from the Tracy airport.

MR. SINGH: So when you collect the data, do you also see the calibration done for all the increments are which are correcting this data? Did you see the (inaudible) and how often the calibration is being done to all the equipments?

MS. QIAN: These data are certified by ARB. So we didn't see the calibration.

MR. SINGH: So you make an assumption since somebody's basically certified the data but you do not see whether those certification (inaudible) output is out of the calibration of these equipment and the collecting data. So you rely on some certification. So is that certification it's a State approved or federal approved they gave you for its general subcontractors collects the data and he stamp it and you use it.

MS. QIAN: We follow the procedures the guideline by EPA air quality modeling basically with meteorological data should have 90 percent more than 90 percent completeness. So it's approved by the ARB. So we didn't do further calibration of this data.

MR. SINGH: But do you know for the fact that

they do have a procedure in place to calibrate all of the equipment being used for the collection of the data? And they do the standardization of those equipment every year, every quarter, every six months?

MS. QIAN: You repeat your question?

MR. SINGH: Do you know for the fact that the equipments are being calibrated quarterly or semi-yearly or yearly when they certify the data? Is it a procedural guideline that they follow in calibration process?

MS. QIAN: I believe ARB has done procedure.

MR. SINGH: Okay. So when we talk about dispersion -- air pollution dispersion models, what is really being considered?

MS. QIAN: What's that?

MR. SINGH: What was the (inaudible) distribution in the air dispersion model?

MS. QIAN: (inaudible) distribution in the basis of the model.

MR. SINGH: Caution distribution?

MS. QIAN: Yes.

MR. SINGH: If you don't mind, you know, did you run the filtration? (inaudible).

MS. QIAN: I did.

MR. SINGH: Can you please tell me how many years of experience you have in running the simulation model?

MS. QIAN: I have a Ph.D. in air quality modeling.

MR. SINGH: But hands-on experience.

MS. QIAN: Five years of experience.

MR. SINGH: Okay. So do you think if a person with 15 years of experience who does a simulation can do a better job than a person with five years of experience?

MR. WHEATLAND: I'm going to object.

STAFF COUNSEL WILLIS: Objection.

HEARING OFFICER CELLI: Sustained. Argumentative. Next question.

MR. SINGH: So now the data point was only one. Does the EPA tell you that the data point has to be done or it has to be simulation (inaudible) from three (inaudible) models and then the simulation need to be done from the three different sectors being collected?

MS. QIAN: One off site data is enough.

MR. SINGH: And that is what the procedure guidelines of the EPA?

MS. QIAN: Yeah.

MR. SINGH: Are you sure about it?

MS. QIAN: Yes.

MR. SINGH: So in your Ph.D., I believe you must have run lots of simulations and there are three points of sectors collections being determined at three different

location; is that correct? Or you only go with one simulation collection of data?

MS. QIAN: About my Ph.D.?

MR. SINGH: Yeah.

MS. QIAN: I don't know what's your question.

MR. SINGH: Anyway, so coming back to the pressure (inaudible) and the speed of the air, so if you put one data point in the center of Mountain House, how many is the data (inaudible) from half a mile being taken from here? And that simulation model being run?

MS. QIAN: Could you repeat your question?

MR. SINGH: In the Mountain House, let's say we put one (inaudible) in the center of Mountain House to collect the data. And the data we collect from (inaudible) how much deviation in the data you can expect? Did you run that simulation?

MS. QIAN: Actually, the applicant has provided data explanation about the representativeness of the meteorological data collected from the Patterson Pass Road. Basically, they compared different windrows from different stations and then find the similarities in whipped patterns. So we don't think there is a need to do further modeling using different data sets.

MR. SINGH: So can I assume for the fact on the record that you relied on the data of what applicant

provided to you?

MS. QIAN: Based on the similarity of the surrounding topography and land use, we think that the meteorological data we used were appropriate and representative.

MR. SINGH: So -- but you did not do your own analysis on that what applicant did?

MS. QIAN: We did not do any further analysis.

MR. SINGH: So let us say for one single day as I'm reading on page number -- average temperatures, I think you took the average temperature from 35 degree Fahrenheit and during the winter season. So let's say for one single day that temperature drops to ten degrees Fahrenheit. In that particular day, do you think the plumes will be hovering closer to the earth than as compared to the temperature which is 35 or 50 degrees Fahrenheit?

MS. QIAN: The model deals every kind of meteorological conditions. So it also considers about the temperature difference from --

MR. SINGH: I see that the average that you have taken is weekly, monthly, and yearly; is that correct?

MS. QIAN: Could you point me which page are you looking at?

MR. SINGH: I read somewhere. I cannot go to

that page.

My question is one single day if the climate conditions changes and the temperature goes to close to negative, in that case, does the plumes that are 35 degrees Fahrenheit versus negative temperature? Do you think the plumes could become below (inaudible) the surface of (inaudible) which would be moving 20 feet above the earth?

MS. QIAN: It depends on the stability of the atmosphere and the turbine levels.

MR. SINGH: So you think that worse condition should have been considered? Because in Mountain House the reason I'm asking this question is there have been many instances that the temperature goes to even ten in the night.

MS. QIAN: We have four years of meteorological data which includes every kind of meteorological conditions. So I think we can basically consider the worst case scenarios.

MR. SINGH: But --

MS. QIAN: We also did fumigation analysis.

HEARING OFFICER CELLI: And that answered the question. Did you have any sense how many more questions you have?

MR. SINGH: I have three more questions.

HEARING OFFICER CELLI: Thank you.

MR. SINGH: Coming down to population distribution, I would talk to the health department. So as the population distribution, what was your population distribution model in which the health are being effected by these type of plants?

DR. ODOEMELAM: I am sorry.

MR. SINGH: Population distribution means, okay, the age from one month to two year old year to five year old child, five to ten year, ten to 20 year, 20 to 30 year, 30 to 40 year of the population. So how these type of plants they impact the various age population people?

DR. ODOEMELAM: As indicated in our analysis, we studied that the standards, the air quality standards themselves are reference exposure levels that we using for criteria pollutants that those are established to ensure protection of the most sensitive individuals. First of all, in cases where the standards are established for animal studies, we look for the most sensitive animal for that pollutants and we look for the most sensitive end point (inaudible) and 75 (inaudible). So (inaudible) intended indicated in our analysis to ensure protection of the most sensitive includes as you know children who are more sensitive than adults, people with asthma or people with preexisting conditions so that all these standards

that we established have all these (inaudible) and ensure protection of the most sensitive, in this case within the population the most sensitive being children or adults or people with preexisting conditions who are just that (inaudible) and then we are confident that everybody's protected.

MR. SINGH: So basically am I understanding correct that kids are more sensitive to these type of pollution as compared to 15-year-old or 20-year-old kid?

DR. ODOEMELAM: Yes, because if they have more of the pollutants (inaudible) of their body.

MR. SINGH: So in your case, you're taking the most sensitive cases to study the impact?

MR. SINGH: Yes. Standards and (inaudible) ratio protection of the most sensitive.

MR. SINGH: So coming back to NOx and SOX mitigation, I believe like you guys provided -- I'm not sure whom to ask this question. When the mitigation being done by air quality district, now as I hear the mitigation has been done by giving the farm people replace their diesel engines. But diesel engines don't create NOx and SOX; is that correct? And how are you going to see the NOx and SOX are mitigated by San Joaquin people?

MR. LAYTON: Any combustion source will create NOx. And most combustion sources because of fuel, most

fuels have some sulfur in them create SOX. So any engine that's burning some kind of fuel will create NOx and SOX, CO, VOC, all the pollutants.

HEARING OFFICER CELLI: So we're at question number 3 D or E at this point.

MR. SINGH: Okay. That's it. Thank you very much.

HEARING OFFICER CELLI: Thank you very much.

I'm not going to let you do it again, Mr. Sarvey. You're messing with me.

Mr. Simpson, you have some questions for these witnesses?

MR. SIMPSON: I've got a couple of questions starting with the air district. There is another source on this parcel. Does that make this a modification of the facility?

MS. CABRAL: I don't know of anything about the other source.

MR. SIMPSON: Okay. So the air district -- is the air district required to respond to comments on the PDOC?

MS. CABRAL: We do respond to comments.

MR. SIMPSON: Did you respond to my comments?

MS. CABRAL: Your comments were untimely.

MR. SIMPSON: I see.

HEARING OFFICER CELLI: I think I'd take that as a no.

MR. SIMPSON: And were my comments untimely because you didn't provide me notice after I had asked? Received notice?

MS. CABRAL: Our requirements are to provide notice by newspaper. We provided notice in four newspapers in and around the Mountain House around. As a courtesy, we send e-mails notice or mail notices to people who have requested notice. You did not request notice. You did not request -- we do not have a request by you for notice about all power plants or about this one in particular. We know that you're interested in the Russell City, but we have not received -- we had not at that time received any such request from you and we were not obligated to send you a notice. We attempted to send you notice as a courtesy, but it's not a legal obligation.

HEARING OFFICER CELLI: Can I just say as a matter of relevance, the PMPD is not going to look at all and whether there was adequate notice or anything like that between whatever the air quality management district did. So I'm going to ask that you focus on things that are in our -- that we can handle up here. But whether they gave you adequate notice or not, we don't really have jurisdiction over that.

MR. SIMPSON: Oh, good. Good. Thank you.

HEARING OFFICER CELLI: I'd like to move to something for --

MR. SIMPSON: Thank you. I was under the impression that the CEC would be adjudicating the issues that I have with the FDOC. But that's --

HEARING OFFICER CELLI: Ask the questions about the air quality stuff, but notice, let's not good there.

MR. SIMPSON: Mr. Layton, where's Brewster Birdsall?

MR. LAYTON: He's on vacation.

MR. SIMPSON: I see. How long has he been on vacation?

MR. LAYTON: I think he left on Tuesday. He should be back on the end of the week.

MR. SIMPSON: Has anybody on the panel participated in the conversion, proceeding to convert a simple cycle to a combined cycle facility?

MR. LAYTON: I worked with Mr. Birdsall and Mr. Will Walters when we've done the conversions or we've worked with applicants who are proposing to convert Henrietta, Hanford, and Tracy.

MR. SIMPSON: From simple cycle to combined cycle?

MR. LAYTON: Yes.

MR. SIMPSON: And what's the basis for that conversion?

MR. WHEATLAND: Objection. Relevance.

HEARING OFFICER CELLI: I am sorry. I didn't hear the question. Ask the question -- what was the question?

MR. SIMPSON: What I'm trying to understand is why simple cycle facility is being built here now when other simple cycle facilities are now being converted to combined cycle facilities. So my question was --

HEARING OFFICER CELLI: And the objection is relevance? I think that, Mr. Layton, you have the expertise to answer that question.

MR. WHEATLAND: Well, Your Honor, he's not asking him the air quality impacts. He's asking him the reasons for one selection of one technology versus another for this project.

MR. SIMPSON: I didn't say that. That's not what I said.

HEARING OFFICER CELLI: What's your question, Mr. Simpson?

MR. SIMPSON: My question is Mr. Layton is participating in conversions of facilities from simple cycle to combined cycle. So is that something that we should expect in this facility or are we starting with the

wrong technology or why do we have on one set of the fence we have a new simple cycle going in and on the other side of the fences we've got simple cycle being converted to combined cycle and what are the air quality effects of those decisions?

STAFF COUNSEL WILLIS: Objection. Calls for speculation.

HEARING OFFICER CELLI: It does call for a little speculation. But I'm also concerned that these witnesses lack foundation. Because really, that's the applicant's call. And I think that's a question better directed to the applicant. Why did you design it this way instead of the other way? Why is it a peaker instead of combined cycle. But I'm not sure that's appropriate for staff's witnesses.

MR. SIMPSON: Well, my question specifically is to Mr. Layton because he's participating in both proceedings. So I would think he'd have some insight.

HEARING OFFICER CELLI: I'm sorry. I didn't hear the last of that.

MR. SIMPSON: I would think he would have some insight.

MR. LAYTON: I didn't have any money on the conversion. I was not paying for the conversion. I was just responsible for analyzing the air quality.

HEARING OFFICER CELLI: Does that help?

MR. SIMPSON: Sure. Was there an air quality improvement by going combined cycle?

MR. LAYTON: It depends.

MR. SIMPSON: Depends on --

MR. LAYTON: I guess what do you call an air quality improvement? Increased emissions? Increased offsets? I mean, because when you convert, more likely you're going to operate more. More likely. These are all hypotheticals. At the same time, you get more offsets. It depends on the -- I think some of these projects were Tracy -- some of them already had offsets.

But I think what you should do is look at the greenhouse gas section. And one of the references in the greenhouse gas section is is called the framework where it discusses how the system might be built out. And there is a need for peakers. So the applicant has to be proposing the peaker and that's what we're reviewing here. If you look at Table 8 on page 89, you'll see some of the benefits or some of the characteristics of a peaker. And if the applicant wanted to build a system or build a project that had different characteristics, then this table would change.

But again, it's a decision the applicant has made, but given that we are looking at this project and

it's a peaker, we evaluated the characteristics that a peaker has. So if they wanted to convert, that would be a different analysis.

MR. SIMPSON: So are there combined cycle peakers?

MR. LAYTON: There are a lot of peakers out there. Some of them are steam turbans. There are a variety of things that operate for a very limited number of hours, yes.

MR. SIMPSON: Yes, they're combined cycle peakers I think what is what I heard.

MR. LAYTON: There are fast response peakers or fast response cycles.

MR. SIMPSON: Thank you.

MR. LAYTON: I don't think the capacity factor of a combined cycle is done in the peaker range of three to five percent.

MR. SIMPSON: I didn't understand that.

MR. LAYTON: You asked if there was a combined cycle peaker. There are peakers that operate in three to five percent capacity factors. If a combined cycle was going to operate at three to five percent, then yes, I would call it a peaker. I have not yet seen a combined cycle built in the state of California that operates at that capacity factor. You could. I don't think it would

be prudent.

MR. SIMPSON: Thank you.

You mention, Mr. Layton, since you're making a mistake in the SSA, are there other mistakes?

MR. LAYTON: Not that I'm aware of.

MR. SIMPSON: Were you aware of the last mistake before you were asked about it?

MR. LAYTON: No, I was not.

MR. SIMPSON: Thank you.

Ms. Cabral, did the air district participate in any air quality workshops with the CEC?

MS. CABRAL: Could you repeat your question?

MR. SIMPSON: Did the air district participate in any air quality workshops or other proceedings with regard to this?

MS. CABRAL: The air district held no hearings on this project.

MR. SIMPSON: I understand. Did the air district participate in any CEC workshops regarding this project?

MS. CABRAL: I personally have been here -- this is the fourth time, so yes.

MR. SIMPSON: So you did. Did you record comments?

MS. CABRAL: I may have taken notes.

MR. SIMPSON: Okay. Did you respond in the FDOC

to any comments you received at workshops?

MS. CABRAL: My recollection is that I was not asked many questions at the workshops or very minimal questions.

MR. SIMPSON: Okay. Is pollen PM?

MS. CABRAL: I think so.

MR. SIMPSON: Do greenhouse gases contribute to the efforts of other pollutant as a precursors or by trapping them in the local area?

MS. CABRAL: The district has written papers about the effects of climate change of increased temperatures on ozone. So I would say probably the official stance of the district is that increased temperatures overall would increase pollution.

MR. SIMPSON: So are there potential localized health risks associated with greenhouse gases?

MS. CABRAL: Not that I know of.

MR. SIMPSON: And for the health expert, can I ask you those same questions? Are localized health risks associating with carbon dioxide or greenhouse gas?

DR. ODOEMELAM: Probably.

MR. SIMPSON: You said probably?

DR. ODOEMELAM: Depends on the circumstance. Theoretically, yeah, there would be areas of concentrated exposures and concentrated levels.

MR. SIMPSON: Thank you.

Was there a cumulative analysis done that included proposed or approved projects that may not have been built yet?

MS. QIAN: Yes, we did include Altamont and the Byron cogen and the waste management cumulative analysis.

MR. SIMPSON: Thank you.

Was there a nitrogen deposition study?

MS. QIAN: What's that?

MR. SIMPSON: Was there a nitrogen deposition study?

MS. QIAN: No.

MR. SIMPSON: I see. For health expert, it sounds like you were saying humans are considered the most susceptible for the analysis. So a human is more susceptible than a canary?

DR. ODOEMELAM: The animals -- air quality standards (inaudible) human protection. We assume that humans are more sensitive than any other species.

MR. SIMPSON: I see. I'm good.

HEARING OFFICER CELLI: Thank you, sir.

Mr. Wheatland, cross-examination.

MR. WHEATLAND: No. No questions.

HEARING OFFICER CELLI: Staff, any redirect?

STAFF COUNSEL WILLIS: None.

HEARING OFFICER CELLI: Thank you very much. I'd like to thank all of you, this panel, for participating this these hearings. You are excused. At this time, we will take a five minute, ten minute -- take a ten minute break. It's now 9:48. Let's come back and we will take the applicant's panel at 10:00. So we will see you at 10:00. Please be back on time and in your seat and ready to go. We are off the record.

(Off record.)

HEARING OFFICER CELLI: We're on the record. What I'd like to do is read three comments into the record from some members of the public.

First was Nazeer Shaik, N-a-z-e-e-r, S-h-a-i-k. He's a member of the Mountain House community. And his remarks are that this plant may degrade the home values which are already in crisis. This plant may also pollute the atmosphere which could cause health issues.

Then we have a comment from Anand Palanisamy, A-n-a-n-d, P-a-l-a-n-i-s-a-m-y, of the Mountain House community, and he said this plant is going -- he or she, I don't know -- this plant is going to pollute the air and also there will be a lot of noise. It will effect beautiful and brand-new community.

And finally we have a comment from Prakash Mohan, P-r-a-k-a-s-h, M-o-h-a-n from Mountain House. He's a

resident. He/she. It will pollute air and I will be lured to move from my house to another place. I don't want to do that. I will be forced. Thank you. Forced to move to another place and they don't want to move.

So you know, these comments are good.

They're useful. I will give them to you in a little bit, Mr. Petty.

And just underscores to need for us to really take evidence and take a look at what the evidence is. Because there are a lot of people running around and making conclusions and saying this or that about the project. Until we've seen it, we don't know. So now we're at that part of the proceedings where the applicant is going to call their witness. So applicant.

MR. WHEATLAND: Well, our witnesses have taken the stand. But I understand that the intervenors are prepared to stipulate to the admission of our air quality testimony by declaration without the need for the witnesses to appear.

HEARING OFFICER CELLI: Let's do this. Before I get to you again, Mr. Wheatland, I took in all of staff's air quality evidence. That's been received now; correct?

STAFF COUNSEL WILLIS: That's correct.

HEARING OFFICER CELLI: And I took in Mr. Sarvey's, all of your air testimony; correct?

MR. SARVEY: No.

HEARING OFFICER CELLI: Except for that one document that we're waiting for.

MR. SARVEY: You haven't taken any of any air quality testimony.

HEARING OFFICER CELLI: I'm going to take that motion right now. So do you have any exhibits you wish to move in with regard to air quality, Mr. Sarvey?

MR. SARVEY: Yes. I'd like to move in Exhibit 403, air quality testimony of Robert Sarvey; 411, the Mulqueeney ranch pump storage. Well, I could -- we can move that now. 412, the PSP increment consumption status report. And that would be what I would request to move into the record.

HEARING OFFICER CELLI: Okay. There is a motion that we receive exhibits marked for identification as 403, 411 and 412.

Is there any objection from staff?

STAFF COUNSEL WILLIS: None.

HEARING OFFICER CELLI: Any objection from Mountain House?

MR. GROOVER: None.

HEARING OFFICER CELLI: Dighe?

MR. DIGHE: None.

HEARING OFFICER CELLI: Singh?

MR. SINGH: None.

HEARING OFFICER CELLI: Simpson?

MR. SIMPSON: No, sir.

HEARING OFFICER CELLI: Applicant?

MR. WHEATLAND: No.

HEARING OFFICER CELLI: Then Exhibits 403, 411, 412 marked for identification are received into the record.

(Whereupon the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: Mr. Dighe, did you have any air quality evidence that you wanted to put in?

MR. DIGHE: I don't think so. All of my (inaudible).

HEARING OFFICER CELLI: Okay. Mr. Singh, did you need to move any evidence in?

MR. SINGH: Can I?

HEARING OFFICER CELLI: Well, let me see what you -- let me get to your page.

MR. SINGH: I have not submitted earlier, but do I have time to submit something tomorrow?

MR. WHEATLAND: Not tomorrow.

MR. SINGH: I haven't submitted any evidence in air quality.

HEARING OFFICER CELLI: Okay. I didn't think so. I thought you did not.

Okay. And Mr. Simpson, did you have any air quality evidence to put?

MR. SIMPSON: I did not.

HEARING OFFICER CELLI: You already had the one exhibit that's already in. Your exhibits are already in.

MR. SIMPSON: And my comments in the FDOC are in, right? The whole FDOC is in with all the comments.

HEARING OFFICER CELLI: Okay. So with that, then we just received 403, 411, 412. And applicant, what are your exhibit numbers, please?

MR. WHEATLAND: They are 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, 14, 21, 22, 33, 34, 37, 46, 52, 5 7, 59, 61, 62, and 65.

HEARING OFFICER CELLI: Okay. So the motion is for the receipt of the following exhibits: Exhibit 1 through 9, inconclusive, 11, 13, 14, 21, 22, 33, 34, 37, 46, 52, 5 7, 59, 61, 62, 65.

Any objection, staff?

STAFF COUNSEL WILLIS: No objection.

HEARING OFFICER CELLI: Any objection, Mr. Sarvey?

MR. SARVEY: No.

HEARING OFFICER CELLI: Mountain House, any

objection?

MR. GROOVER: No.

HEARING OFFICER CELLI: Mr. Dighe, any objection?

MR. DIGHE: No.

HEARING OFFICER CELLI: Mr. Singh, any objection?

MR. SINGH: No.

HEARING OFFICER CELLI: Mr. Simpson, any objection?

MR. SIMPSON: Nope.

HEARING OFFICER CELLI: Okay. Those exhibits are received into the record.

(Whereupon the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: And your representation was there was a stipulation --

MR. WHEATLAND: That's what I've been informed. Perhaps Mr. Simpson can verify that for you.

MR. SIMPSON: My understanding is that none of us have questions for these witnesses.

HEARING OFFICER CELLI: So let me just around so I can ask. Staff, any questions of these witnesses?

STAFF COUNSEL WILLIS: We have none.

HEARING OFFICER CELLI: Okay. Any questions by Mr. Sarvey?

MR. SARVEY: No questions.

HEARING OFFICER CELLI: Mountain House, any questions of these witnesses?

MR. GROOVER: None.

HEARING OFFICER CELLI: I just want to let everyone know that San Joaquin -- is it Air Pollution Control District is here and just so you know.

Mr. Dighe, did you have any questions for these witnesses?

MR. DIGHE: No.

HEARING OFFICER CELLI: Mr. Singh, did you have any questions of these witnesses?

MR. SINGH: No.

HEARING OFFICER CELLI: Mr. Simpson, do you have any questions of these witnesses?

MR. SIMPSON: No, sir.

HEARING OFFICER CELLI: So with that, I think we received your evidence with regard to air quality. There are no questions for these witnesses. We can excuse the witnesses. I want to thank you for being there. I'm sorry you had to hang around for so long.

And with that, I think we can close the record on air quality. Is there anything further on air quality, staff?

STAFF COUNSEL WILLIS: No, we don't.

HEARING OFFICER CELLI: Mr. Sarvey, anything further on air quality?

MR. SARVEY: Nothing further.

HEARING OFFICER CELLI: Mountain House, anything further on air quality?

MR. GROOVER: No.

HEARING OFFICER CELLI: Mr. Dighe, anything on air quality?

MR. DIGHE: No.

HEARING OFFICER CELLI: Mr. Singh, anything on air quality?

MR. SINGH: No.

HEARING OFFICER CELLI: Mr. Simpson?

MR. SIMPSON: No, sir.

HEARING OFFICER CELLI: Then the record on air quality is closed. At this time, I'm going to go off the record for one second.

(Off record.)

HEARING OFFICER CELLI: I'm going to hand the hearing back over to Commissioner Douglas to adjourn for the night. We'll resume tomorrow at 10:00.

STAFF COUNSEL WILLIS: Mr. Celli, before we do that, we had a question on worker safety. There was only the issue of the fire department and not an issue necessarily with staff's assessment. But staff would like

to be here if the fire department is going to be here. Otherwise, we would request that the issue be moved to this -- the fire department

HEARING OFFICER CELLI: Someone is on the phone is saying the fire department would be here.

MS. FARRON: I was on the phone this evening. And I thought I heard you say you were going to move public safety from tomorrow's agenda and I told him tomorrow morning I would try to find out what time for him to appear to enter his testimony.

HEARING OFFICER CELLI: And I better get an identification of the speaker, please.

MS. FARRON: My name is Celeste Farron. I was there earlier, director (inaudible).

HEARING OFFICER CELLI: I am sorry. Your name again?

MS. FARRON: My name is Celeste Farron, Director of (inaudible) Mountain House.

HEARING OFFICER CELLI: Okay. So tomorrow the agenda would be -- unless we need to discuss this further, we would

MS. FARRON: (Inaudible).

HEARING OFFICER CELLI: I didn't hear that.

MS. FARRON: I just spoke with him moments ago, and he said it is an issue that he does need to address

the CEC.

HEARING OFFICER CELLI: Tomorrow I expect to begin immediately at 10:00 with traffic and transportation, which is aviation, followed by socioeconomics, which I hope won't take that long, followed by alternatives. Now, if people are going to be here for fire and worker safety, do you want us to fit that in somehow tomorrow or --

STAFF COUNSEL WILLIS: I was just asked by Mr. Layton since he was the supervisor he would be coming back for that issue. He wanted to know if it was possible to move it to the 7th. But if the fire department would be here, he said he would be willing to come back down for that.

MS. FARRON: Chief Brammel is making a special trip tomorrow to be there tomorrow.

HEARING OFFICER CELLI: Do you know what time he intends to be here?

MS. FARRON: I told him I would notify -- he can arrange his schedule tomorrow to be there at the appropriate time. I told him I would let him know in the morning when I found out.

HEARING OFFICER CELLI: Let me -- the applicant, is there any chance that this is going to settle for worker safety issues?

MR. WHEATLAND: Yes, there is a chance that it could settle.

HEARING OFFICER CELLI: Okay. Let me ask it definitely. Is there a remote chance or is there a good chance?

MR. WHEATLAND: It's --

MS. FARRON: I just spoke with the chief. It doesn't sound like they were reaching an agreement.

MR. WHEATLAND: I'm not that pessimistic. It's better than remote. It's not quite to good, but it's better than remote. We're still having a serious discussion on this one, and it would be our expectation that we can try to settle it.

HEARING OFFICER CELLI: I hate dragging down people, especially from other agencies to sit around all day and then not call their matter.

MR. SIMPSON: How about 1:00?

HEARING OFFICER CELLI: Well, see, the problem is I'm going to have -- see, the beauty of getting rid of traffic and transportation, once I finish with that, then one of my intervenors leaves.

MR. WHEATLAND: If Mr. Curry is able to talk with Mr. Brammel -- Chief Brammel tomorrow morning if Chief Brammel is available to have a discussion, we can try to work this out. The key thing is that we'll need to have

the two of them being able to talk together.

HEARING OFFICER CELLI: Let's do this. If you can -- Ms. Farron and all parties, if we can facilitate in some way the communication between the applicant and Chief Brammel.

MS. FARRON: The discussion has been ongoing today.

HEARING OFFICER CELLI: Good. Then maybe I can get a report back tomorrow morning first thing. And then if we have movement hopefully some stipulation, then we can -- we won't have to drag him into the proceedings. Because I really wanted to stick to the -- do you remember we have that pie chart that we did and we're trying to tackle the big issues up front first. So I wanted to hit --

MS. FARRON: I will note this has been the one issue that Mountain House community service district our intervenors have been standing on. And I would respectfully request we don't move it if the fire chief wishes to have his moment with the CEC.

HEARING OFFICER CELLI: Okay. Well, it is important. And we will -- hopefully we can fit it in if we have to tomorrow. And it seems like we do.

MR. WHEATLAND: One other scheduling issue for tomorrow is as I mentioned earlier today, our witness on

pipeline safety has flown out here to be available tomorrow. So we'd also ask that you take his testimony tomorrow, even if you take the other witnesses on the 7th.

HEARING OFFICER CELLI: I want to say that everyone did a really excellent job of moving along today. I think that everybody did a good job of having ready questions and I really appreciate that. And if we can do that again tomorrow, and if we can move with some alacrity through alternatives, I don't have to give all that preamble information up front like I do on day one. Tomorrow at 10:00, call your first witness on aviation. We hit the ground running. We should be able to tackle all of that. I will make sure that we handle the hazardous materials. So be prepared to ask your questions with regard to the hazardous materials expert that the applicant will be putting on. We're going to take him out of order because we really expected to take hazard materials on day three on the 7th. That's when we really want to hear the rest of the evidence. But we're going to accommodate this.

So with that, traffic and transportation in the morning, followed by socio, followed by alternatives. And I have the feeling socioeconomics might be a little more abbreviated than people think.

Mr. Sarvey, you have a question?

MR. SARVEY: Well, I was just going to say since worker safety and fire protection was my issue, I have no objection to wait until the 7th to hear it.

HEARING OFFICER CELLI: I actually --

MR. SARVEY: I think it will give the parties more time to come to a reasonable agreement. But obviously I defer to your judgment, Mr. Celli.

HEARING OFFICER CELLI: You know what happens when you have an extra day out there, everything starts to pile up on the last day. And that's what I'm trying to avoid doing. Let's do our best tomorrow to get through traffic, transportation, socio, alternatives. And we'll see if we can't get hazardous materials started and maybe worker safety knocked out tomorrow. So that's the plan.

STAFF COUNSEL WILLIS: So we should have our witness here for worker safety

HEARING OFFICER CELLI: It looks that way, yes.

STAFF COUNSEL WILLIS: Do you have a time? Because they have some meetings tomorrow scheduled.

HEARING OFFICER CELLI: Let's put it this way. If we can start tomorrow at 10:00 with traffic and transportation and we move as quickly as we just did, we might be able to get that finished by let's say lunchtime, noon. And then we tackle socioeconomics after that. So mid afternoon. Mid-afternoon seems reasonable.

STAFF COUNSEL WILLIS: Okay.

HEARING OFFICER CELLI: Anything else on scheduling or housekeeping before we go?

MR. SINGH: I have a question. Is socioeconomic and environmental justice combined together?

HEARING OFFICER CELLI: Socioeconomics and environmental justice? The thing about environmental justice is that socioeconomics addresses the statistics of the minorities in a given area. Okay. What are the demographics of the area. But once that's established, if there is an impact, the impact would come from one of the other areas, biology, traffic and transportation, noise, something like that.

Do you understand what I mean?

So all that socioeconomics does is actually sets up some statistical data. But it really doesn't go to impacts, per se. That would then be proven in biology, soil and water, whatever the impact might be. So that's how socio -- socioeconomics deals with things like how many jobs are going to be created. How much tax revenue is going to be generated. How many workers are going to be coming into the area to work on this construction job. That kind of thing.

MR. SINGH: So the environmental justice basically like you don't consider as a I minority

community so we have to start (inaudible) from there where we have to establish the facts we are the minority community.

HEARING OFFICER CELLI: That's socioeconomics. Tomorrow is if we're getting into socioeconomics, then you will want to establish whether there is a minority or not. That's socioeconomics. Now, that's all we do in socioeconomics. Okay. So we don't talk about whether there's an air impact. We've already dealt with air. Or biology or anything. We're just talking about what the statistics are. If I'm not doing a good job, I mean, please. Let me know. But that's what we expect for tomorrow.

And you should read some of the socioeconomics section of other PMPDs are which are all on the Internet and you can get a sense of what the Committee is listening for, what we're looking for in socioeconomics.

Mr. Dighe, you had a question.

MR. DIGHE: Yeah. We had a joined motion and I think you said (inaudible).

HEARING OFFICER CELLI: With regretfully, the Committee denies the motion in its entirety. And so the motion is denied.

MR. SINGH: So in the morning you said the first item that --

HEARING OFFICER CELLI: Oh, Mr. Travis can appear for you. I'm sorry. But, yes, that part is granted. Mr. Travis's participation will be granted and he can represent you. But other than that, the request for translators and the request for a translated publication into native languages is denied.

MR. SINGH: But my understanding was once we establish that we are minority then we are going to take an action on those two items. If we're not able to establish a minority then no action would be taken or the other two items. That's what my understanding was in the morning from Mr. Celli.

MR. DIGHE: Because we believe that -- I mean there's significant facts which clearly prove it's a minority community and staff is kind of ignoring it right now. So I'm confused how can we make this motion. How did you deny --

HEARING OFFICER CELLI: Okay. I'll tell you what the basis for the denial is. Remember, we're granting the motion as to Mr. Travis Miller.

MR. SINGH: But he's not available tomorrow. So do you grant like the continuance second hearing?

HEARING OFFICER CELLI: Oh, the motion to continue?

MR. SINGH: The second hearing. That is what

I've asked for, because Mr. Travis is not available.

HEARING OFFICER CELLI: Oh, I see. No, we're not going to do this because this is a noticed hearing. All of the parties are here. We have people flying out from I don't know where but people are flying in to testify. We're all ready to go. We will take the testimony. Now, so that is -- that motion is denied.

As to the motion with regard to interpreters and translation of the documents, that's purely an economic all problem. The State, we can't even have travel. There just is no money. So there is no budget for translators to come in and translate written documents into whatever languages. Yes, thousands of pages.

MR. SINGH: So do I assume the burden has to be taken by the minorities instead of applicant in this state.

HEARING OFFICER CELLI: Can you state louder?

MR. SINGH: This is a burden that the minority will be carrying because you guys don't have the money. The applicant should take that burden and translate those documents so that --

HEARING OFFICER CELLI: Let me explain that in constitutional terms, you know, if you go into criminal court, you're looking at the loss of life and liberty. And that's a very high priority. And so they always are

entitled to an interpreter in criminal court. But this is an administrative hearing that's not put life, liberty, or property at stake. And as such, there's just not money for that sort of thing. It's just not a high enough priority.

MR. SINGH: But is there any rules, regulations or legislation that deals like this is not being addressed?

HEARING OFFICER CELLI: Is there a --

MR. SINGH: Is there code of conduct or the rules of regulation of Legislature that this will not be addressed like for example you have big -- (inaudible) dictionary. Section so and so it says okay we can't cross-examine our own witnesses on friendly cross-examine. We have established document which says that.

HEARING OFFICER CELLI: Yes, I do.

MR. SINGH: Tell me what section would that be?

HEARING OFFICER CELLI: The section is 1203 of Title 20 of the California Code of Regulations. Basically says that the powers -- I am sorry. The powers in the Chairman. Well, 1203(c). All right. "The Presiding member" --

MR. SINGH: Are we on the record right now?

HEARING OFFICER CELLI: Yes, we are. 1203 subsection (c) says that, "The Presiding member has the

power to regulate the conduct of the proceedings in the hearings, including, but not limited to, disposing with procedural requests, meeting or excluding evidence, receiving exhibits, designating the order of appearance, the persons making oral comments or testimony during the hearings." So this comes under regulating the conduct of the proceedings and that is the section 1203(c).

MR. SINGH: So that goes back to again a simple problem that the minority is not established --

HEARING OFFICER CELLI: No. What that says is that. We ruled and the ruling is the motion is denied. And if you don't understand, you might want to talk to Mr. Travis about that. But that's the ruling.

MR. DIGHE: Can I put a statement on the record?

HEARING OFFICER CELLI: Sure. Go ahead.

MR. DIGHE: So it's like the minority communities not a --

HEARING OFFICER CELLI: There's no fact right now in the record other than allegations that this is a minority community. We're going to find out tomorrow.

MR. DIGHE: That's fine.

HEARING OFFICER CELLI: Let's just assume that it is a minority community.

MR. DIGHE: So now minority community is not able to establish --

HEARING OFFICER CELLI: A minority community is -- there are certain rules having to do with a minority communities in terms of disparate impacts. That means that you can't pollute more on one group of people than everyone else. Basically that's the idea. If there isn't anything about minority -- there's nothing in CEQA that says minorities are entitled to transcripts in their native language or they're entitled to an interpreter. That's --

MR. DIGHE: I understand. I just want to put it so that the minority community is not able to establish a record, right, because of the lack of translators. I just want to say that (inaudible) right.

HEARING OFFICER CELLI: I am sorry. I didn't hear some of the words. He said some of the minority community is not capable of establishing a what?

MR. DIGHE: A record.

HEARING OFFICER CELLI: A record.

MR. DIGHE: Yeah, because of it's not going to establish a record because of the lack of -- because (inaudible) translators and our motion is getting denied, right?

HEARING OFFICER CELLI: The motion is denied. You're here. You're representing Mountain House. We're going to hear your evidence tomorrow on the

socioeconomics. So and we have Mountain House community district here as well. And we're going to hear evidence on what the make up -- demographical make up is of Mountain House.

MR. DIGHE: Yes. But I think you explained that the translate --

HEARING OFFICER CELLI: Whoever is on the phone, I'm going to ask you to please hold off until we're done here. Go ahead.

MR. DIGHE: So I think the motion clearly explains the challenges which we are facing.

HEARING OFFICER CELLI: I understand. I wanted to say --

MR. DIGHE: It's fine. I just want to put it on the record that it's (inaudible)

HEARING OFFICER CELLI: We regret --

MR. DIGHE: Translators to establish a record.

HEARING OFFICER CELLI: I'm sorry that we -- I wish we could. I wish we could have translators. I wish we could have everything published in every language. We just can't. So --

MR. SINGH: That is because California doesn't have the funding. Is that it?

HEARING OFFICER CELLI: That's right. There is no budget for translation. There is no budget for

interpreters for the California Energy Commission hearings. So that's our predicament. So understood that it's difficult. Not only do we have the people with English as a second language as intervenors, we have people with English as a second language who were witnesses. And we do our best to communicate and make a record. And hopefully in the end the right things happens.

MR. DIGHE: Yes, I understand. (Inaudible) as well but (inaudible) lot of statements during the workshops and that we had a lot of people that was in my community with multiple languages. And we just wish that we had the capability of getting those translators so that we could establish a record. And (inaudible) residents and communicating is a challenge. (inaudible) and I tried to get those translator into questions today. You must have seen. I tried my best. But I wanted to -- I want to see if there was a chance that's why we make motion. But that's fine.

HEARING OFFICER CELLI: I appreciate that. And I want you to appreciate also that we stood here and listened to all of these Mountain House people say we're opposed to the project. We are worried about. We have children. We are worried about air pollution. All of that came in. You know, the fact that more people say

that, the information is the same. And so I just -- if your concern is that we're going to get more of the same information from more people, I don't think -- I think that's needlessly cumulative.

MR. DIGHE: Not necessarily. Because I don't think I did the justice in actually translating it myself. It is amazing the diverse finalized languages are there. And I tried my best. And the more and more I talked to people in the community, the more and more I realized how little I know about the different languages. And a lot of questions. And I think (inaudible) should probably be diversified questions instead of the same questions. That's a fact.

HEARING OFFICER CELLI: We are doing our best with what we can.

MR. DIGHE: Appreciate it.

MR. SINGH: If you see the record, all the cards that came, the people that came here, 95 percent were minorities.

HEARING OFFICER CELLI: Certainly they were mostly Asian names. That's true. I'll give you that. So the sample of people who showed up were mostly minority people.

MR. SINGH: Right.

HEARING OFFICER CELLI: So with that, Mr. Sarvey

has a question.

MR. SARVEY: I am sorry. I have one more question. I polled all the parties and about Mr. Powers testifying telephonically tomorrow. Everyone was in agreement, except for the applicant.

HEARING OFFICER CELLI: We're going to allow him to testify. But like I said, this is risky business having people testify by the phone. As you can hear it's --

MR. SARVEY: I understand. I just wanted to make sure it's all right.

MR. WHEATLAND: Mr. Sarvey actually didn't quite represent what I told him. I'm still prepared to accept Mr. Powers testimony by declaration without the need for him to appear. And waive all questions. I understand that staff no longer has any questions. And if there is no friendly cross, there is no reason why his testimony cannot be accepted without him having to appear.

HEARING OFFICER CELLI: Okay. And Mr. Powers is testifying under what topic?

MR. SARVEY: Alternatives.

HEARING OFFICER CELLI: Alternatives. And so essentially that means that your testimony comes in.

MR. SARVEY: I'm going to have him on the phone. If there's no cross or anything, then we'll be done. But

I want to go through the formality of it.

HEARING OFFICER CELLI: If you talk to him, please let him know that a lot of these people call in and they're on their speaker phones. We have no fidelity on speaker phones. He needs to pick up the hand set and actually talk through a hand set to get the best sound that we can. And we are doing our best to accommodate this. But I just hope -- I'm not going to have the techy that I had here today. Matt Dowell was here today. He won't be in tomorrow. So I'm just hoping, knock wood, that Web Ex works properly.

MR. SARVEY: Well, I'll talk to Mr. Powers tonight and I'm talk to Mr. Wheatland in the morning and we'll go from there.

HEARING OFFICER CELLI: Great. Thank you. And Mr. Wheatland had another question.

MR. WHEATLAND: Mr. Salamy reminded me that I moved for admission of our air quality exhibits but I did not move for the admission of our public health witnesses and the two topics were combined. So I'd like to move those at this time, if I could.

HEARING OFFICER CELLI: What are those exhibits

MR. WHEATLAND: Under public health 1, 3, 4, 6, 11, 15, 37, 46, 61, and 62.

HEARING OFFICER CELLI: The motion is to have

Exhibits 1, 3, 4, 6, 11, 15, 37, 46, 61 and 62 received into the record.

Is there any objection from staff?

STAFF COUNSEL WILLIS: None.

HEARING OFFICER CELLI: Any objection from Sarvey?

MR. SARVEY: None.

HEARING OFFICER CELLI: Any objection from Mountain House?

MR. GROOVER: None.

HEARING OFFICER CELLI: Any objection from Dighe?

MR. DIGHE: No.

HEARING OFFICER CELLI: Any objection from Singh?

MR. SINGH: None.

HEARING OFFICER CELLI: Any objection from Simpson?

MR. SIMPSON: No objection.

HEARING OFFICER CELLI: Okay. Those exhibits are now received into the record.

(Whereupon the above-referenced exhibits were admitted into evidence by the Hearing Officer.)

HEARING OFFICER CELLI: And with that, I'm going to now hand over the meeting to Commissioner Douglas.

COMMITTEE MEMBER DOUGLAS: Thank you, Mr. Celli.

I'd like to thank everybody for their hard work today, their constructive focused and helpful questions and helpful to the Committee. So we'll be adjourned today. And see you all tomorrow.

(Thereupon the hearing recessed at 10:39 p.m.)

CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 2011.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277