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Mike Smith, Commissioner Advisor

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Kerry A. Willis, Staff Counsel

Paul Richins, Jr., Project Manager

APPLICANT

Jeffrey D. Harris

Chris Ellison

Ellison, Schneider and Harris LLP

Kenneth E. Abreu, Project Manager

Steve DeYoung

John Carrier, CH2MHILL

INTERVENORS

Elizabeth Cord, STCAG

Scott Scholz

Issa Ajlouny

Molli Dent

Richard Buikema

Laurel Prevetti

City of San Jose

Robert F. Williams

Jeff Wade

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

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good afternoon.

4 My name is Robert Laurie, Commissioner
5 at the California Energy Commission, and Presiding
6 Member of the Commissioners' Committee hearing the
7 Metcalf Project.

8 To my far -- to my far left is Mr. Mike
9 Smith, the Senior Advisor to Chairman Keese, and
10 to my immediate left is Stan Valkosky, the
11 Commission's Chief Hearing Officer, who will be
12 administering this case.

13 Mr. Valkosky will have some business to
14 talk with us about regarding scheduling, but let
15 me offer a comment.

16 Yesterday, Mr. Ajlouny asked a extremely
17 pertinent question in regards to the letter sent
18 to the Committee by the most senior of
19 California's legislators regarding this project.
20 And his question dealt with in light of the
21 receipt of such a letter, do I or the Committee
22 feel we could proceed in an unprejudiced manner.

23 And I -- I gave thought to that, and I
24 felt that my response at the time was inadequate.
25 And I want to use this opportunity to provide a

1 greater response to it.

2 First, I would note that I have the
3 utmost respect for the authors of that letter, and
4 their right and their responsibility to send such
5 a letter if they feel that their constituencies,
6 meaning the individuals in their district, and, in
7 fact, the people of the State of California, are
8 affected by what we do here today. So I believe
9 that communication to us was right and proper, as
10 I believe any communications from Mayor Gonzales,
11 or any other representative of the people, as they
12 may feel their people's interests are affected by
13 this case, are right and proper.

14 And what all of these individuals have
15 to say is relevant, and, as mentioned earlier,
16 will all be considered.

17 Now, I received a copy of the letter
18 executed by Senators Burton and Brulte, and
19 Speaker Hertzberg and Assemblyman Campbell, last
20 night, and read it fully for the first time. I
21 need to note for the record that I received a call
22 in my office from the Speaker's office asking for
23 my response to the letter. I will provide such a
24 response after I give it some due thought.

25 Some weeks ago the Applicant sent a

1 letter to -- it was probably Commissioner Keese
2 and myself, offering comment and concern about the
3 schedule that we are following today, and the
4 number of hearings and the length of time that it
5 is taking. It was not proper and appropriate that
6 I respond to that letter at that time. I would
7 expect, however, that is that letter that has made
8 its way to many offices beyond mine, and is
9 resulting in many inquiries by elected
10 representatives throughout the state.

11 I do not believe that all the comments
12 in the Applicant's letter were correct. I do not
13 believe that all the comments in the letter from
14 the legislature are correct, particularly when it
15 is stated we understand that all salient issues
16 have been submitted and are before the Commission
17 to enable a swift decision. To the extent
18 necessary, I intend to correct the record. Copies
19 of my response will be communicated to all
20 interested parties.

21 In direct response, sir, to your
22 question of yesterday, again, I have the utmost
23 respect for elected officials because that is what
24 our country is made of, and I respect their rights
25 to communicate.

1 The Energy Commission is a little
2 different agency. As an Energy Commissioner I was
3 appointed by the governor and confirmed by the
4 senate, for a specific term of years. I do not
5 intend to commit such crimes as will allow my
6 removal before my term of office expires. And I
7 think we are a commission for a given reason, and
8 that is the legislature, in their wisdom, wanted a
9 body to exercise its independence, and I intend to
10 do that. I fully expect and have confidence that
11 Commissioner Keese, Chairman Keese, and my
12 colleagues on the Commission will do that.

13 My responsibility to you is not to rule
14 in your favor. That may happen; it may not
15 happen. My responsibility to you is to fulfill my
16 obligations to grant you a fair hearing and an
17 opportunity to be heard as our -- as our rules
18 require. And that is my intent.

19 At this time we'll go off the record so
20 we can conduct business.

21 (Off the record.)

22 MR. AJLOUNY: Commissioner Laurie, thank
23 you very much for articulating that and taking the
24 time to respond in a much better way, and
25 appropriate way to the question yesterday by

1 myself. But I -- the question did -- was
2 generated also by the confirmation from the
3 governor's office that there is an offer in front
4 of the governor from Calpine that if they at the
5 office pushes Metcalf through they'll give a
6 discount in wholesale prices of power. And that--

7 PRESIDING MEMBER LAURIE: No.

8 MR. AJLOUNY: -- and that was in -- from
9 the governor's office, from --

10 PRESIDING MEMBER LAURIE: No. You're --
11 you're offering comment as to the case, as opposed
12 to the process that I --

13 MR. AJLOUNY: Well, I'm letting you know
14 where my comments came from.

15 PRESIDING MEMBER LAURIE: Okay, thank
16 you. I -- I appreciate that.

17 Okay. We'll now go off the record, Mr.
18 Valkosky.

19 (Off the record.)

20 PRESIDING MEMBER LAURIE: Mr. Abreu.

21 MR. ABREU: Ken Abreu. I'd like to just
22 thank you for those comments, Commissioner Laurie.
23 Our intent -- I represent Calpine and Bechtel on
24 this project -- is that this project is in a state
25 process, the CEC process, which it has to go

1 through to be licensed. And we're quite satisfied
2 with this process.

3 We did write you a letter on our
4 thoughts on the schedule, which we sent to you. I
5 can tell you we -- we did not send that to other
6 folks, to pursue other avenues to provide comment
7 to you on that. If the legislators sent this
8 letter, they did that without, you know, anything
9 that we sent them inducing them to do that.

10 PRESIDING MEMBER LAURIE: No more.

11 Thank you.

12 Off the record.

13 (Off the record.)

14 HEARING OFFICER VALKOSKY: Okay. At
15 this time I'd like the parties to introduce
16 themselves for the record.

17 Mr. Harris.

18 MR. HARRIS: Yes. I'm Jeff Harris, of
19 Ellison, Schneider and Harris, here on behalf of
20 the Calpine/Bechtel Joint Venture.

21 To my right is Mr. Ken Abreu, who's the
22 Project Manager for Calpine/Bechtel. Two seats to
23 my left is Mr. Steve DeYoung, who's the
24 Environmental Project Manager for the
25 Calpine/Bechtel Joint venture. And to his left is

1 John Carrier, with CH2MHILL, principal consultant
2 for the project.

3 HEARING OFFICER VALKOSKY: Thank you.

4 Ms. Willis.

5 MS. WILLIS: I'm Kerry Willis, Staff
6 Counsel, representing Staff in -- Energy
7 Commission Staff in these proceedings.

8 To my right is Eric Knight, who will be
9 our Land Use witness, and to his right is Paul
10 Richins, Project Manager.

11 HEARING OFFICER VALKOSKY: Ms. Cord.

12 MS. CORD: Elizabeth Cord, Santa Teresa
13 Citizen Action Group.

14 MS. DENT: Molli Dent, attorney for the
15 City of San Jose. To my right is Rich Buikema,
16 with our Planning Department; Laurel Prevetti,
17 with our Planning Department; and Kent Edens, who
18 will be the city's witness on Land Use.

19 HEARING OFFICER VALKOSKY: Thank you.

20 Mr. Ajlouny.

21 MR. AJLOUNY: Issa Ajlouny, Intervenor,
22 local resident.

23 MR. SCHOLZ: Scott Scholz, local
24 resident, Intervenor.

25 MR. WILLIAMS: Robert Williams, local

1 resident, Intervenor.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Are there any representatives from the
4 City of Morgan Hill or from CARE present?

5 I see that there are none.

6 Okay. With that, I'd like to open it,
7 as I indicated off the record, with public comment
8 from an area resident.

9 Ma'am, if you could approach the
10 microphone, identify yourself, and spell your last
11 name for the record.

12 MS. JACKSON: Excuse me, Mr. Chairman.
13 I wasn't on there, but I would like to make
14 comment after the lady that was -- the card that
15 you do have, and if there is a card that I should
16 fill out, I'd like to do that.

17 HEARING OFFICER VALKOSKY: No, there --
18 there is no card. We're -- we're just making this
19 -- would you like to make your comment now, on
20 Land Use, or wait until the end of the Land Use?

21 MS. JACKSON: My name is Suzann Jackson.
22 I am a member of the City Council for the City of
23 Monte Sereno. My last name is J-a-c-k-s-o-n.

24 I am also the Chair of LAFCO, Local
25 Agency Formation Committee, and I represent the 15

1 cities for the Santa Clara Cities Association.

2 Land issues and the zoning districts
3 within a city's boundaries have always been
4 relegated to the local jurisdictions. Every 20
5 years cities within the county review their
6 general plans and adjust areas to reflect the
7 trends and needs of its citizens. Citizens'
8 groups, environmentalists, business -- large and
9 small -- and city planners have an opportunity to
10 voice their opinions and concerns regarding the
11 growth, and convey those concerns to local elected
12 officials. Every city does this.

13 It is the responsibility of those
14 elected to represent their citizens to take into
15 consideration all factors that impact its
16 citizens. Public safety, density, quality of
17 life, and future impacts to local neighborhoods
18 are some of the many considerations when the
19 general plans are formulated.

20 Although we are in an energy crisis
21 situation, this is no reason to override a
22 unanimous decision of the San Jose City Council to
23 deny the siting of this plant. Other sites are
24 available that will have less impact on the air
25 quality that will be compromised by the toxic

1 emissions that the MEC facility will produce.
2 Anyone who lives in this area and surrounding
3 areas know that this particular area of the valley
4 is a collection pocket for the Bay Area.

5 Yes, we do need more energy protection.
6 Yes, we do need to get more plants up and running.
7 But to override a city council trying to protect
8 its citizens by people that don't live in this
9 area and will have not experienced the impact of
10 these negative consequences is not only
11 irresponsible but criminal.

12 As an elected city official and Chair of
13 the Local Agency Formation Commission, I implore
14 you to uphold the wishes of this community and the
15 San Jose City Council.

16 Thank you

17 HEARING OFFICER VALKOSKY: Thank you,
18 ma'am.

19 MS. DUDLY: My name is Kimberly Dudley.
20 I'd like to thank you again for hearing me today,
21 as I wasn't able to be here yesterday. I had a
22 sick child.

23 I took my kids out of school a little
24 early today, because this -- this issue is so
25 pertinent to the future of my family and my

1 family's existence in South San Jose. We
2 purchased our home in June of 1999. Now, this was
3 approximately I believe four or five months after
4 letters were sent out to the community. Our real
5 estate agent did not know anything about this
6 power plant.

7 We received an environmental report in
8 the process of our real estate transaction, as is
9 standard. The environmental report was not
10 adequate for our needs, and so we called a second
11 environmental report. In neither of those two was
12 anything stated about a proposed future power
13 plant. Nothing.

14 We moved in in June of 1999 and found
15 out one week later that a power plant was proposed
16 to be built three-quarters of a mile from my home,
17 approximately. When you look out the front window
18 of my bedroom, I will see plumes coming up over
19 the other side of Tulare Hill. I'm told that the
20 stacks won't be high enough to see plumes, but I'm
21 having a little trouble believing that.

22 So, anyway, our real estate did not
23 know. We -- I called Calpine approximately one
24 month after moving in, after I had discovered
25 this. I spoke with Lisa Pelley. She said she is

1 absolutely sure that no homes are within one mile
2 of this power plant. This was what I was told. I
3 attended a meeting held by Santa Teresa Action
4 network, and there -- there were representatives
5 there from Calpine. I looked at the maps that
6 were presented there by Calpine, and on the map I
7 saw that my home is three-quarters of a mile from
8 this power plant.

9 When we -- when we looked into buying
10 our home we also looked into the schools. Our two
11 elementary schools are less than a mile from this
12 proposed power plant. One of them is within
13 walking distance. This is another huge concern we
14 have. So once we discovered this, of course we
15 consulted a lawyer, and we were told that it
16 certainly is a fact that a power plume can -- a
17 power plant can have an adverse effect on the
18 value of your real estate, and if this power plant
19 is built we may have a lawsuit on our hands,
20 because we were not informed by any real estate
21 agent on either side about this proposal. And we
22 were astounded that they would -- that Calpine or
23 the City of San Jose would even consider building
24 a power plant that is so close to existing homes.

25 So, again, I thank you for hearing me.

1 And I'm tremendously concerned, and spent the day
2 calling senators to voice my opinion to them,
3 because they're attempting to override the city's
4 decision. And I respect that you have a long
5 process on your hands, and a lot of elements, and
6 that we are in a power crisis now. But I really
7 urge you to consider the issue of schools and
8 communities and how close we are.

9 Thank you.

10 PRESIDING MEMBER LAURIE: Thank you very
11 much.

12 HEARING OFFICER VALKOSKY: Okay. With
13 that, we'll turn to the Applicant. Your
14 witnesses, Mr. Harris.

15 MR. HARRIS: We have three witnesses.
16 One witness on direct testimony, which is Valerie
17 Young, and then on -- for rebuttal testimony, Mr.
18 Abreu and Dr. Pete Mason.

19 And so I'd like to have all three sworn,
20 make all three available for cross examination.
21 So I'll go through qualifications of all three, as
22 well, before we go through the direct testimony,
23 if that's okay.

24 HEARING OFFICER VALKOSKY: Swear the
25 witnesses, please.

1 (Thereupon Valerie J. Young,
2 Peter F. Mason and Kenneth E.
3 Abreu were, by the reporter,
4 sworn to tell the truth, the
5 whole truth, and nothing but
6 the truth.)

7 MR. HARRIS: Thank you.

8 We'll begin with Valerie Young.

9 TESTIMONY OF

10 VALERIE J. YOUNG

11 called as a witness on behalf of Applicant, having
12 been first duly sworn, was examined and testified
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. HARRIS:

16 Q Ms. Young, would you please state your
17 name for the record?

18 A My name is Valerie J. Young, Y-o-u-n-g.

19 Q And what subject matter testimony are
20 you here to sponsor today?

21 A I'm here to sponsor the Land Use
22 testimony.

23 Q And as I understand it, the documents
24 that are part of your testimony are listed in
25 Section 1D of your prefiled testimony; is that

1 correct?

2 A That's correct.

3 MR. HARRIS: Rather than having the
4 witness read all those, and me read them again, I
5 thought I'd go through them the first time and
6 also note some corrections and clarifications.

7 Section 8.4 of the AFC is Exhibit 1.
8 Excuse me. Supplement A of the AFC is Exhibit 3.
9 Supplement C is Exhibit 5. PSA Comments, Set 1,
10 is Exhibit 37. PSA Comments, Set 3, is Exhibit
11 38. PSA Comments, Set 4, is a new exhibit. I'd
12 like to have that one assigned a number.

13 HEARING OFFICER VALKOSKY: Next in
14 numbered order is, I believe, 84. Number 84.

15 (Thereupon Exhibit 84 was marked
16 for identification.)

17 MR. HARRIS: Thank you.

18 Comments on PSA Set Number 7 is Exhibit
19 23. Responses to CEC Data Requests is Number 49
20 to 55 of Set 1A is Exhibit 13. Responses to CEC
21 Data Request Number 50, Set 1E, is Exhibit 46.

22 Responses to CEC Data Request Number 50,
23 Set 1G, is a new exhibit. I'd like that to be
24 assigned a number.

25 HEARING OFFICER VALKOSKY: Assign it 85.

1 (Thereupon Exhibit 85 was marked
2 for identification.)

3 MR. HARRIS: The next one is Responses
4 to CEC Data Request Number 50, Set 1 -- I believe
5 that's I -- I. And ask that that be assigned a
6 new number.

7 HEARING OFFICER VALKOSKY: Eighty-six.
8 (Thereupon Exhibit 86 was marked
9 for identification.)

10 MR. HARRIS: Response to CEC Data
11 Request Number 50, Set M, is also a new document.

12 HEARING OFFICER VALKOSKY: Eighty-seven.
13 (Thereupon Exhibit 87 was marked
14 for identification.)

15 MR. HARRIS: Responses to CEC Data
16 Request 3-244 to 3-230, Set 3B, is Exhibit 29.
17 Responses to CEC Data Request 2-231 to -- and 3-
18 232 is Set 3C, it's Exhibit 53. Responses to CEC
19 Data Request 2-231 to -- and 3-232 is Set 3C.
20 It's Exhibit 53.

21 Responses to Jeff Wade Data Request
22 Number 56, Set 2, is Exhibit 16B, as in boy.
23 Responses to CVRP Data Request, Part C, Number 14,
24 Set 4, is a new document. I'd ask that it be
25 given a number.

1 HEARING OFFICER VALKOSKY: Exhibit 88.

2 (Thereupon Exhibit 88 was marked
3 for identification.)

4 MR. HARRIS: Thank you.

5 We do have a couple of additions and
6 corrections, as well, I'd like to note. The
7 errata sheet for Volume 1 of the AFC should be
8 included, and that's previously marked as Exhibit
9 2. PSA Comments Set 8, on the Western Access
10 Road, should've been referenced in the Land Use
11 section, as well, and that's previously marked as
12 Exhibit 66.

13 There are I think actually three new
14 documents that we want to hand out, as well. The
15 first one -- and we'll pass out copies to all of
16 the parties now. I've already provided them to
17 the Committee. The first one is Response to CEC
18 Informal Data Requests on Land Use, dated
19 September 1, 2000. And that would be a new
20 exhibit. I'd ask that be assigned a number.

21 HEARING OFFICER VALKOSKY: Eighty-nine.

22 (Thereupon Exhibit 89 was marked
23 for identification.)

24 MR. HARRIS: The San Jose International
25 Airport Master Plan Update EIR is a new item. I'd

1 ask that that be assigned a number.

2 HEARING OFFICER VALKOSKY: Assign it
3 Number 90.

4 (Thereupon Exhibit 90 was marked
5 for identification.)

6 MR. HARRIS: The City of San Jose
7 Information on Harry Road Residential Development
8 is a new document. I'd ask that it be assigned a
9 number, as well.

10 HEARING OFFICER VALKOSKY: Ninety-one.

11 (Thereupon Exhibit 91 was marked
12 for identification.)

13 MR. HARRIS: Okay. And we also have, as
14 I understand it, a set of corrections on the
15 existing testimony, and we're going to be passing
16 around a document showing those two corrections.
17 So I'd ask that that document be passed around as
18 well.

19 HEARING OFFICER VALKOSKY: Okay. These
20 are just changes you're going to incorporate into
21 the existing Exhibit 10. Is that correct?

22 MR. HARRIS: That's correct, sir.

23 HEARING OFFICER VALKOSKY: Okay.

24 MR. HARRIS: We had two corrections to
25 the Land Use testimony that we needed to make, and

1 they're both noted on this single sheet dated
2 Corrections to Land Use Testimony, and actually
3 I'd like that to be marked as the next exhibit, if
4 we could.

5 HEARING OFFICER VALKOSKY: Exhibit 92.

6 MR. HARRIS: Okay.

7 (Thereupon Exhibit 92 was marked
8 for identification.)

9 MR. HARRIS: Briefly, the first change
10 relates to Table 1. It's found on page 7 of
11 Appendix F of the Land Use testimony, which is
12 Exhibit 10. The column under Metcalf Energy
13 Center shown -- Center, showing tax dollars per
14 gross acre has been corrected. And simply put, we
15 had the wrong number in that -- in that column.
16 So that's the change there.

17 The second change, the paragraph on the
18 bottom replaces the text on the first paragraph on
19 the top of page 4, in the Land Use rebuttal
20 testimony, Exhibit 77. The issue there is that we
21 had said the term private generation is not
22 defined in the industrial code, when in fact it is
23 defined, and so we have made the correction,
24 adding the proper definition.

25 So with that, I'll return to Ms. Young

1 now, if that's okay.

2 PRESIDING MEMBER LAURIE: Not yet. I
3 had asked for a brief recitation of what your
4 general argument is going to be, Mr. Harris, so I
5 can focus, and the other parties can focus, as
6 well. So give me a two-minute opening statement
7 as to where you're going.

8 MR. HARRIS: Okay. I'm pleased to do
9 so.

10 The evidence that we are going to be
11 sponsoring into the testimony, direct testimony,
12 relates largely to the issue of compatibility, as
13 we discussed previously. And we're not talking
14 about issues of conformance with LORS. We're not
15 going to argue the issues of conformance. We want
16 to talk about the issue of compatibility.

17 We believe there's evidence in the
18 record to the contrary of our position. We would
19 like to make the case that -- that essentially, in
20 terms of compatibility, compatibility is an
21 important issue related to whether this project
22 is, in fact, a prudent and feasible means of
23 achieving our project objectives. And so the
24 compatibility issue focuses directly on that
25 question.

1 In that connection, I think there are
2 five different sets of Land Use LORS that are at
3 issue. We're only going to touch briefly on small
4 portions of each of those, and narrow the
5 testimony down to issues that I think have been
6 misrepresented or factually inaccurate, and some
7 other testimony, as well.

8 We're dealing mostly with questions
9 related to health, you know, safety and welfare
10 issues in that compatibility discussion, and I
11 think the evidence on our side will show that
12 there are not such issues. But that's why I need
13 to make a record to establish that.

14 The second issue that we'll deal with
15 primarily on rebuttal testimony has to do with the
16 issue of prime farmland. We filed rebuttal
17 testimony on this issue, and we'd like to have the
18 opportunity to explain our thinking on -- on how
19 the decision-makers ought to weigh the various
20 issues and attributes of that particular issue in
21 determining whether there is, in fact, a
22 significant environmental impact associated with
23 the conversion of prime farmland.

24 We disagree with the Staff's conclusion
25 in that connection, although we think there --

1 there's some additional information that may have
2 not been available to Staff that we'd like the
3 Committee to consider, and that's why we'll focus
4 on that issue.

5 PRESIDING MEMBER LAURIE: Very well.

6 Thank you, sir.

7 MR. HARRIS: Should I proceed?

8 BY MR. HARRIS:

9 Q Now, Ms. Young, with those
10 clarifications and corrections in hand, do you
11 have any other corrections or clarifications to
12 your testimony?

13 A No, I do not.

14 Q Were these documents prepared either by
15 you or at your direction?

16 A Yes, they were.

17 Q And are the facts stated therein true to
18 the best of your knowledge?

19 A Yes.

20 Q Are the opinions stated therein your
21 own?

22 A Yes.

23 Q And do you adopt this as your testimony
24 for this proceeding?

25 A I do.

1 Q Can you briefly review your
2 qualifications for the panel.

3 A Yes. I'm a Senior Environmental Planner
4 and Project Manager with CH2MHILL here in San
5 Jose, California. I am also a vice president with
6 that firm.

7 I have over 21 years of professional
8 planning experience, with ten years in the public
9 sector, and 11 years as a consultant with
10 CH2MHILL. I have a Bachelor of Arts degree in
11 history from the University of California at Santa
12 Barbara, and a Master of Arts degree in geography
13 from Arizona State University.

14 I have certification as a planning
15 professional through the American Institute of
16 Certified Planners. And I've had that
17 certification since 1986.

18 I have been located and working here in
19 the Santa Clara Valley also since 1986, and have
20 expertise in comprehensive planning, land use
21 analysis, local government planning and land
22 development procedures, and the California
23 Environmental Quality Act.

24 In my consulting career I have also
25 focused on land use and environmental analysis of

1 both large and small scale infrastructure
2 projects.

3 MR. HARRIS: Thank you. And since
4 they'll be available for cross examination I'd
5 like Dr. Mason and Mr. Abreu to briefly summarize
6 their qualifications.

7 TESTIMONY OF

8 PETER F. MASON and KENNETH E. ABREU
9 called as witnesses on behalf of Applicant, having
10 been first duly sworn, were examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. HARRIS:

14 Q Dr. Mason, would you state your name for
15 the record, and then summarize your
16 qualifications?

17 A My name is Peter Mason, M-a-s-o-n. I'm
18 currently a Project Engineer with Bechtel,
19 assigned to the Calpine/Bechtel Joint Venture. I
20 have 26 years experience working at Bechtel.
21 Prior to that I had ten years experience in
22 college and university teaching.

23 I have degrees in geography at the
24 Bachelor's level at Fresno State, a Master's at
25 the University of Colorado, Boulder, and a Ph.D.

1 at UCLA. I'm a Board certified Environmental
2 Professional in Environmental Planning.

3 Prior to Bechtel, I researched and wrote
4 on the subject of Land Use Planning, Land Use
5 Urban Development on the urban fringes of multiple
6 cities, including Tucson, Colorado Springs, the
7 Central Valley, California, Santa Barbara County.
8 I have experience in land use mapping of
9 agricultural land for the Madera County Planning
10 Commission, and we did land use mapping on the
11 urban fringe of Boulder, Colorado, for the
12 City/County Planning Department.

13 I initiated the course on Environmental
14 Planning at UC Santa Barbara, where I taught for
15 five years. I was also a visiting professor at
16 the University of Colorado, Boulder, where I
17 offered a graduate seminar on Land Utilization.

18 Turning to Bechtel, at Bechtel I've been
19 engaged in a number of things, including fossil
20 and nuclear power plant siting studies for a
21 number of years, the siting of large industrial
22 complexes worldwide. I have experience in land
23 use analysis, screening areas for suitable areas
24 for power plants. I was Chief Environmental
25 Engineer at Bechtel for three years, with

1 responsibility for permits and licensing of fossil
2 and nuclear power plants, including siting and
3 environmental reports.

4 And then last, but not least, I was on
5 the faculty of the Argon National Lab of the
6 International Atomic Energy Agency for the short
7 course on nuclear power plant siting. And my
8 contribution to that was general siting criteria,
9 as well as land use and socioeconomic things.

10 Q And Dr. Mason, did you help prepare both
11 the direct and rebuttal testimony?

12 A Yes, I did.

13 Q Thank you.

14 Mr. Abreu, can you briefly summarize
15 your qualifications?

16 A Yes, I can. I've given most of the
17 qualifications before in earlier testimony, but
18 for purposes of this testimony, as the Project
19 Manager I've been the one in charge of setting
20 decisions and strategies and participating in all
21 of our city interactions, in terms of our land use
22 entitlements for the Metcalf Energy Center, as
23 well as my 20 years experience on the siting,
24 engineering, and operation of power plants.

25 Q And you assisted in preparing both the

1 direct and rebuttal testimony; is that correct?

2 A Yes.

3 Q Returning now to Ms. Young.

4 Ms. Young, can you provide us with an
5 opening summary of your testimony, please?

6 A Yes. You're going to be distributed a
7 copy of the presentation that was used by the
8 Calpine/Bechtel Joint Venture to both the Planning
9 Commission and the City Council, Appendix D in our
10 Land Use testimony.

11 For the Land Use testimony, we believe
12 it is important to understand the physical context
13 for the Metcalf Energy Center. We will be
14 referring to some of the slides in this
15 presentation material, and just call your
16 attention to the fact that the page numbers are in
17 the lower right corner when we refer to the
18 slides.

19 Q Ms. Young, you're not going to be
20 referring to all those slides; is that correct?

21 A That's correct.

22 Q So we just provided the entire document.
23 I wanted to make sure they knew that.

24 A I'm not going through the entire
25 presentation.

1 Q Right. And this was also part of your
2 prefiled testimony, as Exhibit -- I think it was
3 D.

4 A That's correct.

5 Q Okay. So this has already been seen.
6 We just wanted to give folks the color version, so
7 continue, please.

8 A If you'd first refer to the aerial in
9 Slide 4. This is an aerial view of the Metcalf
10 site. It's looking north, and just gives you the
11 setting of the location of the site, that it is
12 bounded by the PG&E substation, by Tulare Hill on
13 the north, and by large expansive agricultural
14 land to the south.

15 If you refer to slide six, this shows
16 the current use of the Metcalf site, particularly
17 that portion of the site where the main
18 development will occur. And then on slide 18,
19 that slide provides you with illustrative setting
20 of Metcalf, particularly how well screened it is
21 from most vantage points, and also we feel it's
22 important to show that the site is not in
23 physically -- physically within a neighborhood.
24 It is isolated from residential neighborhoods to
25 the north, and from the CVRP campus by intervening

1 agricultural land, so.

2 Q Returning to the questions now of land
3 use compatibility, can you provide us with your
4 opening summary on that?

5 A Yes. For land use compatibility we
6 really looked at three or four key issues. First
7 we looked to CEQA guidance, Appendix G, for land
8 use compatibility, and how CEQA defines land use
9 compatibility impacts.

10 We then looked at compatibility between
11 public and quasi public uses for the Metcalf use,
12 which is the recommended land use by the city, and
13 other campus industrial sites. We also then
14 looked at whether or not the project was
15 compatible with the city's major planning
16 documents, which is the general plan, the North
17 Coyote Valley Master Development Plan, and the
18 riparian corridor policy.

19 Q Turning to the first of those sets, the
20 CEQA document, Appendix G. What were your
21 findings there?

22 A I'd like to call your attention to slide
23 12, where we believe that this slide shows that
24 the Metcalf site is completely compatible with its
25 existing uses. What we look at under CEQA is the

1 surrounding land uses. We look at whether or not
2 it will disrupt or divide an existing community;
3 will it have secondary environmental effects such
4 as dust, nuisance, public health. And then will
5 it conflict with any applicable land use plan,
6 policy, or regulation of the agency that has
7 jurisdiction over the project.

8 Again, slide 12 shows that the Metcalf
9 Energy Center is completely compatible with its
10 adjacent land uses. And in addition, slide 10
11 shows the general plan designations by the City of
12 San Jose surrounding the site, and you can see
13 that the Metcalf substation is designated as
14 public, quasi public land use.

15 Q Does this divide an existing community?

16 A No, we do not believe it divides an
17 existing community. It's an isolated site at the
18 north end of Coyote Valley, separated from
19 residences by Tulare Hill and by other land uses,
20 by key features surrounding the site.

21 Q Could we turn to slide 23 in your
22 presentation, please.

23 A Uh-huh.

24 Q What does that slide show?

25 A What we wanted to show here was that

1 Metcalf Energy Center is really not in a
2 neighborhood. The nearest neighborhood is
3 approximately 3,000 feet away, one-half mile to
4 three-quarters of a mile. And if you look at
5 other power plants in California, particularly
6 northern California, you can see that the Metcalf
7 location, with regard to proximity to
8 neighborhoods, is at a further distance from these
9 representative examples.

10 Q And turning to the issue you raised
11 earlier of secondary impacts, what were your
12 findings with regard to secondary impacts?

13 A We found that with the mitigation
14 measures and the Conditions of Certification, the
15 facility will not create dust or similar public
16 health and nuisances, and this is addressed in the
17 FSA and it supports a finding of land use
18 compatibility.

19 Q In terms of the master development plan,
20 what were your findings?

21 A We found that the project is consistent
22 with the city's master development plan, and,
23 indeed, may assist in achieving economic goals for
24 North Coyote Valley.

25 Q Thank you. I want to turn to the second

1 set of documents, the second major topic here, the
2 compatibility of MEC with campus industrial uses.

3 Can you begin that presentation.

4 A Yes. What we did was we looked to see
5 if there was any precedent in the city for siting
6 power plants or campus industrial uses adjacent to
7 other public, quasi public or similar uses. We
8 found, for two Cisco sites, similar examples that
9 we'd like to bring to your attention.

10 Slide 15 shows Cisco Site 4, which is
11 located in --

12 Q Yeah, slide -- I'm sorry, slide 15. Is
13 that correct?

14 A Slide 15, right.

15 Q And that's the Cisco Site 4?

16 A Cisco Site 5.

17 Q The existing project; is that correct?

18 A Yes.

19 Q Okay.

20 A This site is the site of the Agnews
21 Power Plant, which is a 30 megawatt plant. And
22 you can see from this aerial view that the Cisco
23 campus in North San Jose is very near to the power
24 plant. In fact, the nearest building is about 150
25 to 200 feet of the Cisco buildings.

1 The Agnews Power Plant uses anhydrous
2 ammonia. In addition, the Water Pollution Control
3 Plant, which is the City of San Jose's and City of
4 Santa Clara's facility, is one mile to the north
5 of this project, which would be to the northeast
6 corner of your -- of your site of your slide here.
7 And the Water Pollution Control Plant is a -- a
8 user also of acutely hazardous materials, chlorine
9 and sulfur dioxide.

10 In addition, there are child care
11 facilities within three-quarter of a mile of the
12 Agnews facility.

13 Q So overall, what were your conclusions
14 regarding the Cisco Site 4?

15 A We reviewed the City of San Jose's EIR
16 for this project, and they determined that this
17 campus would be a compatible use with both the
18 Agnews Power Plant as well as the Water Pollution
19 Control Plant.

20 Q Thank you. I want to turn your
21 attention now to slide 14, which is the aerial
22 view of the Cisco Site 6 project. Can you -- can
23 you provide a summary of that testimony, please?

24 A Yes. This is the Cisco Site 6 campus
25 that was recently approved by the city last year.

1 It's in North San Jose, north of 237, and it again
2 is also near the Water Pollution Control Plant,
3 about 3100 feet. And the city environmental
4 documents that we reviewed did identify the
5 compatibility issue with the Water Pollution
6 Control Plant, and they found that with the plant
7 being in compliance with all LORS and -- and
8 standards that govern the operation of that plant,
9 that the campus industrial facility of Cisco Site
10 6 was compatible with that land use.

11 MR. WILLIAMS: Excuse me. Could you
12 point to the plant on that diagram?

13 MS. YOUNG: It's right here.

14 MR. WILLIAMS: Thank you.

15 BY MR. HARRIS:

16 Q And in terms of -- is there a child care
17 facility nearby that you're aware of?

18 A Yes. Some time ago, in the early
19 nineties, I worked on an EIR for a project called
20 the Renaissance Project, and if you look on your
21 map you see North First Street. It's basically
22 due west of the north, of the North First Street.
23 You'll see residential development there. The
24 lighter colored buildings are the trailer
25 park/mobile home park, and then there's a high

1 density residential development for -- called the
2 Renaissance Development. That project was
3 permitted with a daycare facility.

4 Q Thank you. Let's turn quickly to slide
5 27, the Cardinal Cogen Facility at the Stanford
6 campus. Can you briefly summarize that -- that
7 site, as well?

8 A Yes. We wanted to look at other
9 examples of where power facilities have been sited
10 and are operating successfully within a campus
11 environment. The Cardinal Cogen Facility is such
12 a facility. As you can see from the aerial, it's
13 located in and amongst the campus buildings. It
14 is immediately adjacent to medical buildings at
15 the Stanford Hospital.

16 Q You've included this as another example
17 of the compatibility with these types of uses?

18 A Yes.

19 Q Okay. Thank you.

20 Turning now to the question of Metcalf's
21 ability to fulfill the city's goal for world-class
22 design in North Coyote Valley. Can you please
23 summarize your testimony in that regard?

24 A Yes. The Metcalf team hired the firm of
25 Hillier Architects to review the North Coyote

1 Valley Master Development Plan architectural
2 guidelines. They are the third largest
3 architectural firm in the United States.

4 They looked at the guidelines. They
5 also looked at the development of the Cisco campus
6 and came up with a treatment that we believe, and
7 that they also believe, meets the architectural
8 intent of the master development plan.

9 Q How about in terms of landscaping?

10 A The landscaping that has been designed
11 for the Metcalf Energy Center was performed by the
12 firm of Gazzardo and Associates, who prepared the
13 updated landscape plan for the Master Development
14 Plan. They also designed the Metcalf landscape
15 program to be consistent with that plan.

16 Q Is that shown on slide 30 of your
17 presentation?

18 A Yes, it is.

19 Q Okay. So slide 30 shows the Gazzardo
20 landscape plan.

21 A That's right.

22 Q Thank you.

23 PRESIDING MEMBER LAURIE: Mr. Harris, is
24 the architectural treatment as reflected on slides
25 17 and 20, is that the most recent --

1 MS. YOUNG: Yes.

2 PRESIDING MEMBER LAURIE: -- design?

3 Thank you.

4 BY MR. HARRIS:

5 Q I want to turn now to the issue of the
6 size of the facility. And there's testimony in
7 the record describing this as a massive power
8 plant. I'd like you to speak to that issue, if
9 you would, please.

10 A Sure. The Metcalf main structures,
11 which is the HRSG structures, actually have a
12 smaller footprint than the Cisco buildings that
13 will be built to the -- to the south. Reading
14 from the PV zoning plan set of the approved Cisco
15 buildings, it looks like there will be at least 30
16 buildings on that site. Hard to dimension them
17 out, but it looked they -- like they will be about
18 60 by 90, and they are entitled to go up to about
19 120 feet in height.

20 In contrast, the Metcalf facility, the
21 two HRSGs, each of those has a footprint of 45
22 feet by 70 feet, the main structures going up to
23 95 feet, and the stacks up to 145 feet.

24 Q So your comparison there is 30 buildings
25 versus two HRSGs, is that correct?

1 A That's correct.

2 Q And 60 by 90 on the Cisco buildings,
3 approximately.

4 A That's correct.

5 Q Versus 45 by 70 for the HRSG structures.

6 A Right.

7 Q Is that correct?

8 A That's correct.

9 Q Thank you. Can we turn your attention
10 now to slide 10. This shows adjacent uses. Can
11 you please summarize your testimony here?

12 A Yes. What we're showing here is that
13 the proposed designation for Metcalf, which was
14 public, quasi public from the City of San Jose, is
15 a compatible land use, and this slide shows the
16 immediate adjacency of the existing public, quasi
17 public designation for the PG&E transmission
18 facility -- substation facility.

19 Q So the large blue, I guess it is, to the
20 right --

21 A The large lighter blue, yes.

22 Q And that's the PG&E substation?

23 A That's right.

24 Q And that's the public, quasi public
25 designation; is that correct?

1 A That's correct.

2 Q Thank you.

3 I want to turn now to the North Coyote
4 Valley Master Development Plan, another one of the
5 documents you examined. Can you give us an
6 overall summary of what you found there, as well?

7 A Yes. Our summary is that the Metcalf
8 Energy Center is a compatible use within the
9 context of the master development plan, and,
10 perhaps more importantly, does not significantly
11 impact the goal, the city's goal for that plan, in
12 terms of economic benefits.

13 Q I understand there are a couple of
14 issues in terms of compatibility that have been
15 called out, that you'd like to address. Can you
16 go through those for us briefly?

17 A There were two setback issues that were
18 identified in terms of compatibility with the
19 master development plan. One is a 50 foot setback
20 requirement from the UPRR right-of-way. If you go
21 back to the landscape plan on slide 30, you can
22 get a better sense of that setback area.

23 Q So the slide -- help orient us towards
24 the -- on slide 30, towards where the railroad
25 would be.

1 A The railroad runs across the top of the
2 slide from east to west, on this.

3 Q Okay. That's Monterey Road across the
4 top; right?

5 A That's correct.

6 Q Okay. Sorry, continue.

7 A The primary purpose of this setback is
8 really to screen views from Monterey Road, and
9 from train passengers. We developed the site plan
10 for the Metcalf facility respecting Fisher Creek
11 and that setback, believing that it is a more
12 important setback to maintain, in terms of
13 environmental sensitivity. Our closest structure
14 to that setback is 32 feet, and the landscape plan
15 shows the planting of a dense row of Italian
16 cypress to screen that area.

17 In addition, there's an existing buffer
18 between the UPRR tracks and the Metcalf site, and
19 an additional buffer beyond that between the UPRR
20 and Monterey Road. And again, we are proposing
21 substantial landscaping in there.

22 Q What were your findings overall in this
23 connection?

24 A Our findings are that we definitely meet
25 the intent and the spirit of the master

1 development plan with regard to that setback
2 issue. And also, that not meeting that setback
3 requirement does not result in a significant
4 environmental impact.

5 Q So there are no significant
6 environmental impacts.

7 A That's right.

8 Q Turning to the -- the other setback
9 issue, the -- could you please address that issue,
10 as well?

11 A Yes. The other setback issue was the
12 requirement to maintain a large setback between
13 campus industrial uses that is a requirement of
14 the master development plan. It's a 100 foot
15 requirement. With the condition of certification
16 of LAND-5, we believe that we will be fully in
17 compliance with that setback requirement.

18 Q So Condition 5 addresses that issue?

19 A That's right.

20 Q Thank you. And the final set of
21 policies, the San Jose Riparian Corridor Policy.
22 You found that we're in compliance with that
23 policy?

24 A Yes.

25 Q And can you explain why you found that

1 to be the case?

2 A Yes. First and foremost, we meet the
3 required 100 foot setback. Secondly, the
4 construction of the energy center will actually
5 enhance the biological value of Fisher Creek and
6 its surrounding area. The area, as I'm sure you
7 all know, is currently very degraded, and the
8 intent of the policy is to protect and enhance
9 riparian corridors whenever a development is
10 proposed adjacent to them.

11 Our proposal includes restoration and
12 enhancement not only of the channel, but also
13 removing debris from the site, enhancing and
14 removing the debris from the Tulare Hill spring on
15 the other side of the creek, and then substantial
16 riparian vegetation planting, which includes
17 native vegetation and trees.

18 Q There's also on slide 29, I believe, the
19 discussion of open space; is that correct?

20 A That's right. What we're showing here
21 is that of all of the acreage that is affected or
22 involved with this project, only nine acres will
23 be disturbed by the Metcalf Energy facility.
24 Tulare Hill will be protected in perpetuity as
25 open space, and you can see on this slide other

1 acreage that is dedicated to habitat enhancement.

2 Q So in summary, your review of the
3 riparian -- riparian corridor policy?

4 A Yes, is compatible with that policy.

5 Q Can you provide us with your bottom line
6 analysis and your professional opinion about the
7 project?

8 A Yes. We believe that the use of this
9 land as a power plant is prudent and in accordance
10 with basic principles of land use planning. It's
11 compatible with all current and future planned
12 surrounding land uses. And the site plan design
13 and landscape treatment of the Metcalf facility
14 meet the spirit and intent of applicable city
15 planning policies.

16 Q Thank you.

17 Returning now to the more mundane. I
18 want to talk about the -- the issues related to
19 your review of the Final Staff Assessment. Did
20 you have a chance to review the Final Staff
21 Assessment?

22 A Yes, I did.

23 Q And you reviewed the Conditions of
24 Certification?

25 A Yes, I did.

1 Q I understand that you had proposed a
2 couple of modifications in your prefiled testimony
3 to Conditions 2 and 3?

4 A That's correct.

5 Q I don't know if you had an opportunity
6 to speak with Staff about those, but --

7 A Yes, we did.

8 Q Did you? And what was -- can you
9 describe that for us, please.

10 A The change to LAND-2, there is -- LAND-2
11 was written with a requirement to change the
12 landscaping in the parking lot area to better
13 reflect an orchard planting style, which is the
14 master development plan requirement. That
15 requirement is really geared towards large
16 industrial campuses where you have surrounding
17 large parking areas with the use of an orchard
18 style planting to break up that -- that parking
19 lot area, as well as provide shade.

20 The Metcalf Energy Center parking lot is
21 small. It doesn't really demand orchard style
22 parking. And we've provided a revised language to
23 meet the intent of that, which, in talking with
24 Staff, was really to provide shade relief in the
25 parking lot and to look at redesigning our -- our

1 landscape plan to accommodate that goal.

2 Q Thank you. Your proposed changes in
3 your prefiled testimony.

4 A That's right.

5 Q LAND-3, now, can you briefly describe
6 the issue there, making it very briefly.

7 A Yes. The issue with LAND-3 is it
8 defines setbacks for some of the major facilities
9 on the property. And the setbacks go into inches,
10 as opposed to just feet. We're recommending that
11 the inches reference be removed, because during
12 the process of design and construction it may be
13 difficult to meet inches, and things may change in
14 the field. But we are comfortable with the -- the
15 feet designation.

16 Q That, again, is spelled out in your
17 prefiled testimony.

18 A Yes.

19 Q It's a game of inches here.

20 A Yes.

21 Q With those clarifications, do you find
22 the Conditions of Certification to be acceptable?

23 A Yes, I do.

24 Q Thank you.

25 I'd like to turn now to Dr. Pete Mason,

1 and deal with our rebuttal testimony.

2 So, Dr. Mason, would you again state
3 your name for the record?

4 A My name is Peter Mason.

5 Q Dr. Mason, you had a chance to do an
6 analysis of the prime farmland issue; is that
7 correct?

8 A Yes, I have.

9 Q The first issue I want to discuss is the
10 1985 action by the City of San Jose. Am I correct
11 that in 1985 this North Coyote Valley plan was
12 redesignated to make this a campus industrial
13 area?

14 A That's correct.

15 Q And an EIR was prepared for that
16 conversion, as you recall?

17 A Yes, and that recognized the conversion
18 of farmland.

19 Q So that EIR did recognize the conversion
20 of farmland in 1985. And that was reaffirmed in
21 the city's recent land use decision, specifically
22 the Cisco EIR; is that correct?

23 A That's correct.

24 Q So is it your testimony that the
25 proposed conversion of prime farmland is, in fact,

1 not a new or an analyzed impact?

2 A That's correct.

3 Q Factually, I want to move on now.

4 Factually, this ten acres, the northern ten acres
5 of the Metcalf project has not been farmed
6 recently; is that correct?

7 A That's true.

8 Q What is your understanding of the
9 current use of that northern ten acres?

10 A Currently, as shown on slide 6 of the
11 handout, as I think most of you are familiar with
12 it, it's a collection of cars, trailers, sheds,
13 things of that sort. It's not irrigated
14 agriculture, it's not irrigated farmland.

15 Q So your findings, then, from a factual
16 standpoint?

17 A It's factually not -- not irrigated. I
18 should clarify the Metcalf site north of the tree
19 line is -- is this area that is definitely not
20 irrigated.

21 Q Thank you. I want to talk about the
22 size of the actual conversion here, in terms of
23 the number of acres. Is it your understanding
24 that it's about 22 and a half acres we're talking
25 about?

1 A That's correct.

2 Q And what's your understanding of the
3 size of the master development plan area that
4 we're dealing with here?

5 A It's approximately 1400 acres, probably
6 a bit more than that.

7 Q So the discussion here, the focus, if
8 you focus on that variable, the master development
9 plan acreage, the 1400 acres, what percentage is
10 the 20 acres out of that 1400 acres in the plan
11 area?

12 A Well, it's 1.4 percent, something like
13 that.

14 Q So about 1.4 percent of the master
15 development plan area?

16 A Right.

17 Q Taking it to the next level, looking at
18 Santa Clara County. Were you aware there were
19 approximately 32,000 acres of prime farmland
20 designated in the county in 1998?

21 A Yes.

22 Q So, again, 20 acres out of that 32,000
23 acre total, approximately what percentage is MEC
24 of that total farmland acreage?

25 A It's pretty low. It's .06 percent.

1 Q .06 percent. So six one-hundredths of
2 one percent.

3 A Right.

4 Q Okay. Thank you. Then with those
5 numbers in mind, what were your findings in terms
6 of the significance of the conversion of 20 acres
7 of farmland?

8 A If one looks exclusively at the size and
9 the location and the condition of the Metcalf
10 site, in terms of farmland, it appeared to just be
11 awfully small, hemmed in by other land uses, and
12 not suitable for farming; particularly, the
13 northern portion of the Metcalf site had not been
14 farmed. The southern portion of the Metcalf site,
15 which is about ten acres, is farmed and has been
16 farmed. But the northern part has not.

17 Q Thank you. I want to turn now to other
18 actions by the City of San Jose that you've
19 uncovered as part of your analysis.

20 Do you have in front of you the document
21 that's labeled the San Jose International Airport
22 Master Plan Update? This is previously marked as
23 Exhibit 90, and distributed.

24 Do you have that document in front of
25 you?

1 A Yes, I do. Yes, I do.

2 Q In that EIR there's a discussion about
3 the conversion of -- of 40 acres of prime
4 farmland; is that correct?

5 A That's correct.

6 Q And that 40 acres is actually
7 substantially larger than Metcalf's footprint; is
8 that correct?

9 A That's correct.

10 Q Would you turn to page 3.1-9, and read
11 the -- the second bracketed paragraph there.

12 A Okay. Under different circumstances the
13 conversion to non-agricultural use or impairment
14 of the productivity of prime agricultural land can
15 constitute a significant environmental effect.
16 However, in view of the small size of the land to
17 be converted and the constraints on long-term
18 economic viability of agricultural use imposed by
19 surrounding urban development, the impact would be
20 less than significant.

21 Q And would you read also the bottom
22 bracketed portion, as well.

23 A Changes in on airport land uses impact
24 prime farmland, the project case would result in
25 the conversion of the land designated as prime

1 farmland to aviation uses, and less than
2 significant.

3 Q Thank you. So again, we're dealing with
4 a conversion of prime farmland, land that was
5 indisputably prime farmland, 40 acres, the city's
6 EIR for the city's airport finds that to not be a
7 significant impact. Is that correct?

8 A That's correct.

9 Q Thank you. Could you turn now to the
10 next document in the list, the information on the
11 Harry Road residential development. This has been
12 marked as Exhibit 91.

13 A I have it.

14 Q The Harry Road EIR refers to the
15 conversion of 37 acres of prime farmland. Again,
16 is this a larger amount than the Metcalf project?

17 A It is.

18 Q And this EIR determined that this
19 conversion was not significant as well; is that
20 correct?

21 A That's true.

22 Q This property was within the urban
23 services area; is that correct?

24 A Yes, it was.

25 Q Could you turn to what's listed as page

1 2 of 3 on Exhibit 91, and go down to near the
2 bottom of the page. And if you'd read the section
3 starting with the development of the proposed
4 project.

5 A The development of the proposed project
6 would result in the permanent loss of up to 37
7 acres of land designated as prime farmland by the
8 California Department of Conservation. The City
9 of San Jose considers acreages of less than 50
10 acres of prime farmlands to be less than viable
11 for prime agricultural uses if located within the
12 urban service area. Therefore, the permanent loss
13 of 37 acres of lands designated prime farmlands
14 would result in a less than significant impact to
15 agricultural lands.

16 Q Is it your understanding that the
17 Metcalf project is within the urban services area?

18 A Yes, it is.

19 Q And is it also your understanding that
20 the Metcalf is -- is less than the 37 acres cited
21 here?

22 A Yes, it is.

23 Q So based upon this city precedent, what
24 would be your professional opinion?

25 A That the conversion of the MEC site for

1 its planned use from agricultural land would be
2 not significant.

3 Q Thank you. And, briefly, I want to talk
4 as well about the California Department of
5 Conservation classifications. I don't want you to
6 go into a lot of detail about this, because I want
7 to keep it short. It's in your direct testimony.
8 But what were your conclusions regarding the
9 California Department of Conservation's
10 classifications of prime farmland?

11 A For the -- the California Department of
12 Conservation, where they're responsible for the
13 mapping of the prime farmland, farmland in
14 California, my conclusion was that the MEC site
15 did not qualify as prime farmland or farmland of
16 statewide importance, or unique farmland. The
17 overriding criterion that disqualified MEC's site
18 in this regard is the absence of irrigation at
19 that site.

20 Q And that's discussed in more detail in
21 your rebuttal testimony; is that correct?

22 A Yes, it is.

23 Q And in terms of the mapping by the CDC,
24 did you have a concern about the dates of those
25 maps?

1 A Yes. In looking at the CDC farmland
2 map, which was published in 1998, it continued to
3 show the MEC -- Metcalf site as prime farmland.
4 However, that was not the case because that
5 condition had not existed for years, and it
6 continued to be represented incorrectly on the
7 map. And so therefore, that was a classic case of
8 where reality is -- is lagging --

9 Q So the map is -- is, in your view, out
10 of date in terms of the current condition of the
11 property?

12 A Yes.

13 Q Thank you. Overall, what were your
14 findings regarding the conversion of farmland?

15 A Basically, conversion of 20 acres of
16 farmland does not constitute a significant
17 environmental impact.

18 Q Thank you.

19 Real briefly, I want to talk now about
20 the suitability of sites in the M-4 district
21 that's set forth in the city's testimony.

22 Have you reviewed the claim that there
23 are hundreds of acres of land available for power
24 plant sites in San Jose?

25 A Yes, we looked into that.

1 Q Which documents did you review?

2 A We looked at the city zoning map, we
3 looked at the general plan, land use and
4 transportation diagram. And we also looked at the
5 city vacant land use inventory map.

6 Q And what were your findings after
7 analyzing those documents?

8 A After thoroughly going through them, we
9 found that there were not sites available that
10 would be suitable for a Metcalf type facility.
11 And we thoroughly looked -- looked at everything.

12 Q So you didn't find hundreds of acres of
13 available land.

14 A We found lots of -- lots of land, but it
15 was all basically utilized.

16 MR. HARRIS: Thank you very much.

17 I would at this point like to move our
18 documents into evidence, if that's appropriate at
19 this time.

20 HEARING OFFICER VALKOSKY: Specify the
21 documents.

22 MR. HARRIS: I'd like to move in Exhibit
23 86, Exhibit 87, Exhibit 89, Exhibit 90, Exhibit
24 91, and Exhibit 92. Also, the remainder of our
25 group 2B testimony, which is the remainder of

1 Exhibit 10, and our Applicant's Rebuttal Testimony
2 filed today, which is Exhibit 77.

3 HEARING OFFICER VALKOSKY: Is there
4 objection?

5 MR. WILLIAMS: One clarification.

6 HEARING OFFICER VALKOSKY: Okay. The
7 clarification before. Mr. Williams.

8 MR. WILLIAMS: Does -- since you've
9 offered the presentation that you made to the city
10 council, you also offered some improvements to the
11 power plant at that time.

12 MR. HARRIS: Can we be off the record,
13 please?

14 HEARING OFFICER VALKOSKY: Okay. Off
15 the record.

16 (Off the record.)

17 HEARING OFFICER VALKOSKY: Is there
18 objection to the admission of Exhibits 10, 77, 86,
19 87, 89, 90, 91, and 92?

20 MS. WILLIS: None.

21 HEARING OFFICER VALKOSKY: Any other
22 party object?

23 Hearing no objection, those exhibits are
24 admitted.

25 ///

1 (Thereupon Exhibits 10, 77, 86, 87,
2 89, 90, 91, and 92 were received
3 into evidence.)

4 HEARING OFFICER VALKOSKY: Before we get
5 to cross examination, I've got a couple of basic
6 questions.

7 Is there any effect on your proposed
8 revisions to Conditions of Certification Land Use
9 2 and 3, upon compliance with local requirements?
10 In other words, would these changes create a non-
11 compliance, would they cure a non-compliance, or
12 are they just neutral in that regard?

13 MS. YOUNG: I would say they do neither.
14 I'm trying -- I'm trying to figure out LAND-2.
15 LAND-3, the answer is no, the changes to LAND-3,
16 the project is out of compliance, if you will,
17 with that standard in the master development plan.
18 The removal of inches from the measurement to the
19 setback does not achieve a greater set of -- of
20 compliance or a lesser set of compliance.

21 HEARING OFFICER VALKOSKY: Okay. Fine.
22 Now, for LAND-2.

23 MS. YOUNG: With regard to LAND-2, I --
24 I guess you might say it could take us out of
25 compliance if you -- if the orchard planting

1 guidelines were to be strictly applied to the
2 Metcalf site. And we are applying not to have
3 them apply to the Metcalf site. And I guess you
4 could say that that takes us out of that
5 compliance.

6 But they -- they were not really
7 intended for -- for power plant type of
8 structures. And the orchard planting requirement
9 is a guideline, as opposed to a standard or a
10 regulation. It's -- it's a guideline.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you for that clarification.

13 On page 14, that top paragraph, second
14 last line, indicate that with the implementation
15 of the conditions the project will be in, quote,
16 substantial compliance with the applicable LORS.
17 I'm wondering if you can explain to me what the
18 phrase substantial compliance -- or, help -- help
19 bracket that phrase for me.

20 MS. YOUNG: I guess in my mind, in the
21 realm of -- of land use, these two guidelines or
22 standards in the master development plan, not
23 meeting them does not result in an environmental
24 impact. So that's the first tier in my mind, but
25 if you don't meet a standard and you're going to

1 cause a significant environmental impact, that's a
2 pretty substantial being of out of compliance, or,
3 you know, it's a substantial land use impact, but
4 you're going to cause secondary impacts.

5 We believe that of all of the standards
6 and the guidelines in the master development plan,
7 if we were to add them all up and tell you how
8 many of them we meet, we're probably 95 to 98
9 percent in compliance with those development
10 standards. From a land use perspective, that is,
11 in my professional opinion, substantial compliance
12 with those standards.

13 HEARING OFFICER VALKOSKY: Okay. Thank
14 you. Appreciate that.

15 On page 16, the last paragraph, there's
16 a phrase that I would like you to put in
17 perspective for me. The first line of the last
18 paragraph ends with the clause, quote, while at
19 the same time no new power plants have been built
20 for several decades. Could you explain to me the
21 context in which you offer that statement? Is
22 that just within the urban Santa Clara Valley, or
23 does that have --

24 MS. YOUNG: Yes, that's -- that's the
25 intent of that statement --

1 HEARING OFFICER VALKOSKY: Okay.

2 MS. YOUNG: -- is to indicate that the
3 valley has experienced a tremendous amount of
4 growth in population in high tech development and
5 housing and transportation facilities, and all
6 different kinds of -- of things that go with basic
7 urban growth. But the one piece of infrastructure
8 that has not kept pace with that growth is power
9 generation.

10 HEARING OFFICER VALKOSKY: Okay.

11 Localized to that geographical area.

12 MS. YOUNG: Localized to that area.

13 That's correct.

14 HEARING OFFICER VALKOSKY: Okay, fine.

15 Next, we've heard a representative of
16 the Local Agency Formation Commission address us.
17 Could you address, or answer my question as to
18 what, if any, is the role of LAFCO in this, in the
19 certification, the permitting of the Metcalf
20 Energy Center? I guess just does LAFCO have a
21 role, and if so, what is it?

22 MS. YOUNG: I don't know that I have an
23 answer to that. The site is located within the
24 urban service area of the City of San Jose. Both
25 the City and the County have express policies

1 regarding development in the urban service area,
2 and the city providing services to the urban
3 service area. And so I don't know that there is a
4 role for LAFCO in -- in that regard, for this
5 project.

6 It doesn't require any form of
7 application before LAFCO, to my knowledge, to do
8 the development at the Metcalf site.

9 HEARING OFFICER VALKOSKY: Okay. And
10 I'd just like to indicate, in a prior set of
11 hearings it was at least the assertion that LAFCO
12 had a role in this process, and fundamentally it
13 was deferred since we weren't dealing with land
14 use, to the land use area.

15 MR. WILLIAMS: Because of the lack of
16 annexation.

17 HEARING OFFICER VALKOSKY: So it's --
18 but to your knowledge, LAFCO has no role, no
19 further role in this project.

20 MS. YOUNG: To my knowledge, that's
21 correct. I -- I would assume that that is a part
22 of the CEC's decision-making on the project, as to
23 --

24 HEARING OFFICER VALKOSKY: Okay.

25 MS. YOUNG: -- whether or not it can

1 authorize the development of the project.

2 HEARING OFFICER VALKOSKY: Okay. Since
3 the site has not been annexed by the city, do you
4 agree with Staff -- I believe it's page 218 of the
5 FSA -- that the City of San Jose, the requirements
6 of the City of San Jose's General Plan applies to
7 the entire site?

8 MS. YOUNG: Yes.

9 HEARING OFFICER VALKOSKY: Do you agree
10 with Mr. Edens' testimony at page 6, lines 20 to
11 22, that development approvals must be done by the
12 city? That's Exhibit 76, page 6, lines 20 to 22.

13 MS. YOUNG: Mr. Edens' testimony cites
14 longstanding ordinances between the county and the
15 city with regard to development in urban service
16 areas. Which do state that developments in urban
17 services areas must be approved and gotten their
18 entitlements through the City of San Jose.

19 HEARING OFFICER VALKOSKY: Correct. So
20 you agree with that statement?

21 MS. YOUNG: That's a correct statement.

22 HEARING OFFICER VALKOSKY: That is a
23 correct statement. Okay.

24 MR. HARRIS: Actually, were you asking
25 her for a legal opinion on that? I don't think --

1 HEARING OFFICER VALKOSKY: I was not
2 asking her for a legal opinion.

3 MS. YOUNG: I was just going to say I'm
4 not an attorney.

5 MR. WILLIAMS: I wasn't going to object.

6 MR. HARRIS: Yeah, I know you weren't
7 going to object, Bob.

8 I guess I want to note for the record
9 that I think that does call for a legal
10 conclusion, and counsel for Applicant
11 unfortunately disagrees with his own witness on
12 that -- that conclusion. I think we need to --

13 HEARING OFFICER VALKOSKY: Okay. That's
14 -- that's --

15 MR. HARRIS: -- make that part of the
16 record, as well.

17 HEARING OFFICER VALKOSKY: No, that's --
18 that's a fair clarification. Yeah.

19 MR. HARRIS: And just --

20 HEARING OFFICER VALKOSKY: I am just
21 trying to fully understand the information before
22 the Committee, that's all.

23 MR. HARRIS: I have a wonderful witness
24 who wants to provide answers to everything.

25 HEARING OFFICER VALKOSKY: Okay. And

1 the last question, and I realize a lot of this may
2 be more appropriate for the Visual witnesses. But
3 as -- as I understand, you intend the
4 architectural treatment, the design of the
5 facility, to be consistent with guidelines
6 approved by the City of San Jose, or those
7 suggested by our Staff? Because I understand
8 there's a difference.

9 And if this is something that's better
10 done in Visual, that's okay.

11 MR. ABREU: I can answer it, though it
12 probably is better done in Visual.

13 Yeah, we filed our Visual testimony,
14 that's what I was asking them, last week. And we
15 did request a change the condition of
16 certification on the architecture. And to make it
17 so that we could work with the city planning staff
18 to have the screening be a screen that they feel
19 would be more consistent with the kind of look
20 that if a power plant goes in that they would be
21 comfortable with, which might not be the -- the
22 building facade type look that we see in the
23 drawings at this point in time.

24 HEARING OFFICER VALKOSKY: Okay. So
25 I'll --

1 MR. ABREU: That's in the Visual
2 testimony.

3 HEARING OFFICER VALKOSKY: Right. But -
4 - but the current intent, as I understand it,
5 then, is to conform with the design standards or
6 the design scheme that the city would prefer.

7 MR. ABREU: The city hasn't selected a
8 design scheme, but what we have offered to do, and
9 be happy to do, is to work with the city to
10 develop a scheme that's consistent with the
11 physical arrangement of things as we have them in
12 the plan right now, but -- but maybe a different
13 look. We did spend, you know, a couple of hours
14 with the city planning staff with our architects,
15 and stuff, going over numerous concepts, and this
16 was back last summer, I believe. And from that,
17 they've sort of had some concepts they thought
18 were -- were interesting, but we haven't pursued
19 it beyond that point.

20 HEARING OFFICER VALKOSKY: Okay. Thank
21 you.

22 PRESIDING MEMBER LAURIE: Ms. Young, I'm
23 Bob Laurie. How are you doing?

24 MS. YOUNG: I'm fine, Bob. How are you?

25 PRESIDING MEMBER LAURIE: Fine. Thank

1 you for being here.

2 I, too, am most interested in
3 discussions regarding the architectural treatment.
4 And I'm fully prepared to reserve those questions
5 for Visual, unless you feel comfortable responding
6 to some general questions.

7 MS. YOUNG: Sure. I think between Ken
8 and I we can answer your questions.

9 PRESIDING MEMBER LAURIE: And if you
10 can't answer, that -- that's fine.

11 Who's the witness going to be in Visual?
12 Is it representative -- is Hillier going to be
13 here?

14 MR. ABREU: We're planing to have Hiller
15 here. Our witness would be Tom Priestley, for
16 Visual.

17 PRESIDING MEMBER LAURIE: Okay. And --
18 and he's not from Hillier; right?

19 MR. ABREU: He's not from Hillier.

20 PRESIDING MEMBER LAURIE: Okay.

21 MR. ABREU: He's familiar with, and
22 actually participated in these meetings, but he's
23 not with Hillier.

24 PRESIDING MEMBER LAURIE: Do you know
25 the extent -- and I ought to direct this to Ms.

1 Young -- do you know the extent to which Hillier
2 examined international examples of power plants in
3 sensitive urban areas? Power plant designs in
4 sensitive urban areas.

5 MR. ABREU: I can answer that, because
6 we actually hired Hillier as -- as for Calpine, as
7 the corporate architect. They actually did the
8 design of a power plant for us in New York at
9 Kennedy Airport. And -- which is a -- a award
10 winning power plant architectural design. They
11 also, of course, are doing -- looking at ours.
12 They've looked at, you know, architectural
13 treatments of power plants around the world to
14 give us ideas on what they thought might work.

15 PRESIDING MEMBER LAURIE: Okay. Well, I
16 am looking forward to that discussion, because
17 recognizing we don't have any evidence on it yet,
18 and -- and I will reserve judgment until I see the
19 evidence, but it is my preliminary belief that how
20 a building, how a use, how a facility looks has
21 dramatic impact on the value of that community --
22 on the value of that building use for facility to
23 the community.

24 And thus, that question is going to be
25 very important to me. I'm looking forward to that

1 discussion. Thank you.

2 HEARING OFFICER VALKOSKY: Ms. Willis,
3 cross examination?

4 MS. WILLIS: Thank you.

5 CROSS EXAMINATION

6 BY MS. WILLIS:

7 Q Ms. Young, I'd like to refer you to page
8 9 of your testimony, and focus on the two changes
9 to the Land Use conditions. Since these -- these
10 changes were not brought up in workshops, I'd just
11 like to pursue just a few questions of
12 clarification.

13 The first, on LAND-2. On the -- under
14 discussion, at the -- the last sentence, you
15 state, orchard style planting is not proposed in
16 the area between the parking lot and the heat
17 recovery system generators for visibility and
18 safety reasons. Are -- are you proposing a change
19 in this condition for safety reasons, and if so,
20 can you explain what those reasons -- safety
21 reasons are?

22 A No. The existing landscape plan for --
23 refer to slide 30 -- for in between the parking
24 area and the -- the HRSGs, always has been a low
25 type of a shrub. It has never really been

1 proposed for trees of any sort in -- in that area.
2 And it's -- it is for visibility and safety
3 reasons, so that the visibility of the HRSGs is
4 clear to people working in the administration
5 building.

6 Does that answer your question?

7 Q I think so. So you're saying that the
8 condition that you're proposing, the changes is
9 not for safety reasons. It would be for -- for
10 putting in parking spaces?

11 A No. It -- the intent really of that
12 guideline is for large expanses of parking lots.
13 And since the Metcalf parking lot is relatively
14 small -- I can't recall the total number of
15 spaces, maybe 12 or 14 spaces -- the intent of
16 that change is to still meet the -- one of the
17 intents of that guideline, which is to provide
18 shade and relief within the Metcalf parking lot.

19 If you -- if you look at the Metcalf
20 parking lot, you can see that there are no trees
21 currently in and among the spaces. And so one of
22 the ideas would be, for example, maybe to put a
23 little pop-out island there to put some kind of
24 relief or landscaping in there.

25 But it was still to -- to meet the

1 intent of providing shade and relief, but not to
2 specify that it be in an orchard style.

3 Q Okay. I want to move on to LAND-3.
4 Isn't it correct that the feet and inches that are
5 itemized in that condition were provided by the
6 Applicant?

7 A That's correct.

8 Q I'd like to refer you back to your slide
9 on number 10, where you have the already adjacent
10 to public, quasi public land. And I don't know if
11 you have available the San Jose 2020 general plan
12 map that was provided in the city's testimony.

13 A Yeah, we -- we have a copy of it.

14 Q I just wanted to ask you, is the --
15 where did you come, or how was the map that you
16 show on your slide developed? It appears to be
17 different from the map that we have in front of
18 us.

19 A It was really just a generalized version
20 of the city's general plan map that was done for
21 presentation purposes. It was not intended to be
22 a line by line property definition of the general
23 plan.

24 Q Okay. So isn't it correct that there's
25 open space park land in between the -- the public,

1 quasi public uses --

2 A Yes, that --

3 Q -- and the Metcalf grounds?

4 A -- that's correct.

5 Q Along the same line, you state on page
6 15 of your testimony that public, quasi public is
7 a common land use in the vicinity of MEC. Other
8 than the substation, PG&E substation, is there
9 other public, quasi public uses in that area that
10 you can point to for me?

11 A It's just the PG&E transmission
12 facilities and the substation.

13 Q Thank you.

14 A It's close to 500 acres.

15 Q I'd like to go to the issue of the prime
16 farmland conversion. Dr. Mason, you stated in
17 your testimony that the southern ten acres -- the
18 southern ten acres is being currently farmed. Is
19 that correct?

20 A That's correct.

21 Q Is that portion in the city or in the
22 county?

23 A That's in the -- that's in the city.

24 Q That is in the city. And maybe you can
25 clarify for me what -- what your testimony is

1 today. I'm a little bit confused.

2 Are you testifying that the land on the
3 MEC site is not prime farmland, or are you
4 testifying -- or are you testifying that it's too
5 small to be significant? And maybe you can
6 clarify that for me.

7 A I'm doing a little bit of both. First
8 of all, the Metcalf site really is -- is divided
9 into two parts, north and south of the tree line.
10 North of the tree line is part of the Metcalf site
11 which is designated, in my opinion, not prime
12 farmland, because it has not been farmed. There's
13 not an active irrigation system operative there,
14 crops are not harvested from that property. It's
15 just not farmed. And therefore, it is not a
16 suitable candidate for prime farmland mapping,
17 basically.

18 Q Can I ask you a follow-up question on
19 that?

20 A Yes.

21 Q That area that you're discussing right
22 now is in the northern ten acres?

23 A Approximately.

24 Q And that -- and that would be in the
25 county?

1 A Yes.

2 Q Have you considered the county threshold
3 for determination of prime farmland?

4 A No.

5 Q Okay. Continue, I'm sorry.

6 A What's that?

7 Q You were talking about the southern
8 part.

9 A Oh, the southern -- the southern portion
10 of the property, the southern ten acres, as I
11 mentioned, would be considered prime farmland
12 because it is irrigated, and it is actively
13 farmed, and it would be a suitable candidate for
14 prime farmland inclusion.

15 MS. WILLIS: Just one moment, please.

16 DR. MASON: Sure.

17 (Pause.)

18 BY MS. WILLIS:

19 Q I'm going to refer you to your rebuttal
20 testimony, on page 6 at the bottom, regarding
21 conversion of prime farmland.

22 You state that therefore, conversion of
23 prime agricultural land is not a new impact, and
24 this is based on the change in designation with
25 the adoption of the campus industrial designation

1 by the City of San Jose.

2 A Kerry, forgive me. Could you repeat the
3 question, please?

4 Q I'm just referring you to the -- I
5 haven't actually asked a question yet.

6 MR. HARRIS: I'm sorry, what --

7 MS. WILLIS: Just referring you to the
8 bottom of page 6 of your rebuttal testimony.

9 MR. HARRIS: -- page 6, got it.

10 BY MS. WILLIS:

11 Q Could you tell us the basis of your
12 determination that changing a designation is not
13 -- is that -- I guess that would be the impact, as
14 opposed to actually the physical change of land
15 from prime farmland to some other type of land
16 use?

17 A Let me answer it this way. When the
18 North Coyote Valley was redesignated campus
19 industrial, the decision was made basically to --
20 to use that land for something other than farming.
21 And therefore, that decision and all the
22 deliberations that went into that decision were
23 basically concluded, and so from the land use
24 planning standpoint and administratively, the
25 decision was made to change that designation, and

1 therefore, prime farmland was no longer an issue.

2 So that -- that's kind of where I --
3 that's how I approached it, that it was -- it's
4 not -- it's not a new -- new issue, and not a new
5 impact.

6 Q And -- and that change in designation
7 was in 1985; is that correct?

8 A Yes.

9 Q And some of the land is still being
10 farmed today; is that correct?

11 A Oh, yes. Definitely.

12 Q Did you review the Environmental Impact
13 Report for the -- for CVRP?

14 A Yes, I did. Yes.

15 Q And do you know what the determination
16 was on the impacts of conversion of prime farmland
17 in that Environmental Impact Report?

18 A Great question.

19 MS. YOUNG: Yes. The conclusion in that
20 was that the -- which is actually very consistent
21 with the way the city evaluates conversion
22 impacts, in particular, is that the conversion of
23 the acreage from CVRP -- from agriculture to
24 campus industrial is significant and unavoidable.

25 MS. WILLIS: Thank you. That's all the

1 questions I have. Thank you.

2 PRESIDING MEMBER LAURIE: And did they
3 make overriding findings?

4 MS. YOUNG: Yes, they did.

5 HEARING OFFICER VALKOSKY: Ms. Dent.

6 CROSS EXAMINATION

7 BY MS. DENT:

8 Q Ms. Young, I want to pick up on a
9 section of your testimony that ALJ Valkosky was
10 discussing, and that is the substantially in
11 compliance with specifically city laws,
12 ordinances, regulations and statutes. And I think
13 that -- that today your testimony was that there
14 was a -- you met the spirit and intent.

15 And so I take from the use of the word
16 "substantially" and the use of the word "spirit
17 and intent", you acknowledge that the letter of a
18 variety of city standards and policies are not met
19 with this project.

20 A I don't know that I agree with a
21 variety, but we -- I would agree that yes, we are
22 not in compliance with the letter, the exact
23 letter, of the standards.

24 Q So, starting with -- at the top, with
25 the first city standard applicable to the project

1 site, the city's general plan designation and
2 Coyote Valley, North Coyote Valley Master
3 Development Plan, the campus industrial
4 designation. You would agree that the site is not
5 -- that the project is not campus industrial as
6 it's defined in the general plan or the Coyote
7 Valley master development plan?

8 A That is correct. And we applied for a
9 general plan amendment to the city's general plan
10 in accordance with the city's direction to -- to
11 change that designation for our site.

12 Q So, and -- and then, if I understand
13 correctly, the slide -- the presentation that you
14 handed out to the Commission today, the -- were
15 copies of slides that you produced for both the
16 Planning Commission and the City Council on the
17 project. I believe that was your testimony, that
18 that was the same presentation that was given to
19 the Planning Commission and the City Council.

20 A Substantially the same, yes.

21 Q So, now, we've got the word
22 "substantially" again.

23 (Laughter.)

24 BY MS. DENT:

25 Q Maybe you would -- maybe you could tell

1 us the changes in the presentation as you gave it
2 today to the Commission and the presentation as
3 you gave it to the Planning Commission and City
4 Council.

5 MR. HARRIS: By way --

6 PRESIDING MEMBER LAURIE: Okay. Let --
7 let me ask about relevancy of that question. Does
8 it relate to the packet as a whole? Why -- why do
9 we need to know the difference between what's in
10 that packet and -- and what was presented?

11 MS. DENT: This witness has given an
12 expert opinion on compatibility. And that opinion
13 on compatibility is certainly inconsistent with
14 our City Council's eleven to zero vote on
15 compatibility of this project. And their vote
16 was, of course, based on what was in front of
17 them.

18 Now she's been -- she has given an
19 opinion on compatibility on something apparently
20 different that's been presented today. It may not
21 be substantially different. I would just like to
22 get those -- if it's the same, that's the -- the
23 Applicant can say so.

24 MR. ABREU: This is the exact
25 presentation we made to the Planning Commission --

1 to the Planning Commission. The City Council was
2 practically the same, we just changed a few little
3 things between the Planning Commission and City
4 Council, like updated how many Stage 2 alerts
5 there were, and things like that.

6 MS. DENT: Thank you.

7 MR. ABREU: We haven't changed it from
8 that.

9 MS. DENT: Thank you for that
10 clarification.

11 BY MS. DENT:

12 Q So, now you've indicated your opinion on
13 compatibility, but yet the City Council voted to
14 deny a plan development permit for the project.
15 Is that correct?

16 A They voted to deny a general plan
17 amendment and a plan development zoning.

18 Q Zoning for the project. And that was
19 after seeing substantially the same presentation
20 that you've given today?

21 A That's correct.

22 Q Now, I want to just really briefly run
23 through the areas of local policy or standard non-
24 compliance, as I understand them, for the project.
25 And I think you went through most of them today.

1 And we're talking now about city policies and
2 ordinances.

3 The setback for the project from the
4 railroad tracks doesn't meet the 50 foot setback
5 requirement in the city, in the Coyote Valley
6 Master Development Plan; is that correct?

7 A That's correct.

8 Q And the setback for the project from the
9 southern property line doesn't meet the 100 foot
10 setback requirement from the current property
11 line.

12 A From the current property line?

13 Q Yes.

14 A That's correct. It's a 70 foot setback,
15 but with a condition of certification at the time
16 that the property to the south would develop, and
17 with that condition in -- in effect, when that
18 property develops with campus industrial, that
19 setback would be met.

20 Q And the project doesn't meet the 100
21 foot riparian corridor setback requirement because
22 the 100 feet that you're including within the
23 riparian corridor includes ten feet of clear
24 space, ten feet that is going to be cleared of
25 vegetation; is that accurate?

1 A I don't know that I understand the
2 question.

3 Q Well, the project is not going to
4 maintain the riparian vegetation for the entire
5 100 feet that you're including in the riparian
6 corridor setback area. There's a proposal that
7 ten feet of that space would be cleared of
8 vegetation. Are you --

9 MR. HARRIS: Could you point us to the
10 relevant part of the testimony where that's found?

11 MS. DENT: Yeah, here at the clear
12 space.

13 MS. YOUNG: The -- the riparian corridor
14 setback is 100 feet, and we will be meeting the
15 100 foot setback with no structures, in accordance
16 with the city's policy we're meeting that 100 foot
17 setback.

18 BY MS. DENT:

19 Q Let me ask the question this way, then.
20 Is there any proposal on the part of the Applicant
21 to clear vegetation within that 100 foot setback
22 area, as far as you know?

23 A The setback -- the setback area actually
24 is very degraded in many places right now, so the
25 site will be cleaned up, graded, no riparian trees

1 will be removed.

2 Q So in terms of maintaining a vegetation
3 free zone within the setback, you -- do you have
4 any knowledge of that whatsoever?

5 A Could you ask the question again?

6 Q In terms of the Applicant's desire to
7 maintain a vegetation free zone within the
8 riparian corridor setback, do you know whether
9 that's the case or not? Yes or no.

10 A It -- it's -- there is a ten foot clear
11 space. That's correct.

12 Q Okay. Thank you.

13 Going on to other areas of inconsistency
14 with the riparian corridor policy. The noise
15 level in the riparian corridor will exceed
16 background ambient noise levels, which is an
17 exceedence of the city's goal for that also; am I
18 correct?

19 A I believe that issue was addressed in
20 the Noise testimony, and the impact of noise is --
21 to the riparian corridor is dealt with in the
22 Biology testimony.

23 Q Well, the city's standard isn't a
24 biological standard, though, is it? The city's
25 standard is no increase in ambient noise level --

1 MR. HARRIS: I'm going to object on the
2 basis that these are questions for the Biology
3 witness.

4 MS. DENT: I'm asking --

5 HEARING OFFICER VALKOSKY: Why don't we
6 just let the witness answer. If she knows the
7 answer, fine. If she thinks that she can defer it
8 to Biology, that's fine, too.

9 Just answer the question, please.

10 BY MS. DENT:

11 Q Do you know whether the city's standard
12 is a biologically based standard or whether the
13 standard is simply no increase in ambient noise
14 levels?

15 A I do not know how that standard was
16 developed, if it had biology in mind or not.

17 Q Okay. Now, I think that we've had some
18 earlier clarification of the testimony in terms of
19 proximity of the site to the PG&E substation. And
20 you've indicated that, in fact, the site is
21 directly adjacent to a county park with a regional
22 park chain in it, and not to the PG&E substation.
23 Is that accurate?

24 A It's -- well, if you want to get
25 semantics, it's adjacent to a railroad track. And

1 then it's adjacent to Monterey Road, and then
2 there is a county park facility, and then there is
3 the PG&E substation.

4 Q Well, let's -- let's talk about the
5 railroad for just a minute. You -- you described,
6 in your testimony, you described the Union Pacific
7 Railroad line as the main line? I think -- is
8 that your understanding, that that's a main Union
9 Pacific Railroad line?

10 A Do you have a reference for that in my
11 testimony?

12 Q Page 12.

13 A Yes. UPRR main line.

14 Q So, now, do you have any understanding
15 about the frequency of use of that line by Union
16 Pacific Railroad?

17 A No, I'm not an expert on the traffic on
18 the UPRR railroad.

19 Q Well, in your testimony, at the very
20 back of your testimony, in your conclusion, you
21 talked about -- on page 19, you talked about
22 positive land use attributes in relation to
23 standard power plant siting criteria. And you
24 mention the rail transport corridor as a positive
25 site attribute. Could -- could you tell me how

1 you -- you consider the railroad line being
2 adjacent to the site as being a positive site
3 attribute, especially in light of the fact that
4 the only access into that site is going to be
5 across those railroad tracks?

6 A The construction of a power plant
7 requires the delivery of large pieces of equipment
8 to the site. And having a rail spur or a railroad
9 immediately adjacent to the site reduces the
10 amount of roadway travel or truck travel of those
11 heavy pieces of equipment when they're delivered
12 to the site.

13 So finding a site that has immediate
14 adjacency to a rail corridor is one of the
15 features or benefits when siting a power facility.

16 Q Can you tell us where the rail spur is
17 on the Metcalf Energy Center plans?

18 A It will be constructed as a spur off of
19 the main line.

20 Q So it's not there now?

21 A It's currently not there. It's part of
22 the construction part of the project.

23 Q So you've identified that for -- that
24 during construction, being adjacent to the
25 railroad will be a benefit to the Applicant. I'd

1 like to ask you about during operation. Again,
2 focusing on the access to the site being in that
3 grade crossing into the site, how that could be
4 considered any kind of advantage to the site.

5 A I don't know that during operation
6 there's any benefit or any detriment to having the
7 rail next door. It's primarily a construction
8 related benefit.

9 Q I want to go back to another statement
10 that you made in your testimony today about the
11 orchard planting criteria for the parking lot.
12 And I believe that what you said was well, that
13 criteria was not intended for a power plant type
14 use. Did I understand you to say that?

15 A That's correct. And in my testimony, I
16 cite the master development plan language that
17 describes the intent of the orchard planting
18 guidelines.

19 Q Well, of course, the master development
20 plan for Coyote Valley has development standards
21 in it for campus industrial type uses. Correct?

22 A That's correct.

23 Q So, indeed, the master development plan
24 for Coyote Valley didn't anticipate the standards
25 in many ways that the city might have wanted to

1 impose for a power plant type use. Is that
2 accurate?

3 A Yeah, that's a fair statement.

4 Q So you don't meet some of the standards
5 that are imposed even for campus industrial uses,
6 the ones we've talked about, the setbacks and that
7 sort of thing, but you -- and you also acknowledge
8 that the standards that are imposed for campus
9 industrial uses are not standards necessarily that
10 would even apply to power plants.

11 A We have made those statements before,
12 yes.

13 Q Now, in terms of compatibility, just
14 general compatibility, your own opinion of
15 compatibility of land uses. Did you look at
16 planned future uses as well as existing uses in
17 making -- in reaching your conclusion on
18 compatibility?

19 A Yes.

20 Q Did you consider the plans for
21 residential uses that are even closer to the site
22 than the current Santa Teresa neighborhood?

23 A Can you define where those residential
24 uses are proposed?

25 Q I think we can do it on the general

1 plan.

2 A Is that on the far side of Highway 1, or
3 101?

4 HEARING OFFICER VALKOSKY: Ms. Prevetti,
5 could you describe for the record where you're
6 pointing?

7 MS. PREVETTI: This is Metcalf Road
8 here, and then this is the area that has some
9 planned areas for residential development at a
10 very low density. The Metcalf Energy site is up
11 here under the campus industrial adjacent to
12 Tulare Hill.

13 HEARING OFFICER VALKOSKY: I'm sorry.
14 Were you pointing to the green area, or on the
15 opposite side of the green area?

16 MS. PREVETTI: Opposite of the green,
17 right adjacent to our urban growth boundary, there
18 is an area planned for residential use.

19 HEARING OFFICER VALKOSKY: Is that zoned
20 open space now, or what's the zoning on that?

21 MS. PREVETTI: I don't know what the
22 zoning is. The general plan designation is for
23 residential use.

24 MR. HARRIS: So what is the general plan
25 designation?

1 MS. DENT: Low density residential.

2 MR. HARRIS: And the yellow part --

3 MS. PREVETTI: Approximately five units
4 to the acre.

5 MS. YOUNG: It appears from the map to
6 be the same, very similar distance from the
7 nearest Santa Teresa neighborhoods, and it's also
8 on the other side of Highway 101.

9 BY MS. DENT:

10 Q So my question is, did you -- did you
11 consider that planned residential area in terms of
12 your opinion of compatibility?

13 A Yes.

14 Q And what about the planned residential
15 area in the Coyote Valley urban reserve to the
16 south of the site?

17 A Yes.

18 Q And approximately how far would that
19 residential area be from Metcalf Energy Center?

20 A A mile and a half to two miles or so.

21 Q Now, Ms. Young, in your testimony, in
22 your written testimony, you opined that the
23 Metcalf Energy Center site was perhaps not large
24 enough for development as an industrial -- as a
25 campus industrial site. Now, the Metcalf Energy

1 Center site is a part of a larger -- was a part of
2 a larger parcel of property, the Passantino
3 property. Is that correct?

4 A No, that's not correct. The developed
5 -- primary developed portion of the Metcalf site
6 is actually part of the Tulare Hills property.
7 The Passantino property is a separate parcel.

8 Q And you're going to be using some of the
9 Passantino property for the project site, and
10 you're going to be using some of the Passantino
11 property now for the 30 foot setback area?

12 A That's correct.

13 Q So, now, if it were not for the MEC
14 development, do you agree that the most likely
15 development scenario for this parcel would be as
16 an assemblage with other nearby adjacent parcels
17 so that it could be developed into a campus
18 industrial use? In other words, this -- this
19 parcel, this piece of property, would not have
20 been developed on its own, necessarily.

21 A I guess that's conjecture. You could
22 always develop the site with its own development.
23 I don't know that there is anything that would
24 preclude that from happening. Certainly the --
25 the city's policies in the MDPA are to look for

1 opportunities to merge parcels when it's
2 appropriate.

3 Q Now, in your written testimony, you took
4 -- you took issue with the city's, and the CEC's
5 designation of this, of MEC as heavy industrial
6 use. Have you looked at the -- whether or not
7 power plants are generally considered heavy
8 industrial uses in other general plans and zoning
9 ordinances in other jurisdictions?

10 A No, I haven't surveyed other general
11 plans or zoning ordinances to determine if -- if
12 they're considered heavy industrial uses for other
13 jurisdictions.

14 Q And you also indicated in your resume
15 that you -- you had worked on a few other power
16 plants. Do you --

17 A I know there was one in Hawaii. That
18 struck me.

19 Q Do you know or recall whether those
20 projects were consistent with the local land use
21 designations for their sites, or whether there was
22 a need to locate the project on a site that was
23 not what was contemplated by the local land use
24 designation?

25 A The project that I worked on in Hawaii

1 was on the big island of Hawaii, on the Kona Coast
2 side. I do not recall if that project required a
3 change of zoning or a change of general plan. In
4 the State of Hawaii all of those types of requests
5 go through the state -- it's called DLNR,
6 Department of Natural Land Resources, or something
7 like that. But I do not recall if it required any
8 kind of land use change.

9 Q And what about pending projects before
10 the Energy Commission, or recently approved
11 projects by the Energy Commission. Do you have
12 any knowledge about whether any of those required
13 land use changes by the local jurisdiction?

14 A The only project I'm familiar with that
15 required a land use change before the CEC was the
16 Sutter case. I have no knowledge of other cases
17 pending before them, whether or not they require
18 land use revisions.

19 Q Now, on -- in page 16 of your testimony,
20 you indicate that to have the greatest impact on
21 ameliorating energy supply and reliability
22 problems, new plants need to be located in areas
23 of electricity demand. Now, assuming that you're
24 correct, that new plants need to be located in
25 areas of electricity demand, can you give me the

1 facts upon which you based the conclusion that the
2 area around Metcalf Energy Center is the area of
3 greatest demand in San Jose, or even in the
4 greater South Bay area?

5 MR. HARRIS: What page of the testimony
6 are you on? I'm sorry.

7 MS. DENT: Page 16.

8 MR. HARRIS: And what paragraph are we
9 looking at here?

10 MS. DENT: Down at the bottom of the
11 page, talking about the San Jose 2020 general
12 plan.

13 MR. HARRIS: And which paragraph? I'm
14 sorry.

15 HEARING OFFICER VALKOSKY: The last
16 sentence.

17 MS. DENT: Yeah, the --

18 MS. YOUNG: The last sentence --

19 MR. HARRIS: To have the greatest -- the
20 one that says to have the greatest impacts on?

21 BY MS. DENT:

22 Q Now, assuming that's true, you say the
23 Metcalf Energy Center is such a plant, can you
24 tell me how you reached the conclusion that
25 Metcalf Energy Center is the center of load demand

1 in San Jose --

2 MR. HARRIS: Objection. I don't --

3 MS. DENT: -- and the greater South Bay

4 --

5 MR. HARRIS: -- believe that's her

6 testimony, so I would object on that basis.

7 HEARING OFFICER VALKOSKY: Rephrase the

8 question.

9 BY MS. DENT:

10 Q How did you come to the conclusion that
11 Metcalf Energy Center is a plant that would be
12 located in the area of electricity demand such as
13 to ameliorate the energy supply and reliability
14 problems?

15 A My reference in that statement is really
16 to the electricity demand in the greater Santa
17 Clara Valley, not in the immediate vicinity of the
18 Metcalf site, if that's what you're referring to.

19 Q That -- that's -- I understand that.
20 The first sentence reads, urban growth in the
21 Santa Clara Valley has intensified --

22 A Right.

23 Q -- and the demand has intensified. So
24 are you saying now that -- that it's urban growth
25 in the whole valley and the demand for electricity

1 in the whole valley that you're talking about
2 needing to have a power plant located somewhere
3 near that demand?

4 A Yes. There are no major generating
5 facilities in Silicon Valley. It's an area of
6 energy demand.

7 Q And you personally have not made any
8 study of where the electricity demand is actually
9 centered, where the load center is in the Santa
10 Clara Valley area, have you?

11 A That's not my area of technical
12 expertise. That will be covered under local
13 system effects.

14 Q Thank you. Now, on page 19 of your
15 testimony, you summarize the positive land use
16 attributes of Metcalf Energy Center, in --

17 A What page was that? I'm sorry.

18 Q Page 19, I'm sorry -- in relation to
19 standard power plant siting criteria. And you
20 include among those criteria proximity to fuel
21 supply and water lines, and you indicate that
22 there is a planned extension of South Bay Water
23 recycled supply line to the project.

24 Please assume for a moment that there is
25 no planned extension, that the city has no plans

1 to extend South Bay Water recycling to the
2 project, that the line is located, as in fact it
3 is today, seven to ten miles away from the plant.
4 Do you then agree that this location does not meet
5 one of the key criteria, which is access to a
6 necessary supply for the project?

7 MR. HARRIS: I'm going to object that
8 the question -- her testimony is not that these
9 are the key criteria for the project.

10 MS. DENT: Standard power plant --

11 HEARING OFFICER VALKOSKY: I'm going to
12 overrule the objection. I mean, it seems to me
13 it's -- it's relevant to what is stated on page 19
14 of her testimony.

15 MR. HARRIS: Just objecting to the
16 phrasing of key power plant siting criteria. Her
17 -- her sentence -- the way that the question was
18 phrased, and I can't read it back.

19 HEARING OFFICER VALKOSKY: Okay. Just
20 -- Ms. Dent, rephrase the question. Keep the
21 substance of it.

22 MS. DENT: Thank you.

23 BY MS. DENT:

24 Q Page 19. You summarize the positive
25 land use attributes in relation to, quote,

1 standard power plant siting criteria. And you
2 include among those criteria proximity to things
3 such as water supply lines. And you indicate that
4 there's a planned extension of South Bay Water
5 recycle to the project.

6 I'm asking you to assume for a moment
7 that there is no such planned extension, that the
8 line is, in fact, located seven to ten miles from
9 the plant. So then would you agree that the
10 location does not meet that standard power plant
11 siting criteria?

12 A I guess so, but my testimony is that
13 there is a planned extension for South Bay Water
14 recycling. It's a hypothetical situation that
15 you're asking. If --

16 Q And on what basis -- and who do you
17 think intends to extend South Bay Water recycling
18 to the project?

19 MR. HARRIS" I'm going to object on the
20 basis the question was covered during the Water
21 testimony.

22 HEARING OFFICER VALKOSKY: Again, I'm
23 going to overrule. If the witness can answer it
24 within her expertise, she should do so. If not,
25 she should so state.

1 MS. YOUNG: The project is proposing to
2 extend South Bay Water recycling to the site.

3 BY MS. DENT:

4 Q So now I -- now I want to get into an
5 area of testimony that Commissioner Laurie was
6 asking about, and perhaps it was ALJ Valkosky, and
7 that's the LAFCO, the area of LAFCO input into the
8 process, and ask you if you understand that if
9 this project is not -- if the Metcalf Energy
10 Center site, the portion that's in unincorporated
11 areas of the county, is not annexed into the city,
12 do -- are you aware of the requirement for LAFCO
13 approval of outside service connection agreements
14 for utility services to this property?

15 In other words, that not only would the
16 city council have to approve the contracts for
17 utility service to the project, but LAFCO would
18 have to approve those projects also. Do you have
19 any knowledge of that?

20 MR. HARRIS: Object to these. Then it
21 calls for a legal conclusion.

22 HEARING OFFICER VALKOSKY: Okay. To the
23 extent it calls for a legal conclusion, that's
24 fine. Otherwise, I would like to hear an answer
25 to it, too. Again, I think it goes back to the --

1 the initial question concerning the extent, if
2 any, of LAFCO involvement should the area not be
3 annexed into the city. Is that about it, Ms.
4 Dent?

5 MS. DENT: Yes.

6 HEARING OFFICER VALKOSKY: Yeah.

7 MS. YOUNG: I guess I would agree with
8 Mr. Harris. I believe it calls for a legal
9 conclusion that I don't have the expertise on.
10 However, the Energy Commission has the exclusive
11 power to certify all sites related to siting power
12 facilities, and my assumption would be that the
13 Energy Commission would make that determination
14 about that issue.

15 PRESIDING MEMBER LAURIE: I think the
16 question was are you aware of the requirement as
17 expressed by Ms. Dent.

18 MS. YOUNG: I'm aware of the
19 requirement.

20 PRESIDING MEMBER LAURIE: Thank you.

21 MS. DENT: Now, I'm not quite sure who
22 was responsible for Appendix F. Was that Ms.
23 Young, or was that Mr. Abreu?

24 MR. HARRIS: The panel is available to
25 answer questions on that.

1 MS. DENT: Okay. All right.

2 BY MS. DENT:

3 Q On page 6 of Appendix F of the
4 testimony, there is a description of how Metcalf
5 Energy Center will assist the city in achieving
6 its economic goals for North Coyote Valley. And
7 I'd like one of the witnesses to describe how
8 Metcalf Energy Center would help the city achieve
9 the economic goal for North Coyote Valley of
10 creating additional jobs in North Coyote Valley
11 when Metcalf Energy Center will only employ 20
12 workers, and a campus industrial use on the
13 property would, according to the Coyote Valley
14 Master Plan, allocate over a thousand jobs to the
15 site.

16 A I don't have an answer to that. Your
17 statement is correct. Metcalf will have 24
18 employees permanently, and have a construction
19 workforce of approximately 300 to 400.

20 Q So it does not meet the city's economic
21 goal, then, of utilizing -- of having -- of having
22 development in North Coyote Valley create
23 additional jobs to the level that is envisioned by
24 the Coyote Valley Master -- the North Coyote
25 Valley Master Plan?

1 A If the Metcalf site were developed with
2 a power facility, it would not have the same
3 number of jobs as a campus industrial facility.
4 That's correct. Whether or not those jobs could
5 be made up elsewhere within the entire 1500 acres
6 of the North Coyote Valley Master Development
7 Plan, I guess is conjecture. They could be. You
8 could add another couple of floors to a couple of
9 buildings, and make up those employees. But
10 you're -- you're right.

11 MS. DENT: I want to take just a couple
12 of minutes.

13 (Inaudible asides.)

14 BY MS. DENT:

15 Q Is the Metcalf Energy Center project in
16 compliance with the city's urban design policies
17 in the general plan regarding height, which
18 establishes height limit in the campus industrial
19 area of 120 feet?

20 A Yes.

21 Q So how do stacks that are 145 feet high
22 comply with the 120 foot height requirement?

23 A Let me find my reference. There's an
24 exception to the city's height limitations when
25 you have a piece of your structure that is

1 intrinsic to the functioning of the facility. And
2 actually, we have a letter from the city -- that's
3 what I was looking for -- that identifies that the
4 Metcalf facility does qualify for that exception
5 to the height -- the height limit.

6 Q And now, the letter, though, from the
7 planning department, indicated that that would be
8 contingent on approval of the project. The
9 height, the change in the height limit is
10 discretionary with the director of planning. Is
11 that correct?

12 A Well, the -- it's my understanding that
13 if the PD zoning had been approved, then the
14 height that was proposed in Metcalf is part of the
15 PD zoning. And it would have been incorporated
16 into the zoning standards for the site.

17 Q But the PD zoning wasn't approved, and
18 --

19 A That's correct.

20 Q -- the site is campus industrial, and
21 the limit is 120 without PD zoning.

22 A That's correct.

23 Q In terms of -- I want to go back for
24 just a minute to -- to compatibility with adjacent
25 uses. And -- and ask you to talk about the creek

1 and the planned recreational trail along Fisher
2 Creek, and project compatibility with a
3 recreational trail in that proximity to the Energy
4 Center site.

5 A And what would you like me to talk
6 about?

7 Q Well, for example, noise to -- noise,
8 audible noise to trail users. It looks like the
9 trail would be -- it would be the closest adjacent
10 use to the site, I think.

11 MR. HARRIS: Objection. This is not the
12 Noise witness. We covered this ground.

13 MS. DENT: I'm asking about
14 compatibility of uses. The planned trail --

15 MR. HARRIS: And this was a Noise issue
16 which we discussed, and I object on that basis.

17 HEARING OFFICER VALKOSKY: Okay. Let's
18 just have -- the questions will explore the
19 witness's area of expertise. The witness can say
20 whether or not she knows the answer.

21 MR. HARRIS: That -- the caveat, I don't
22 think this is part of her prefiled testimony, as
23 well. So I'd point that out.

24 HEARING OFFICER VALKOSKY: Well, then
25 the witness is free to state that. Not in her

1 area of expertise.

2 Proceed.

3 BY MS. DENT:

4 Q Did you consider the planned Fisher
5 Creek Trail in reaching your conclusion and making
6 your opinion on compatibility with adjacent uses?

7 A Yes. However, the planned Fisher Creek
8 Trail is just that. There is no designation in
9 any documents that I know of so far exactly where
10 that trail is going to go, or where it will be
11 designated to go.

12 Q Well, I --

13 A In addition, there are many trails
14 throughout the City of San Jose and in the county
15 that are immediately adjacent to facilities that
16 generate noise, the Los Gatos Creek Trail, the
17 Coyote Creek Trail, the Guadalupe River Trail, and
18 in my professional opinion, having a trail next to
19 a power plant is not -- would not have a
20 detrimental noise effect on that experience.

21 Q Thank you. In terms of the trail being
22 designated on city planning documents, I'd refer
23 you to the Coyote Valley -- the North Coyote
24 Valley Master Plan, which does indeed indicate the
25 trail north of Bailey, doesn't it? Is that a

1 document that you reviewed?

2 A Yes, it is. Yes.

3 MR. HARRIS: Could you provide a copy of
4 that document for the witness?

5 MS. YOUNG: No, it's right here. What's
6 the question?

7 BY MS. DENT:

8 Q The Fisher Creek Trail is actually
9 illustrated in that document, and described, is it
10 not?

11 A Yes. It shows a creekside
12 bike/pedestrian trail option.

13 Q Well, page 39 is an overview that shows
14 the location of the trail.

15 A That's what I'm looking at.

16 Q And I believe there's a cross section
17 also of the trail, as well.

18 A On what page? The fact that the trail
19 is shown there doesn't change my conclusion about
20 compatibility.

21 Q You agree that it is a planned use for
22 the site?

23 A It's -- there is a trail shown in that
24 vicinity, yes.

25 Q Thank you.

1 MR. HARRIS: Can I ask that my witnesses
2 be given a five minute break for obvious reasons.

3 MS. DENT: I probably only have another
4 five minutes, but I --

5 MR. HARRIS: I thought you only had 30
6 to start with.

7 MS. DENT: I've been too long. I'm
8 sorry.

9 HEARING OFFICER VALKOSKY: Okay. Do we
10 --

11 MS. YOUNG: Go ahead. It's fine, we can
12 go for five minutes.

13 HEARING OFFICER VALKOSKY: Are you sure?
14 Okay. We'll go for five minutes, no longer.

15 (Inaudible asides.)

16 BY MS. DENT:

17 Q The last question that I have really has
18 to do with the part of the testimony in Appendix
19 F, dealing with -- with the other sites available
20 for power plants in San Jose. And you understood,
21 and we're looking, I suppose, in response to the
22 city's testimony only at San Jose's general plan,
23 only at San Jose's zoning ordinance, and only at
24 San Jose's vacant land use inventory. Is that
25 correct?

1 A That's the rebuttal testimony, not
2 Appendix F, that you're referring to.

3 Q Oh, you're right. I'm sorry.

4 A Yes. We looked at land within the City
5 of San Jose. That's correct.

6 Q And I think you previously testified
7 that the area of demand, as you defined it, was
8 Santa Clara Valley, and that's the area that
9 doesn't have very many power plants in it. You
10 didn't look at land availability, for example, in
11 Santa Clara, Sunnyvale, Milpitas?

12 A No. This -- this exercise was really
13 done in rebuttal to the testimony of Mr. Edens
14 that there are, quote, hundreds of acres of land
15 zoned and for -- or zoned for heavy industrial use
16 in San Jose, for development for things such as
17 power plants. We did not extend that
18 investigation beyond the city boundaries.

19 Q And then you reached the conclusion that
20 there wasn't any vacant land. I believe that was
21 your testimony; is that correct?

22 DR. MASON: Yes. Molli, can I address
23 that?

24 MS. DENT: Whoever.

25 DR. MASON: Yes, based on the search

1 that we conducted, there were parcels that were
2 vacant. But in terms of their suitability for the
3 Metcalf type project, we just did not find them
4 suitable. Either they were developed, or there
5 were other -- other constraints. I can go into
6 them if you have specifics.

7 MS. DENT: Well, my specific question
8 really has to do with using only vacant sites.
9 Power plants are often, are they not, located on
10 sites that are redeveloped from some other --

11 DR. MASON: No, I --

12 MS. DENT: -- use.

13 DR. MASON: No. I understand, I
14 understand your question. The purpose of the
15 exercise was to just simply look in that area. We
16 looked at sites that were available and vacant.
17 That does not preclude the possibility of maybe
18 something out there that could be developed,
19 knocking down a building, or something like that,
20 to create a site. But nothing jumped out from
21 what we looked at.

22 MS. DENT: Do you have any -- do you
23 contest the -- do you contest that there are
24 hundreds of acres that are zoned and general
25 planned for heavy industrial use?

1 DR. MASON: No, we don't. They're --
2 they're zoned heavy industrial. You're right.

3 HEARING OFFICER VALKOSKY: Okay. Ms.
4 Dent, do you have much more? Because we --

5 MS. DENT: I think I'm almost done.

6 HEARING OFFICER VALKOSKY: Okay.
7 Because we --

8 MS. DENT: I might be done.

9 HEARING OFFICER VALKOSKY: All right.
10 Let me know.

11 MS. DENT: I'm done.

12 HEARING OFFICER VALKOSKY: Okay. Thank
13 you.

14 With that, we'll take a 15 minute
15 recess.

16 (Thereupon a recess was taken.)

17 HEARING OFFICER VALKOSKY: All right.
18 Again, I'd appreciate everybody keeping their
19 original estimates in mind as we continue the
20 cross examination.

21 Ms. Cord.

22 MR. WILLIAMS: Let the record show Mr.
23 Boyd has joined us.

24 HEARING OFFICER VALKOSKY: Mr. Williams,
25 please. We're -- Ms. Cord.

1 MS. CORD: I have no questions at this
2 time. Thank you.

3 HEARING OFFICER VALKOSKY: Thank you,
4 Ms. Cord.

5 Mr. Ajlouny.

6 MR. AJLOUNY: I just have a couple short
7 questions, and to whoever can answer.

8 Are you aware of any -- anyone living on
9 the proposed site right now? Squatters, or --

10 MS. YOUNG: I -- I don't know.

11 MR. AJLOUNY: Ken, you don't know that
12 either?

13 MR. ABREU: I'm -- I'm not sure. I
14 don't believe there's anybody living on the site
15 now.

16 MR. AJLOUNY: You have visited the site
17 in the last few months?

18 MR. ABREU: Sure.

19 MR. AJLOUNY: Are you aware of any
20 ordinances that require clean-up of cars or -- or
21 -- that are, let's call it like junkyard looking
22 cars, or things like that, that are on any
23 property?

24 MR. HARRIS: Can I object on the basis
25 this is not in his direct testimony?

1 HEARING OFFICER VALKOSKY: Yes. This
2 isn't in the scope of the testimony.

3 MR. AJLOUNY: Well, I thought it said in
4 his testimony that -- the way the land looked
5 today. And I was just wondering if he's --
6 because -- I'm not -- okay. That's my two
7 questions. If you guys don't want to answer,
8 that's fine. I just -- I just thought it'd be
9 nice if they cleaned it up now instead of waiting.

10 HEARING OFFICER VALKOSKY: Okay. Mr.
11 Scholz.

12 MR. SCHOLZ: No questions.

13 HEARING OFFICER VALKOSKY: Mr. Williams.

14 MR. WILLIAMS: Yes. My first question
15 relates to the definition of substantial. Forgive
16 me while I find my notes here. I got caught by
17 surprise. I was expecting --

18 PRESIDING MEMBER LAURIE: Didn't we try
19 this one yesterday, Mr. Williams?

20 MR. WILLIAMS: No, sir.

21 CROSS EXAMINATION

22 BY MR. WILLIAMS:

23 Q My first question to Ms. Young is, in
24 your opinion, could there be five or six or ten
25 ordinances that are most important in terms of

1 compatibility?

2 A I'm not sure I understand the question.

3 Q Well, this is a -- treat it as a
4 hypothetical question. You said you have 95
5 percent compatibility, but you've taken into
6 account meeting a long laundry list of ordinances.
7 So I'm trying to suggest now that there might be
8 six or eight ordinances that are most important.
9 Is that conceivable, in your mind?

10 PRESIDING MEMBER LAURIE: Let me try the
11 question, Mr. Williams.

12 MR. WILLIAMS: I appreciate it.

13 MS. YOUNG: Thank you.

14 MR. HARRIS: Yeah, you did well
15 yesterday. Try it.

16 (Laughter.)

17 PRESIDING MEMBER LAURIE: Take, for
18 example, if you had a general plan ordinance, a
19 zoning ordinance, a height restriction ordinance,
20 a setback ordinance, and a trash pickup ordinance.
21 And you found yourself compatible -- we
22 consistently use those terms interchangeably for
23 our discussion -- with the general plan and zoning
24 and -- and height restriction and setback, but you
25 weren't compatible with your garbage pickup

1 ordinance.

2 Can you prioritize those five different
3 rules and say, you know, these first four are --
4 are biggies, and yeah, garbage is garbage, but
5 really, the general plan and zoning is -- is a lot
6 more important. Therefore, the question is, with
7 all these goals and policies and ordinances we're
8 talking about, in order to determine
9 substantiality, can you prioritize, in your own
10 opinion, the importance of such?

11 MS. YOUNG: Like a hierarchy, almost, of
12 -- of planning policies.

13 I guess in my mind ordinance and -- and
14 laws have the force of -- of law, or of regulatory
15 standards, that if you are not in compliance with
16 them you are not in compliance with -- with the
17 law. So whether or not those have a place in the
18 hierarchy, I don't know.

19 I guess in my mind, it's -- it's not
20 that some are more important than others, but if
21 you look at the entirety of policies that apply to
22 a particular project, and this is -- typically
23 what we would do when we would write an
24 environmental impact report, we would look at the
25 entirety of policies that apply to a given

1 project. And of all of those policies, if we are
2 not in compliance with a few of them, regardless
3 of where they may fall, then there's -- there's a
4 substantial compliance with the bulk of the
5 policies that apply to the project.

6 PRESIDING MEMBER LAURIE: Okay. But
7 let's say hypothetically that a few of them
8 included your land use map, and -- and thus you
9 might want to rate that significantly more
10 important than some of the others. Would that
11 affect your ability to determine substantiality?

12 MS. YOUNG: I guess so. Certainly for a
13 land use testimony, the issues of compliance with
14 general plan and land use plans and zoning, from
15 my testimony's perspective, are more important
16 than a garbage ordinance, or a noise ordinance, or
17 --

18 PRESIDING MEMBER LAURIE: Is that
19 helpful, Mr. Williams?

20 MR. WILLIAMS: That was extremely
21 helpful, sir. Thank you. I'm tempted to ask you
22 to pursue the second one.

23 PRESIDING MEMBER LAURIE: We'll talk
24 later.

25 (Laughter.)

1 BY MR. WILLIAMS:

2 Q I want to pursue the issue of public,
3 quasi public zoning. Could you, Ms. Young, please
4 read the highlighted definition of quasi public
5 zoning as it existed before the 1999 amendment?

6 MR. HARRIS: Can I ask what document
7 we're reviewing?

8 MR. WILLIAMS: Well, the -- the general
9 plan, page 215, where they -- it's part of the
10 city testimony, and it -- be happy to show you the
11 page.

12 MR. HARRIS: Okay, can you show me the
13 page, please.

14 MS. YOUNG: I have the city's general
15 plan. Would you tell me the page --

16 MR. WILLIAMS: Page 215. Your copy, or
17 mine, whichever you --

18 MS. YOUNG: Want me to read?

19 BY MR. WILLIAMS:

20 Q Please.

21 A This is the --

22 Q The definition of public, quasi public
23 zoning.

24 A From the Land Use and Transportation
25 diagram section of the general plan?

1 Q Yes.

2 A And that section describes the
3 designations that the city uses in its general
4 plan.

5 Q That's correct.

6 A This is the language from the public,
7 quasi public. This category is used to designate
8 public land uses, including schools, colleges,
9 corporation yards, homeless shelters, libraries,
10 fire stations, water treatment facilities,
11 convention centers and auditoriums, museums,
12 governmental offices, and airports. Joint
13 development projects which include public and
14 private participation, such as an integrated
15 convention center, hotel, restaurant complex are
16 allowed.

17 This category is also used -- I'm
18 reading all of your highlighted section?

19 Q Yeah, please, yes.

20 A This category is also used to designate
21 lands used by some private entities, including
22 public utilities, and the facilities of any
23 organization involved in the provision of public
24 services, such as gas, water, electricity, and
25 telecommunications. In addition, such

1 institutions as churches, private schools and
2 private hospitals are also appropriate for this
3 designation.

4 Q Okay. From your experience, or Mr.
5 Mason's experience, does that designation seem
6 unusually broad for a zoning ordinance, including
7 churches, recreation facilities, schools,
8 colleges?

9 A No. Public, quasi public is not a zone.
10 It is a general plan designation, and it allows a
11 broad category of uses that can fall into that
12 category.

13 Q Do you see in that definition any
14 mention of power plants?

15 A What's mentioned there is public
16 utilities and facilities of any organization
17 involved in the provision of public services, such
18 as gas, water, and electricity. Power plants
19 would fall under electricity.

20 Q Now, the -- in your mind, is there a
21 distinction between generation and distribution of
22 electricity?

23 A Yes.

24 PRESIDING MEMBER LAURIE: From the
25 standpoint of --

1 MS. YOUNG: There's a difference.

2 BY MR. WILLIAMS:

3 Q Well, and what would the main difference
4 be? Or would the amount of effluents, the
5 quantity of discharge, be a distinguishing factor
6 between generation and distribution?

7 A Effluents of what?

8 Q Well, from the provision of electricity.
9 I'm suggesting the ordinance is silent between
10 generation and distribution of electricity, and it
11 could be misconstrued.

12 A It's the city's general plan. I -- I
13 guess you could ask the city to clarify that. I
14 --

15 Q Well, I wanted -- I wanted to ask you
16 your understanding. I refer to your testimony on
17 page 17, at the bottom, and page 18, where you --
18 someone on your team brings in the -- the text
19 amendment.

20 A What page are you on?

21 Q Page 17 at the bottom, and 18 at the
22 top.

23 A Okay.

24 Q I'll just give you a minute to glance at
25 that. The last, very last paragraph. It's stated

1 in the public, quasi public discussion in the San
2 Jose General Plan, page 173. I have no idea why
3 it's now on page 215.

4 The city has not in the past and does
5 not currently designate specific sites on the
6 general plan land use diagram for energy
7 facilities. It continues to rely on the use of
8 general plan amendments and the discretionary
9 alternate use policy for new public, quasi public
10 uses to establish such sites.

11 I now want to ask you, in that -- in
12 that context, then, is it valid, as was stated in
13 your presentation, to ask that the public, quasi
14 public zoning for a transmission substation be
15 extended to a power plant?

16 A The public, quasi public designation
17 that was sought with our general plan amendment
18 was recommended to us as the appropriate
19 designation by the city planning staff.

20 Q I may have to pursue that with the city.
21 In your opinion, does that -- does that not seem
22 unreasonably broad, not to distinguish a parochial
23 school from a power plant?

24 A It -- they're both classified as public,
25 quasi public uses.

1 Q Okay.

2 A And it's within the purview of any local
3 jurisdiction that adopts its general plans to
4 establish what uses fall into that designation.

5 HEARING OFFICER VALKOSKY: Mr. Williams,
6 this really isn't the witness to attack the
7 provisions of the general plan with.

8 MR. WILLIAMS: I don't want to attack my
9 friends.

10 (Laughter.)

11 MR. WILLIAMS: I -- no further
12 questions.

13 HEARING OFFICER VALKOSKY: Thank you.
14 Redirect, Mr. Harris?

15 MR. HARRIS: No. Thank you.

16 HEARING OFFICER VALKOSKY: Okay. No
17 direct. Seeing nothing else for the witness,
18 thank you. You're excused.

19 Ms. Willis.

20 MS. WILLIS: Thank you. Did you also
21 want a statement of -- shall we just move on? It's
22 very quick.

23 HEARING OFFICER VALKOSKY: Go ahead.

24 MS. WILLIS: Okay.

25 At this time Staff calls Eric Knight.

1 HEARING OFFICER VALKOSKY: Swear the
2 witness, please.

3 (Thereupon Eric Knight was, by the
4 reporter, sworn to tell the truth,
5 the whole truth, and nothing but
6 the truth.)

7 TESTIMONY OF

8 ERIC KNIGHT

9 called as a witness on behalf of Commission Staff,
10 having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. WILLIS:

14 Q Mr. Knight, could you please state your
15 name for the record.

16 A My name is Eric Knight.

17 Q And was a statement of your
18 qualifications attached to your testimony?

19 A Yes.

20 Q And could you briefly state your
21 education and experience as it pertains to Land
22 Use analysis.

23 A I have degrees in Environmental Studies
24 and Government, and I have testified on four other
25 -- testified on Land Use on four other power plant

1 cases before the Commission. I have prepared or
2 overseen the preparation of Land Use, Traffic, and
3 Visual analyses on seven other power plant cases
4 currently before the Commission. And I've been
5 working on the power plant licensing program at
6 the Energy Commission for the past two and a half
7 years. Prior to that I worked at the Energy
8 Commission on the Commission's Energy Efficient
9 Land Use Planning program. I did that for about
10 three years.

11 Q Did you prepare the testimony entitled
12 Land Use in the Final Staff Assessment that's been
13 previously marked Exhibit 7?

14 A Yes, I did.

15 Q Do you have any changes to your written
16 testimony?

17 A Other than the minor changes that have
18 already been docketed and served, no, I do not.

19 MS. WILLIS: And just for the record,
20 that was included -- I think -- believe that was
21 marked Exhibit 74.

22 HEARING OFFICER VALKOSKY: That's
23 correct.

24 BY MS. WILLIS:

25 Q Do those changes you proposed change any

1 of your conclusions?

2 A No, they do not.

3 Q Do the opinions contained in your
4 testimony represent your best professional
5 judgment?

6 A Yes.

7 Q Could you please state the purpose of
8 your testimony?

9 A Under the Commission's siting
10 regulations the responsibility of the Energy
11 Commission Staff is to conduct an independent
12 assessment of the land use impacts of a project.
13 And that includes environmental effects, and
14 compliance with LORS.

15 I have provided my independent
16 interpretation of the local LORS, which at times
17 differs from the city's interpretation, or the
18 Applicant's interpretation. It is for the
19 decision-makers on this case to decide the weight
20 of my testimony.

21 Q And could you briefly state the
22 documents you reviewed in performing your
23 analysis?

24 A I looked at the city's general plan and
25 zoning ordinance; the city's master development

1 plan for the Coyote Valley; the campus industrial
2 area; the county's general plan and zoning
3 ordinance; also the city's riparian corridor
4 study. And also looked at past EIRs of the city
5 in its riparian projects.

6 Q Did you obtain information other than
7 through documents?

8 A Yes. I've had extensive conversations
9 with the city staff, county staff, both planning
10 departments.

11 Q And did you also attend public workshops
12 sponsored by the Energy Commission?

13 A Yes, I did.

14 Q Was your testimony completed before the
15 city council voted not to approve the general plan
16 amendment application and zoning changes?

17 A Yes, it was.

18 Q Does the vote -- does that vote of the
19 council change the conclusions in your analysis?

20 A No, it doesn't, because I had considered
21 the council's decision in that analysis.

22 Q So can you explain, did the -- did you
23 consider that the zoning -- the zoning change, or
24 the zoning would remain the same as it was in your
25 analysis? Is that correct? After the vote.

1 A No. There was a statement in my -- in
2 my analysis that the project does not currently
3 conform to the city's general plan and zoning, and
4 that non-conformity would only be resolved by the
5 city approving that amendment request.

6 Q I guess my question was did the council
7 -- the council's vote did not change any of your
8 assumptions in that, is that --

9 A No, huh-uh.

10 Q Did you conclude the project was in
11 compliance with all LORS?

12 A No, I did not.

13 Q And can you please explain how the
14 project is not in compliance?

15 A As I just mentioned, the project is not
16 in conformance with the city's general plan and
17 zoning designations for the site. The campus
18 industrial and agricultural zoning don't allow for
19 a power plant. And in addition to that, the
20 project is not in compliance with several general
21 plan policies, including the county's general plan
22 and several guidelines of standards in the master
23 development plan and riparian corridor study.

24 Q On page 458 of Socioeconomics --

25 PRESIDING MEMBER LAURIE: Can everybody

1 hear him okay?

2 BY MS. WILLIS:

3 Q On page 458 of the Socioeconomics
4 testimony in the FSA, states in particular MEC is
5 consistent with economic goal number 7 of the
6 general plan. There was some testimony yesterday
7 that might indicate that it is inconsistent, based
8 on the city council vote.

9 I think there needs to be some
10 clarification. Could you please clarify Staff's
11 position, and how you would -- what your approach
12 was in this area?

13 A In the Land Use section, I did provide a
14 discussion of what Staff believed to be the
15 project's support of the economic development
16 major strategy. When I read what the general plan
17 says about the economic development strategy, it
18 seems to be focusing on encouraging commercial and
19 industrial development in the city to balance the
20 existing housing stock. And the focus is jobs and
21 property taxes, or sales taxes.

22 So my conclusion that the, you know,
23 that this particular project would not provide
24 very many jobs; however, it would provide \$600,000
25 a year in property taxes to the City of San Jose.

1 Q Since the --

2 A So my conclusion was it was supportive
3 of that strategy.

4 Q Since the council did not approve the
5 land use entitlement, did you consider county
6 LORS?

7 A Yes, I did.

8 Q Would the project be in conformance with
9 all county land use LORS?

10 A No, it would not. The county doesn't
11 assign general plan designations to areas within
12 the city's urban services area. The allowable
13 uses are determined by that city's general plan.

14 Q And can you explain how the county
15 general plan and zoning apply to the
16 unincorporated portions of the site, of the
17 proposed site?

18 A The general -- the county's general plan
19 defers to the city's general plan for an area
20 within the urban services area, even if it's
21 unincorporated.

22 Q Would the county be able to approve a
23 conditional use permit, for example?

24 A My understanding from reading the
25 county's general plan and also speaking with a

1 lead planner at the county, that the county could
2 not approve a conditional use permit if the use is
3 inconsistent with the applicable city's general
4 plan. And according to the county zoning
5 ordinance, a power plant would -- would require a
6 conditional use permit, absent the Energy
7 Commission's exclusive jurisdiction.

8 Q On page 2 of the Applicant's rebuttal
9 testimony, it states, both Applicant and Staff in
10 their testimony on this issue have correctly
11 assumed that MEC would be a fully lawful use
12 within the USA. Is this consistent with your
13 testimony, your written testimony?

14 A That's not what my testimony says, no.

15 Q Did you assume this in your analysis?

16 A No. The Commission has exclusive
17 jurisdiction to license power plants 50 megawatts
18 and greater. In order for this to be a lawful
19 use, that would require an override, since this
20 project is not in conformance with all applicable
21 LORS.

22 Q Did you determine that this project
23 would create significant adverse environmental
24 impacts?

25 A Yes, I did.

1 Q And how so?

2 A The conversion of prime farmland.

3 Q How did you determine that this would be
4 a significant adverse impact?

5 A I reviewed the CEQA guidelines, Appendix
6 G, the environmental checklist, which states that
7 one of the -- one of the questions there under ag
8 resources is would the project convert prime
9 farmland, farmland of statewide importance or
10 unique farmland as shown on the maps prepared
11 pursuant to the Farmland Mapping and Monitoring
12 Program of the California Resources Agency,
13 convert that farmland to non-agricultural use.

14 So I first looked at the department's
15 most current Department Farmland Map, which is for
16 1998, which indicates the entire MEC site is
17 designated as prime. I also reviewed the U.S.
18 Department of Agriculture soil survey, which was
19 conducted for this area, and the entire site is
20 comprised of soil mapping units that are prime.
21 The AFC also indicates that the entire site is --
22 is classified as prime farmland.

23 Because CEQA, the CEQA checklist
24 question on ag resources doesn't refer to whether
25 or not the conversion is substantial or

1 significant, it does make that -- it does make
2 those qualifying statements for many of the other
3 questions in the checklist, so I -- I found out
4 that the interest in it doesn't actually -- it
5 doesn't say that conversion has to be substantial,
6 it's just a conversion.

7 So in order to determine whether or not
8 the impact was significant, I first looked to
9 whether or not the city, and county, in this case,
10 have significance criteria for determining whether
11 or not the impact would be significant or not. So
12 I looked at -- I had conversations with the city
13 planning department which indicated that any
14 conversion of farmland, prime farmland, would
15 constitute a significant impact. It didn't matter
16 what the size of the -- of the farmland was or
17 not.

18 I also looked at the county's
19 thresholds, and their environmental checklist for
20 preparing EIRs or negative declarations on
21 projects is whether or not a project will convert
22 ten acres or more of prime soils. And they're not
23 looking to whether or not the -- the farmland is
24 actually being farmed or not. It doesn't have to
25 be under irrigation, it's just whether or not the

1 soil constituents, the soil mapping is they're
2 prime. In this case, the entire site is prime.
3 And the ten acres in the county, the northern
4 portion of the site which is not being farmed,
5 would fall into that -- the county's criteria.

6 Q Did you review the Applicant's rebuttal
7 testimony on the conversion of the prime farmland?

8 A Yes, I did.

9 Q And do you agree with their conclusion
10 that the impact of the conversion of prime
11 farmland happened at the time of the North Coyote
12 Valley development?

13 A No. No, I do not.

14 Q And can you explain why?

15 A Well, if -- if that were the case, then
16 I don't think the city would -- would be finding
17 that the impact for the Coyote Valley Research
18 Park is significant. The Coyote Valley Master
19 Plan, which there was -- there was an EIR for the
20 -- for the redesignation of Coyote Valley for
21 campus industrial uses. That was in 1983, I
22 believe. And the impact was found to be
23 significant. There were overriding considerations
24 made, but the project EIR for the Cisco project
25 also finds that impact to be significant and

1 avoidable, and they made overriding considerations
2 for that, too. So it's the physical conversion of
3 that prime farmland that I'm looking at.

4 Q Did you analyze the project's
5 compatibility with existing and planned land uses?

6 A Yes, I did.

7 Q And very briefly, what were your
8 conclusions?

9 A I -- I looked at Appendix G, which
10 indicates whether or not a project would
11 physically divide an established community, and
12 concluded that the project would not, because of
13 the agricultural uses that predominate in the
14 area. Energy Commission Staff also considers a
15 project to be incompatible if it would create
16 unmitigated noise, visual impacts, traffic, public
17 health impacts.

18 For Noise, Traffic, Public Health,
19 including Hazardous Materials Handling, the Energy
20 Commission Staff has concluded the project would
21 not create unmitigated adverse impacts --
22 significant adverse impacts. So in terms of those
23 aspects of the project, I concluded it was
24 compatible with existing and planned uses.

25 In terms of visual, the Visual Resources

1 specialist concluded that the project would cause
2 a significant unmitigable impact on existing uses,
3 and would substantially degrade high quality views
4 for future uses of the campus industrial area. So
5 in terms of visual, the project would not be
6 compatible with existing and planned land uses.

7 Q Does that conclude your testimony?

8 A Yes, it does.

9 MS. WILLIS: At this time I'd like to
10 move the Land Use section of the FSA and -- which
11 would be part of Exhibit 7, and Exhibit 74 into
12 the record.

13 MR. WILLIAMS: Excuse me, Mr. Valkosky,
14 could we wait until after cross examination to do
15 that?

16 HEARING OFFICER VALKOSKY: Yes, we can.

17 MR. WILLIAMS: Thank you.

18 HEARING OFFICER VALKOSKY: Okay, we'll
19 take that -- we'll take that as an objection, and
20 as we have done in the past we'll wait until after
21 cross.

22 Mr. Knight, just a couple of preliminary
23 questions. Appendix A to your testimony,
24 specifically pages 245 to 249, indicates
25 compliance with various local rules, standards, et

1 cetera. Is this currently updated and correct and
2 comprehensive?

3 MR. KNIGHT: Well, on page 245, the last
4 -- the last item there, Urban Design Policy number
5 11, I think we heard testimony on this already,
6 but the project would not meet the allowable
7 height limit for public, quasi public uses, as
8 well as campus industrial uses.

9 There is a height exception process that
10 the city can allow in certain cases, and what I
11 had stated here that the project would not comply
12 with the height standard, and I stated that the
13 applicability of the height exception would be
14 determined by the city council.

15 The only -- maybe the only clarifying
16 point I'd make there is that city staff report to
17 the city council had recommended to the city that
18 the -- the project would -- would qualify for the
19 height exception. But absent a city council
20 decision on it, it still remains out of
21 compliance.

22 HEARING OFFICER VALKOSKY: Okay. So it
23 is -- it is still --

24 MR. KNIGHT: It's still a no, but
25 there's just some additional information that it

1 may be --

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. KNIGHT: -- there were -- the master
4 development plan, when we started out on this
5 project, it was the 1985 version we were working
6 with. And in late '99 some changes were made to
7 it, and then in October of 2000 the plan was
8 completely rehailed and revised, and adopted.

9 And there was a guideline, it was a
10 guideline at the time, and now it is a standard in
11 that plan, and that's -- that's what my -- the
12 changes that I filed touched on, but I didn't
13 update the -- the table here. This is page 247,
14 the first item, the 50 foot wide landscape
15 easement will separate properties from the Union
16 Pacific Railroad right-of-way. That is not a
17 guideline anymore, it's actually a standard in
18 that plan. So you would expect it would appear in
19 any planned development zonings in that area, that
20 all projects will have to meet a 50 foot wide
21 landscape easement.

22 HEARING OFFICER VALKOSKY: Okay.

23 Anything else?

24 MR. KNIGHT: I don't believe so.

25 HEARING OFFICER VALKOSKY: Okay. And

1 again, just -- just for my information, 246,
2 second item up from the bottom, where we're
3 talking about again building height, and you
4 indicate compliance to be determined.

5 And again, since --

6 MR. KNIGHT: That's the first item I was
7 talking about, that -- that it's -- in my mind
8 it's -- I mean, there -- it's an exception
9 process, and it's a discretionary action of the
10 city. The project does not conform to the
11 requirement --

12 HEARING OFFICER VALKOSKY: Does not
13 conform presently, but the city could, in its
14 discretion --

15 MR. KNIGHT: Yes. Yeah.

16 HEARING OFFICER VALKOSKY: -- let it --
17 all right. Fine. And the top of the next page,
18 247, second item, concerning direction signs.
19 Your comment begins with insufficient information
20 at this time to determine compliance. Do you have
21 any further explanation to -- to offer on that?

22 MR. KNIGHT: Just that the -- the site
23 plans that were submitted, the plan development
24 zoning application I was looking at didn't
25 indicate whether or not there would be gatehouses

1 or -- or identity signs, and that -- that level of
2 specificity is typically handled in the city's
3 plan development permit stage, and the Applicant
4 did submit a draft application, but the Applicant
5 never got that far, really.

6 And even on that plan, I didn't see that
7 they were indicated, so there was a condition just
8 to ensure that that be met if they do, in fact,
9 propose any signs or gatehouses.

10 HEARING OFFICER VALKOSKY: Okay. That's
11 -- that's a follow-up to -- that would be covered
12 by a Staff Condition of Certification --

13 MR. KNIGHT: Yeah.

14 HEARING OFFICER VALKOSKY: -- is that
15 correct? Okay.

16 Concerning the --

17 MR. KNIGHT: It's -- excuse me, it's
18 LAND-4, for the record.

19 HEARING OFFICER VALKOSKY: LAND-4.
20 Thank you.

21 Concerning the changes proposed to Land
22 Use 2 and Land Use 3, by Applicant, do you have
23 any comments on those as to their acceptability?

24 MR. KNIGHT: On -- on LAND-2, I noted in
25 my analysis that the focus of that -- that

1 guidelines is for these large parking areas.
2 That's to subdue their effect in the -- their
3 visual effect in the environment, give them more
4 of a -- a rural feel. So that's one purpose of
5 the orchard trees. But it also does talk about
6 providing shade.

7 And Staff feels that that's -- that's
8 still a valid condition. I guess I'd like to see
9 or understand why it wouldn't be feasible to put
10 some trees in there. They could be -- seems like
11 they could be limbed up and to provide visibility
12 from the administration building towards the
13 HRSGs.

14 HEARING OFFICER VALKOSKY: Okay. So as
15 it stands now, you would not support the changes
16 proposed by Applicant to Land Use 2; is that
17 correct?

18 MR. KNIGHT: I wouldn't. I would not --
19 I suppose there could be some language added that
20 if the -- to the CPM's discretion, but we would
21 request that they provide information that -- that
22 demonstrates why it's not feasible.

23 HEARING OFFICER VALKOSKY: Okay. No, I
24 just --

25 MR. KNIGHT: Just a statement --

1 HEARING OFFICER VALKOSKY: -- I'm asking
2 as -- as the changes are proposed today.

3 MR. KNIGHT: I would not support that.
4 No.

5 HEARING OFFICER VALKOSKY: Okay. How
6 about Land Use 3?

7 MR. KNIGHT: LAND-3, the -- the
8 setbacks, the precise setbacks that are shown here
9 were actually provided to Staff, it was a Data
10 Request that I had -- I had presented to the
11 Applicant. And these are the numbers that came
12 back. So they -- they added the extra level of
13 specificity.

14 This potentially could be a problem in
15 compliance if they can't meet 32 feet, seven
16 inches, it's got to be 32 feet, six inches, that
17 may require an amendment. So maybe language could
18 be added that says the CPM -- or a lesser setback
19 agreed to by the CPM in consultation with the City
20 of San Jose, something along those lines.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. KNIGHT: But I would not support
23 just striking them altogether.

24 HEARING OFFICER VALKOSKY: You would not
25 support the -- the changes proposed by Applicant,

1 as they exist presently. Is that correct?

2 MR. KNIGHT: That's correct. I would
3 note that these -- these setbacks are less than
4 what the -- the city's master development plan
5 would require.

6 HEARING OFFICER VALKOSKY: Okay. In
7 your opinion, do the changes to either Land Use 2
8 and Land Use 3 proposed by Applicant affect
9 compliance with any local standards?

10 MR. KNIGHT: Well, LAND -- LAND-2 is
11 addressing a guideline which is in the master
12 development plan. The master development plan
13 indicates the guidelines are discretionary, to
14 some degree. The setbacks are standards, and you
15 expect to see them in the plan development zoning,
16 so that -- and that one already is out of
17 compliance, so -- this condition was really to
18 hold the Applicant to at least the minimum that
19 they were proposing, and not any less.

20 HEARING OFFICER VALKOSKY: Okay. Are
21 you familiar with proposed conditions which I
22 understand the City of San Jose has submitted to
23 Staff?

24 MR. KNIGHT: I've -- I've seen them, and
25 I can't recall if they were Land Use conditions.

1 HEARING OFFICER VALKOSKY: Okay. Well,
2 do you know to what extent, if any, the Staff
3 conditions have incorporated the conditions
4 desired by the City of San Jose?

5 MR. KNIGHT: Could you rephrase the
6 question?

7 HEARING OFFICER VALKOSKY: Do you know
8 to what extent, if any, conditions proposed by the
9 City of San Jose have been incorporated into the
10 conditions proposed by Staff?

11 MR. KNIGHT: The -- the conditions that
12 I remember seeing provided by the city came from
13 the city -- I think the city council, or the
14 planning commission, possibly. I don't remember
15 them being land use related.

16 HEARING OFFICER VALKOSKY: Okay. Okay.
17 So to your knowledge, there are none that deal
18 with land use concerns.

19 MR. KNIGHT: That's -- yes.

20 HEARING OFFICER VALKOSKY: Okay. Thank
21 you.

22 Final question. Again, what, if any, is
23 the role of LAFCO in the continued
24 permitting/development of the proposed project?

25 MR. KNIGHT: I don't know how to answer

1 that question. I -- originally I knew that they
2 weren't involved because they weren't annexing the
3 piece of land that was outside of their current
4 urban services area, so the city could conduct its
5 own annexation proceedings. But this other issue
6 of -- now that they're --

7 HEARING OFFICER VALKOSKY: Okay. Let me
8 -- are you aware whether or not LAFCO has any role
9 in the continued development or permitting of this
10 project?

11 MR. KNIGHT: I wasn't until tonight.

12 HEARING OFFICER VALKOSKY: Thank you.

13 Mr. Harris.

14 PRESIDING MEMBER LAURIE: Before we get
15 to Mr. Harris, Mr. Knight, let me chat about
16 choice soils for a moment.

17 When we talk about choice soils, and we
18 use that term --

19 MR. KNIGHT: I think the term I used was
20 prime soils.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Choice meat.

23 (Laughter.)

24 PRESIDING MEMBER LAURIE: The -- the
25 primacy of the soil goes to the soil itself, and

1 not the use of the soil. Is that correct? Any
2 restrictions on use are imposed by the local
3 governmental agency on policy. That is, when --
4 when a piece of dirt has a prime soil designation
5 attached to it, that, by itself, doesn't restrict
6 the use of that piece of dirt. Is -- is that
7 correct, is that a correct statement?

8 MR. KNIGHT: I would say that was --
9 that's correct.

10 PRESIDING MEMBER LAURIE: Okay. So it
11 depends on how the city or -- and/or county, by
12 policy, chooses to utilize that designation in
13 their -- in their land use decisions.

14 MR. KNIGHT: Yes.

15 PRESIDING MEMBER LAURIE: Let's say, for
16 example, that I were a residential land developer,
17 and -- and you were the chairman of the planning
18 commission, and I brought to you a hundred acre
19 subdivision, the middle ten acres of which were
20 prime soil. And your jurisdiction had a rule that
21 said no conversion absent some extraordinary
22 finding, but I were permitted to develop around
23 the center ten acres, so I ended up with a 90 acre
24 subdivision, and in that 90 acres inhibited the
25 use of that prime soil for agricultural purposes.

1 Would the inhibition of use of that ten acres
2 normally be addressed through the local agency
3 land use policies?

4 MR. KNIGHT: Yes, it would.

5 PRESIDING MEMBER LAURIE: What I'm
6 attempting to get at, not very well directly, I'm
7 afraid, is -- is the designation of -- of a piece
8 of dirt as prime doesn't necessarily tell you that
9 in reality, given the totality of circumstances,
10 that it's a good and proper place to conduct
11 agriculture. Is -- is that a correct statement?

12 MR. KNIGHT: I would agree with that.
13 Yes.

14 PRESIDING MEMBER LAURIE: Okay. That's
15 all. Thank you very much.

16 HEARING OFFICER VALKOSKY: Mr. Harris.

17 MR. HARRIS: Thank you. We welcome the
18 opportunity for cross examination, but we have no
19 questions for Mr. Knight. Thank you.

20 HEARING OFFICER VALKOSKY: Ms. Dent.

21 CROSS EXAMINATION

22 BY MS. DENT:

23 Q Mr. Knight, the first thing that I want
24 to get a little bit of an understanding about, in
25 terms of your LORS analysis and your -- the

1 appendix to your testimony indicates only an
2 analysis of city LORS, and I'm specifically
3 wondering about your analysis of county LORS,
4 since half of the project is in the county. And
5 the specific county LORS that I'm asking about is
6 the county's riparian corridor provisions.

7 Did you take a look at the county's
8 riparian corridor provisions and -- and see
9 whether or not they were the same as the city's?

10 A I guess the first correction I'd make is
11 that on page 248 and 249 of Appendix A, there is a
12 discussion on county LORS, the ones that I thought
13 were applicable to the project. I -- the county's
14 riparian policies I did not discuss.

15 Q So, now, if the county has riparian
16 protections that are more stringent than the
17 city's, would you think that might be significant
18 in looking at the compatibility of this project
19 with local ordinances, regulations and standards?

20 A Certainly.

21 Q Also, looking again at your -- at your
22 table, in terms of your finding that the project
23 was consistent with the city's economic
24 development major strategy, and with the Coyote
25 Valley Master Plan, do you acknowledge that the

1 development of jobs in that location is at least
2 as important as the simple production of tax
3 revenue from that location, in terms of both the
4 city's economic development major strategy and the
5 master plan?

6 A The -- the strategy does talk about both
7 generating jobs and tax revenue, so yeah, I would
8 --

9 Q And did you make any assessment about
10 the -- comparing the tax revenue that would be
11 generated by campus industrial to the tax revenue
12 that would be generated by a power plant?

13 A I didn't -- I didn't do an analysis like
14 that. I had recognized that an analysis like that
15 was -- was a good idea, and suggested that to our
16 Socioeconomic Staff, who I understand met with the
17 city planning staff to get information that he
18 believed was necessary to do that, and that
19 information wasn't provided.

20 Q So is it your testimony, then, that if
21 the -- if the Metcalf Energy Center produces any
22 level of economic benefit to the city whatsoever,
23 it meets the economic development major strategy?

24 A I don't think that's what my testimony
25 says. I -- I said it was supportive, which in my

1 mind was less than saying that it's 100 percent
2 consistent with it.

3 Q So your yes is not -- not quite, then.
4 Would that be --

5 A It's --

6 Q -- your testimony today?

7 A -- it's -- my testimony is that it's
8 supportive of that -- that strategy.

9 Q Not -- okay. Well, let's go on to the
10 North Coyote Valley campus industrial area master
11 development plan, where you indicate that it's not
12 a high technology use but it's supportive.

13 I believe in the PSA there was a
14 reference to the Metcalf Energy Center in your PSA
15 as a heavy industrial use. Do you recall
16 characterizing the project that way?

17 A Yes, I do.

18 Q And a heavy industrial use is not
19 consistent with the North Coyote Valley industrial
20 area master development plan, is it?

21 A It's certainly not the type of use that
22 was envisioned by the master development plan, no.

23 Q Okay. Now, in a couple of areas I -- I
24 believe your testimony confirms that the project
25 design doesn't meet certain city LORS, such as

1 setback requirements and -- and I'm thinking of
2 the setback from the railroad tracks, the setback
3 from the property line, and those. Your analysis
4 recognizes that.

5 A Yes, it does.

6 Q And did you take a look at whether or
7 not the project met the city's requirement for two
8 points of access to -- for vehicular access to the
9 project?

10 A I didn't look at that. That seems more
11 appropriate to be handled by the Traffic and
12 Transportation specialists.

13 Q So when you were asked about the
14 requested changes that the city made to the -- the
15 planning commission's requested changes to the
16 Conditions of Certification, you didn't look at
17 the request that the Applicant be required to
18 provide two points of access to the site?

19 A I don't -- I don't recall seeing that,
20 but I believe there is a Condition of
21 Certification in the FSA on that exact issue.

22 Q And --

23 A And it's in -- it's in the Traffic and
24 Transportation section.

25 Q And is it your understanding that there

1 will be two roads into the site provided by the
2 Applicant before construction begins?

3 A I'm not really -- I don't really know
4 the details of the timing on that -- that
5 condition, but I do know that it's complicated by
6 the fact that that roadway would have to go across
7 two privately held pieces of farmland. And also
8 it would have to connect to a future street
9 network in the CVRP project, which hasn't been
10 built yet. The project's being built from the
11 south to the north, so the streets aren't
12 available.

13 Q So in -- in terms of just looking at the
14 problems the project has with meeting some of
15 those not big picture development requirements,
16 but small picture development requirements, like
17 setback and access and things of that nature,
18 don't you just ultimately reach the conclusion
19 that this site isn't quite big enough for the
20 planned use on the site? I think there was a
21 reference in your FSA somewhere that one of the
22 reasons that the site couldn't provide the setback
23 from the property line is they just don't have
24 enough property to do it.

25 A Yeah, the -- the site is constrained.

1 There is a creek on two sides of it, and the
2 proposed use cannot meet those setbacks because
3 the site is not large enough. The Applicant has
4 indicated that the Passantino family wants to
5 retain as much of their land as possible to keep
6 it viable for -- for farming. So --

7 Q So --

8 A -- the -- for that particular
9 configuration of that project, it would require
10 further encroachment onto active agricultural land
11 to meet the setback. At least the -- the 100 foot
12 setback. But there is -- there is a condition
13 that -- that Staff proposed to sort of get at the
14 intent of what that setback requirement is, which
15 I understand it to be basically a 200 foot
16 separation between buildings on adjacent campuses.

17 Q But there was no similar condition for
18 the setback from the railroad tracks, was there?

19 A No. And my -- my conclusion there was
20 that I noted that the -- the project wouldn't meet
21 that 50 foot wide landscape easement. The
22 Applicant proposes a single line of cypress trees
23 along there for screening. I did not that non-
24 conformance with that -- that requirement would
25 not result in a significant adverse environmental

1 effect. The conclusion of the Visual Resources
2 testimony is that the -- the views from Monterey
3 Road and the railway, which are the primary
4 reasons for the -- the setback, that's my
5 understanding, from talking to the city staff, the
6 visual impact of those -- those viewers is less
7 than significant because of the short duration of
8 the view.

9 And they also noted that the Applicant
10 does propose substantial planting offsite between
11 the Monterey Road and the -- and the rail line,
12 which would provide an additional level of
13 screening for people on Monterey Road. It
14 wouldn't benefit the -- the rail users.

15 Q But nonetheless, if we had a larger site
16 we would be able to meet all of those
17 requirements.

18 A Most -- most likely. There's -- there
19 could be engineering type issues with the -- the
20 way a power plant needs to be laid out on the site
21 that I'm not aware of that might conflict that
22 even with a slightly larger site. I don't know.

23 Q Now, going to your appendix in terms of
24 compliance with some of the policies that are
25 discretionary. I think you indicated that you --

1 that the height limit could be -- was, in your
2 view, discretionary.

3 A Yes.

4 Q And, but that the height limit for --
5 that the project does exceed the height limit that
6 is established in current city standards, no
7 discretion has been granted.

8 A That's correct.

9 Q Now, turning for a minute to the
10 landscape ratio for the project in the Coyote --
11 the North Coyote Valley master development plan.
12 I think that the landscape ratio for the project
13 is 25 percent, which I believe is what your
14 testimony reflects. But that landscape ratio is
15 supposed to be met not with vegetation, natural
16 vegetation like the vegetation in the riparian
17 corridor, but with new landscape. And, but again,
18 the inclusion of the riparian vegetation in that
19 calculation is again discretionary. Is that your
20 understanding, as well?

21 A The inclusion of the natural open space
22 is discretionary?

23 Q Yes.

24 A Yes. That is my -- that's my
25 understanding. That's what I stated on page 212

1 of my testimony. So I -- I had made a statement
2 that the project appeared to -- appeared to comply
3 with those standards, which -- it's semantics, but
4 it -- it sort of --

5 Q So with --

6 A -- it's sort of a --

7 Q -- without the discretion exercised, it
8 doesn't comply with that standard.

9 A That's -- that's correct.

10 Q Okay. Now, do you view the project's
11 non-conformance with the city's general plan and
12 zoning designations as more important or
13 significant than a non-conformance with these
14 other issues that we've been talking about, the
15 setbacks and the height requirements?

16 A Yes, I would. I think it's -- it's -- I
17 note that the project is in non-conformance with
18 the general plan. The designations don't allow
19 for the type of use, and the city refused to
20 change the general plan to allow it. So I would
21 say the project is in non-conformance with the
22 city's general plan.

23 Q Now, why was there not a finding made of
24 significant impact under CEQA as a result of the
25 inconsistency with the city's general plan per the

1 CEQA guidelines?

2 A I don't -- I don't believe that a non-
3 conformance with the general plan is -- would
4 necessarily result in a significant impact. If
5 the -- the Appendix G guidelines, what it says is
6 that if a project does not -- if a project
7 conflicts with a plan policy, standard, regulation
8 adopted by a local -- or a jurisdiction, for the
9 purpose of avoiding or reducing an environmental
10 effect, that would constitute a significant impact
11 under CEQA.

12 Q So your understanding is that a conflict
13 with the city's general plan is not a significant
14 impact?

15 A Well, let me clarify. If -- if -- a
16 general plan is -- the EIR for a general plan
17 oftentimes recognizes that implementation of it
18 will result in significant and unavoidable
19 impacts. So, for instance, a campus industrial
20 use on this piece of property, which it's
21 designated for, would result in significant
22 adverse environmental effects that most likely are
23 unavoidable. For instance, conversion of prime
24 farmland.

25 Q Correct. But the general plan

1 contemplated campus industrial use, and that was
2 the impact that the general plan had identified as
3 significant. Now we're talking about a power
4 plant. And it's --

5 PRESIDING MEMBER LAURIE: Well, Mr.
6 Knight, the question is in your opinion, under
7 CEQA, is inconsistency with the general plan a
8 significant impact? Under -- under CEQA
9 guidelines. Do you know?

10 MR. KNIGHT: I would -- I was trying to
11 -- I was trying to read the -- what I believe --
12 does anybody have the CEQA guidelines in front of
13 them? But it does say for the purpose -- the plan
14 or policy was adopted for the purpose of avoiding
15 an environmental effect. And I -- I just don't
16 know, I don't believe a general plan necessarily
17 is one of those plans that was adopted to avoid a
18 significant environmental effect in its totality.

19 PRESIDING MEMBER LAURIE: Okay.

20 MR. KNIGHT: They're adopted with
21 overriding considerations for recognizing that
22 implementation of it will result in significant
23 unavoidable impacts.

24 PRESIDING MEMBER LAURIE: Okay, thank
25 you.

1 MS. DENT: That's okay. I have no
2 further questions.

3 PRESIDING MEMBER LAURIE: Mr. Knight, if
4 I might. Explain to me why an examination at this
5 point the compliance with city LORS is relevant.

6 MR. KNIGHT: You mean the -- the
7 individual policies, standards --

8 PRESIDING MEMBER LAURIE: With the city
9 general plan, with the city zoning, with city land
10 use goals and policies. Is this property subject
11 to such rules?

12 MR. KNIGHT: Warren-Alquist provides
13 that the Energy Commission cannot certify a
14 facility if it is not in conformance with all
15 applicable laws, ordinances, regulations and
16 standards. So --

17 PRESIDING MEMBER LAURIE: No. What I'm
18 asking, and if Ms. Dent can answer that --

19 MS. DENT: Half the project's in the
20 city and half the project's in the county.

21 PRESIDING MEMBER LAURIE: Okay. And so
22 that -- that's the point of my question. Is it
23 your position that the entirety of the project is
24 subject to city LORS because a portion of it is,
25 in fact, located in the city.

1 MR. KNIGHT: A portion of it is in the
2 city, and also the fact that the county's general
3 plan defers to the city's general plan.

4 PRESIDING MEMBER LAURIE: It -- it
5 defers.

6 MR. KNIGHT: It states that allowable
7 uses on properties that are unincorporated and
8 within the urban services area --

9 PRESIDING MEMBER LAURIE: So --

10 MR. KNIGHT: -- are subject to -- must
11 conform to the city's general plan.

12 PRESIDING MEMBER LAURIE: So the city
13 LORS has primacy over county LORS as it relates to
14 this project. Is -- is that your --

15 MR. KNIGHT: That's my understanding.

16 PRESIDING MEMBER LAURIE: Thank you,
17 sir.

18 HEARING OFFICER VALKOSKY: Ms. Cord.

19 MS. CORD: Thank you.

20 CROSS EXAMINATION

21 BY MS. CORD:

22 Q Mr. Knight, my first question is on page
23 202, where you discuss sustainable cities.

24 A Yes.

25 Q And I notice you focus on the reclaimed

1 water aspect of sustainable cities. Are you aware
2 that the sustainable cities strategy includes a
3 significant energy conservation element?

4 A I'm -- I'm not aware of that, no.

5 Q Okay. Hypothetically, if that were the
6 case would it seem to you that efforts to conserve
7 would be a -- a more efficient use of natural
8 resources than building a power plant?

9 A The way I read this strategy is it says
10 a sustainable city is a city designed,
11 constructed, and operated in minimized ways to
12 sufficiently use its natural resources, and I
13 didn't discuss the issue of using natural gas as
14 opposed to some other source of energy, because
15 natural gas isn't coming from the City of San
16 Jose.

17 Q Right.

18 A And it seems to focus on its natural
19 resources.

20 Q Would you consider the air in San Jose
21 to be a natural resource?

22 A I suppose it would be, yes.

23 Q Okay. Thank you. And then over on page
24 203, just a quick question on that very first line
25 at the top. I'm just going to verify. You found

1 the residential neighborhood to be approximately
2 .5 miles from -- or, actually, half a mile from
3 the project site?

4 A The -- the southern -- the southern end
5 of the Santa Teresa neighborhood is about a half a
6 mile away from the project site. And it extends
7 further north.

8 Q Good. Thank you. Okay. And actually,
9 in that same paragraph, about halfway down, it
10 says Staff did not evaluate the project's
11 potential for adverse visual impacts on the
12 nearest residential neighborhood, since Staff
13 determined that the neighborhood would not have
14 views of the site because of Tulare Hill.

15 Now, my question is, did that include an
16 analysis of the plume? Of a plume that could be
17 visible?

18 A It's -- the Staff that I'm referring to
19 in this case is the Visual Resources specialist,
20 who has yet to testify. But my understanding from
21 speaking with him, is -- is with the proposed
22 condition of certification that Staff is
23 proposing, that the plume would not be visible to
24 the Santa Teresa neighborhood.

25 Q Okay.

1 A Over the hill.

2 Q Was it your understanding that the
3 Visual Resource Condition of Certification had to
4 do with reducing the number of hours, not
5 eliminating -- reducing the number of hours that
6 the plume is visible, not eliminating?

7 MS. WILLIS: I'm going to object and ask
8 that these questions be referred to our Visual --

9 HEARING OFFICER VALKOSKY: Yeah, I
10 agree.

11 MS. WILLIS: -- specialist.

12 HEARING OFFICER VALKOSKY: It seems
13 appropriate, but since the question is out -- is
14 out now, I think the witness can just answer yes
15 or no as to his understanding of the -- the
16 question.

17 MR. KNIGHT: My understanding is it --
18 there's a limit on the number of hours the plume
19 can be visible. I think it's 12 hours a year,
20 something like that.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. KNIGHT: And there's also a limit on
23 its size.

24 BY MS. CORD:

25 Q Okay. Did your analysis include what

1 the size, the maximum height of the plume could
2 be?

3 A Can you repeat the question?

4 HEARING OFFICER VALKOSKY: Okay. Ms.
5 Cord, and I -- I understand this, but I think what
6 we've got here is a witness who's -- who's more of
7 a generalist and has incorporated his
8 understanding of a lot of the other impacts. Now,
9 certainly, what you're asking is -- is very
10 relevant. I really think it's more relevant for
11 the Visual witness, who has actually proposed
12 certain conditions to address potential impacts.

13 MS. CORD: Okay. Thank you. That's
14 all.

15 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

16 CROSS EXAMINATION

17 BY MR. AJLOUNY:

18 Q Yes. Mr. Knight, is it true that you
19 are the one that informed Alan Rosen of the
20 possible LORS being broken in the area of the
21 Coyote Park and the Fisher Creek Trail?

22 A Could you be more specific --

23 Q Well --

24 A -- on what you're talking about?

25 Q -- as I understand it -- well, can you

1 elaborate on how Mr. Rosen found that to be true?
2 I understand that you were the one that -- there's
3 reasons for this.

4 HEARING OFFICER VALKOSKY: Mr. Ajlouny,
5 how is this related to his testimony?

6 MR. AJLOUNY: Well, I just --

7 HEARING OFFICER VALKOSKY: I don't
8 recall anything in his testimony about anything
9 like this.

10 MR. AJLOUNY: I understand. But -- but
11 he's supposed to be looking at land use in a -- in
12 a general way, and I think in his expert testimony
13 and what he's done, and being consistent and going
14 on as things happened, I think he found out that
15 there were some issues with noise, and from what I
16 was told he was the one that informed Alan Rosen
17 of that. Is that true?

18 HEARING OFFICER VALKOSKY: I --

19 MR. AJLOUNY: I have another question
20 with this, and then --

21 HEARING OFFICER VALKOSKY: No. Just --

22 MR. AJLOUNY: -- that's it.

23 HEARING OFFICER VALKOSKY: -- just stick
24 -- stick to the land use. I'm really not
25 interested in --

1 MR. AJLOUNY: Well, it goes along with
2 the land use --

3 HEARING OFFICER VALKOSKY: -- some
4 theory about who told who what.

5 MR. AJLOUNY: Okay, fine.

6 HEARING OFFICER VALKOSKY: Okay.

7 BY MR. AJLOUNY:

8 Q Can you expand on the issues of LORS in
9 the area of Fisher Creek Trail and Coyote Park,
10 that you know of being broken, or possibly being
11 broken.

12 A Could you refer to -- could you refer to
13 a specific area in my testimony that this is --
14 that this question is addressing?

15 Q Well, I -- I really have to take some
16 time looking -- look at the page and find it. I
17 wasn't -- I just thought -- I was going to lead on
18 to a couple more questions and be done, and I
19 didn't realize this was going to be such a big
20 issue.

21 A At any time did you have any concerns
22 with Fisher Creek Trail or Coyote Park, in a Land
23 Use issue in the area?

24 A Yes, I did.

25 Q Okay. Was that concern related to Alan

1 Rosen?

2 MS. WILLIS: I'm going to object.

3 MR. KNIGHT: Alan Rosen is the Noise
4 specialist retained by the Energy Commission to do
5 the noise analysis.

6 BY MR. AJLOUNY:

7 Q So -- so you felt -- so you had a
8 concern about noise level in that general area
9 because of the park being discovered next to the
10 --

11 HEARING OFFICER VALKOSKY: Mr. Ajlouny,
12 you can ask the witness on his field of expertise.
13 We are not going to who knew what, supposedly,
14 under whatever theory we're proceeding.

15 Ask this witness about compliance with
16 Land Use laws, ordinances, regulations and
17 standards.

18 MR. AJLOUNY: Well, I -- I guess I feel
19 that this witness believes one thing different
20 than the witness in the Noise area, and I'm --

21 HEARING OFFICER VALKOSKY: I --

22 MR. AJLOUNY: -- trying to get him to be
23 honest about it. But apparently there's probably
24 a -- some undue pressure. And I'm not asking my
25 -- my questions correctly.

1 BY MR. AJLOUNY:

2 Q Are you aware of any LORS being broken
3 in that area that I just discussed?

4 A There was an area that I had a concern
5 about the project's compatibility with
6 recreational uses in the area. The Noise section
7 and the -- the -- typically the way the noise
8 analyses are done by the Commission is it looks to
9 the nearest sensitive receptor, which is
10 oftentimes, or is defined as a residence, or
11 convalescence home, or a hospital, or daycare
12 center, or elder care. And I think that's my
13 understanding, in talking to the noise specialist,
14 that it's very common in the area of noise.

15 My concern was that what about
16 recreational uses in the area. They don't fall
17 under that category. And even the -- the City of
18 San Jose has recognized in its own general plan
19 that -- that recreational uses aren't identified
20 as sensitive noise receptors. Or, I should
21 clarify that. Actually, where I have read that is
22 in an EIR that was prepared by the city on a -- on
23 a recent project, that -- that recreational uses
24 are not identified as sensitive noise receptors.

25 Nevertheless, there's a section of the

1 general plan that addresses noise compatibility
2 issues, and there's also a section of the -- of
3 the county's general plan which also addresses
4 noise compatibility issues, and one of the
5 categories is recreational uses.

6 From my understanding with talking to
7 Alan Rosen, who provided the expert testimony on
8 Noise, is that Coyote Creek, an existing trail,
9 existing parkway, the noise levels would not be a
10 significant adverse impact. They're below the --
11 the levels at that -- at that distance they're
12 below the levels of normal speech, so would not
13 interfere with someone having a conversation
14 walking along the trail. So in that sense, the
15 power plant seems to be a compatible use.

16 Fisher Creek is much closer. There is
17 not a trail there now. There is a planned trail,
18 and my understanding from looking at the master
19 development plan is there's two options for
20 bringing that trail north. The trail goes -- the
21 trail goes through the CVRP project, comes out to
22 an area close to -- near the Passantino residence,
23 and then there's two options. It could either go
24 over, still south of the Passantino residence and
25 over to connect to the Coyote Valley Parkway,

1 connect to that trail. It would be taken over by
2 a planned overpass, which I believe is being built
3 as a part of the CVRP project.

4 Another option would bring it across the
5 Metcalf -- the Metcalf site. And there is a
6 Condition of Certification in the Land Use section
7 that if -- if there is ever a trail connection
8 that can be made to that -- to a trail on the
9 Metcalf site, that the Applicant build that
10 portion of the trail on their site.

11 The noise levels from the power plant in
12 that area are above the levels of normal speech,
13 so it would be a dominant noise source. It's not
14 a part of the existing setting, so in terms of a
15 significant effect under CEQA, it's not -- it's
16 not considered. But a compatibility issue, I -- I
17 don't -- the power plant is not going -- there's
18 room -- there's room along the -- within the
19 setback area for the trail. Granted, it's not
20 going to be a pristine, quiet portion of the
21 trail. But it still have value, it seems, because
22 it would provide a connection if the trail ever
23 went that far north, to connect to I believe it's
24 the Santa Teresa neighborhood.

25 So -- and as the Applicant's had noted

1 earlier, trails do go through areas that are
2 louder than others, but I believe the trail would
3 still have value as a connector trail.

4 Q Okay. I think the point I wanted to
5 make is -- is the word "compatible". So would --
6 if the trail was at the park next to the power
7 plant, would it be compatible, in your opinion?

8 A At -- I believe it would be a compatible
9 use.

10 Q Okay. On page 248 of your chart, one,
11 two, three -- the sixth block down -- 248 of the
12 FSA?

13 A Okay. Which -- which item? I'm sorry.

14 Q Guide 1B, at about the sixth block down.

15 A 1B?

16 Q Yes. I mean, reading that, do you still
17 feel that that would be true, that there -- it
18 still -- whatever the title was, consistent -- and
19 recognizing the recreational use in the corridor?

20 A Well, my understanding is the riparian
21 corridor policy study, its -- its focus is
22 protection of habitat, biological species, and
23 there was testimony presented by Staff's
24 Biological Resources expert that the noise levels
25 produced by the power plant operational phase

1 would not produce adverse effects on biology.

2 Q That hasn't been done yet.

3 A Excuse me?

4 Q As far as I know, that hasn't been done.

5 A That's true. That --

6 Q Oh, okay --

7 A -- submitted.

8 MR. AJLOUNY: Okay. All right, that's
9 the end of my questions.

10 HEARING OFFICER VALKOSKY: Thank you.

11 Mr. Scholz.

12 MR. SCHOLZ: No questions.

13 HEARING OFFICER VALKOSKY: Mr. Williams.

14 MR. WILLIAMS: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. WILLIAMS:

17 Q My first question, Mr. Knight, pleased
18 to see you, is a general question, a hypothetical
19 question. Does the city have the latitude to
20 require more restrictive zoning at the -- at this
21 new site than might've existed at another site;
22 for example, Cisco Number 4.

23 PRESIDING MEMBER LAURIE: I don't
24 understand the --

25 ///

1 BY MR. WILLIAMS:

2 Q This is to address the point that there
3 was a power plant with anhydrous ammonia there,
4 and are therefore they required to license their
5 next site with a power plant with anhydrous
6 ammonia? Or can the city be more restrictive?

7 A Well, my understanding is that power
8 plant was actually licensed by the county. It was
9 county land at the time.

10 Q Is it your understanding it's in the
11 small power plant category, as well?

12 A It's 30 megawatts, I believe. Yes, it
13 would be. It wouldn't come under the Energy
14 Commission's jurisdiction.

15 Q Yes. And so I repeat your question.
16 Because of population growth or other
17 considerations, is it within the latitude of the
18 city council to impose more restrictive
19 requirements in a new business development area
20 than exists, for example, near Zanker Road and
21 First Street?

22 PRESIDING MEMBER LAURIE: I don't
23 understand the question. Are you asking whether
24 if -- are you asking whether the city has the
25 discretion to down zone this property so as to

1 prohibit --

2 MR. WILLIAMS: Or -- or to up zone the
3 property to be more restrictive because of the
4 growth in population and the now foreseeable use
5 and population density.

6 PRESIDING MEMBER LAURIE: Mr. Knight,
7 does a city have jurisdiction to zone a property
8 in any manner consistent with the general plan
9 designation?

10 MR. KNIGHT: Yes, it does.

11 MR. WILLIAMS: Thank you, sir.

12 BY MR. WILLIAMS:

13 Q My next question relates to the city
14 council action and why this section of the FSA was
15 not amended. Did you feel that this section might
16 be made obsolete by the action of the city council
17 on November 28th, and did you ask your management
18 if you could redo this section?

19 If yes, why. If no, why.

20 A Well, what was the --

21 MS. WILLIS: Is that one question?

22 BY MR. WILLIAMS:

23 Q Did you anticipate that the action of
24 the city council in refusing the rezoning would
25 render certain parts of this section incorrect?

1 HEARING OFFICER VALKOSKY: Okay. Let me
2 -- let me try.

3 Mr. Williams, as I recall Mr. Knight's
4 testimony, essentially it was that yes, there are
5 statements which are not currently correct, having
6 currently updated, having not totally incorporated
7 the results of the November 28th, 2000, city
8 council action. But that in spite of that fact,
9 Mr. Knight does not feel the need to extensively
10 revise the testimony and/or change the conclusions
11 therein. Is that a correct summary?

12 MR. KNIGHT: That's correct.

13 BY MR. WILLIAMS:

14 Q Okay. I wanted to explore that point.
15 Let me direct your attention to page 245. This is
16 the first page of your Appendix A Land Use table.
17 In particular, the economic development major
18 strategy.

19 In light of the city council action
20 would not it be appropriate to change that answer
21 from yes to no? It's the second --

22 A As I've already discussed, I -- my
23 conclusion on the economic development strategy
24 was that it was supportive. And it supports one
25 aspect of what that strategy is striving for,

1 which is commercial -- well, industrial,
2 additional industrial uses to balance the existing
3 residential stock, and provide revenue to the
4 city.

5 Q Well, I --

6 HEARING OFFICER VALKOSKY: Okay.

7 MR. WILLIAMS: -- I want to pursue --

8 HEARING OFFICER VALKOSKY: No, no. Mr.
9 Williams, you've got the answer. The witness said
10 no, in his opinion, he doesn't think he has to
11 change his answer.

12 MR. WILLIAMS: Yeah. I --

13 HEARING OFFICER VALKOSKY: That's it.
14 Don't argue with him.

15 BY MR. WILLIAMS:

16 Q The -- do you feel that you have the
17 obligation to act as a city council, putting
18 yourself in the chair of the city council, or to
19 faithfully record the action of the city council?

20 A My -- my responsibility as a employee of
21 the Energy Commission is to provide an independent
22 analysis of power plant projects before us. And I
23 believe I've done that.

24 Q Well, I take that to mean you -- you
25 believe that your judgment can supersede that of

1 the city council?

2 A That's not what I'm --

3 HEARING OFFICER VALKOSKY: That was not
4 the testimony. You've gotten a response to it.
5 Please move on.

6 BY MR. WILLIAMS:

7 Q Well, I didn't hear your answer. Did
8 you make any type of internal request to -- to
9 modify or reissue this section when you learned of
10 the November 28th testimony? Of the -- the
11 November 28th action of the city council rejecting
12 the annexation and the general plan amendment, and
13 the plan rezoning?

14 A If I had believed that there was --
15 there was changes that were necessary, I could've
16 made them. And -- and I did file some
17 supplemental testimony that did make some changes.

18 Q Now, I -- I'm interested in your opinion
19 of the relevance of the other power plant siting
20 within the San Jose General Plan area. To your
21 knowledge, has that siting been on sites zoned for
22 industrial?

23 A Is there a specific project you have --

24 Q Well, in particular, the Agnews site.

25 A I'm not a hundred percent sure of what

1 the zoning is there, but I'd venture a guess that
2 it might -- it could be heavy industrial.

3 MR. WILLIAMS: We -- we could look at
4 the map, but I won't slow us down for that.

5 It's my understanding that -- that the
6 CEQA guidance has a specific reference in Appendix
7 A to the conformance with general plan
8 requirements. Could I ask Ms. Willis to read that
9 guidance in Appendix A into the record, or could
10 we do that at a later date?

11 HEARING OFFICER VALKOSKY: We can even
12 take notice of what Appendix A says.

13 MR. WILLIAMS: Yes, I'd appreciate that.

14 HEARING OFFICER VALKOSKY: Yes. We will
15 note what Appendix A says.

16 MR. WILLIAMS: Thank you.

17 BY MR. WILLIAMS:

18 Q Can I just ask you, in what sense is the
19 -- I'm referring now to page 245 again, the
20 sustainable city major strategy. Could you repeat
21 your rationale for finding yes rather than no
22 there? This is on page 245 of your testimony.

23 A It's -- it's discussed more fully on
24 page 202 of my testimony. And -- would you like
25 me to read it?

1 Q Yeah, if that's -- if you've got it in
2 front of you.

3 A The power plant would use an average of
4 3.3 million gallons per day of reclaimed water for
5 cooling purposes. The project use of reclaimed
6 water will provide a beneficial use for the city's
7 wastewater, helping to reduce the city's discharge
8 to San Francisco Bay. Thus, the project would be
9 supportive of the sustainable city major strategy.

10 Q Thank you. With respect to the
11 residential use land policy number 2, residential
12 neighborhoods should be protected from the
13 encroachment of incompatible activities. Why did
14 you find that yes rather than no?

15 A Because the power plant would not
16 encroach on a residential neighborhood. The --
17 the physical separation of the -- created by the
18 Tulare Hill between the power plant site and the
19 nearest residential neighborhood, I felt that it
20 was -- it met that policy. In addition, the fact
21 that Staff didn't identify any indirect land use
22 impacts that could be caused by the power plant on
23 that residential neighborhood, the project --

24 Q Do you remember the discussion earlier
25 today where the map showed the Basking Ridge homes

1 within a half-mile or three-quarters mile of the
2 plant site? This was the yellow part of the Land
3 Use diagram across the highway.

4 A Yes, I do remember that.

5 Q Now, do you feel a power plant within a
6 half-mile is an encroachment?

7 A Well, to me, encroachment means it's --
8 it's physically -- it's encroaching on it, and
9 it's sited within it, or --

10 Q So you have a -- that they have to
11 contiguous in order to encroach. Do you -- do you
12 know what contiguous means?

13 A Yes, I do.

14 Q Yeah. Okay.

15 A I'm thinking about my answer.

16 Q Forgive my -- I --

17 A Not -- not necessarily. No.

18 HEARING OFFICER VALKOSKY: How much
19 more, Mr. Williams?

20 MR. WILLIAMS: I'm just -- my next
21 question goes to --

22 HEARING OFFICER VALKOSKY: Mr. Williams,
23 how much more?

24 MR. WILLIAMS: About two more minutes,
25 sir.

1 HEARING OFFICER VALKOSKY: Okay.

2 BY MR. WILLIAMS:

3 Q The American Lung Association identifies
4 people running on trails as sensitive receptors.
5 Are you aware of that?

6 A No.

7 Q Okay. Is an examination -- Commissioner
8 Laurie started to ask the question, and I didn't
9 think he got a complete answer. Why isn't a
10 complete examination of city local ordinances and
11 regulations relevant at this time, in light of the
12 action taken by the city on November 28th, 2000?
13 Shouldn't we re-examine the compliance with LORS?

14 A I'm not sure that was --

15 HEARING OFFICER VALKOSKY: We --

16 MS. WILLIS: Object.

17 HEARING OFFICER VALKOSKY: -- that's
18 been asked and answered a couple of times.

19 BY MR. WILLIAMS:

20 Q Do you feel -- okay. I -- I can't
21 believe that -- so that is your position.

22 I think -- I'd just like to ask you, in
23 your opinion, what is the relevance of the
24 presence of chemicals at the Santa Clara Valley
25 Water Plant, and the Agnews Cogeneration Plant?

1 Is there any particular relevance of that to the
2 siting of the Metcalf station?

3 PRESIDING MEMBER LAURIE: As it pertains
4 to Land Use, Mr. Williams?

5 MR. WILLIAMS: Yes, sir. And -- and the
6 earlier representations today of the Applicant
7 regarding anhydrous ammonia, et cetera.

8 MR. KNIGHT: The -- the relevance is --
9 I touched on this to some degree in my -- in my
10 FSA, relates to a precedence for siting industrial
11 parks, or light industrial uses adjacent to more
12 heavy industrial facilities.

13 BY MR. WILLIAMS:

14 Q Yeah. So let me ask that question I
15 asked previously again. In light of increasing
16 population density, isn't it within the
17 prerogative of the city to exclude a use that they
18 previously permitted because of a growing
19 sensitivity to that hazard?

20 A Could you repeat the question? I'm not
21 sure what you're asking.

22 Q If the city's starting to get worried
23 about chemicals or ammonia, can't they tighten the
24 zoning at a new site, such as Coyote Valley,
25 tighter than precedents that exist in other parts

1 of the county?

2 A That's within their prerogative to do
3 so, yes.

4 MR. WILLIAMS: I think so. Yes. Thank
5 you.

6 HEARING OFFICER VALKOSKY: Okay. Thank
7 you, Mr. Williams.

8 Redirect, Ms. Willis?

9 MS. WILLIS: No.

10 HEARING OFFICER VALKOSKY: No redirect.
11 Would you like to move your exhibits?

12 MS. WILLIS: I would. I would like to
13 move Exhibit Land Use Section Number 7, and I
14 believe it was --

15 HEARING OFFICER VALKOSKY: 74, I
16 believe.

17 MS. WILLIS: -- 74.

18 HEARING OFFICER VALKOSKY: Okay. Is
19 there objection?

20 MR. WILLIAMS: Yes, there is an
21 objection.

22 HEARING OFFICER VALKOSKY: Okay. And
23 the nature of your objection?

24 MR. WILLIAMS: Well, despite the opinion
25 of the -- the author, Mr. Knight, I don't believe

1 the section reflects the full impact of the city
2 council's action refusing the annexation or the
3 rezoning, and it should not be accepted.

4 HEARING OFFICER VALKOSKY: Okay.
5 Objection noted. However, we will nevertheless
6 receive that portion of Exhibit 7, as well as
7 Exhibit 74, into the record.

8 (Thereupon the Land Use portion
9 of Exhibit 7 and Exhibit 74 were
10 received into evidence.)

11 HEARING OFFICER VALKOSKY: Does that
12 conclude the presentation of Staff?

13 MS. WILLIS: Yes, it does.

14 HEARING OFFICER VALKOSKY: With that,
15 the Committee thanks and excuses the witness.

16 All right. At this time we'll take a
17 ten minute recess, and then finish up with the
18 city and their witness.

19 (Thereupon a recess was taken.)

20 HEARING OFFICER VALKOSKY: All right.
21 We'll begin with our final witness of the evening,
22 on behalf of the City of San Jose.

23 Ms. Dent.

24 MS. DENT: Would you state your name,
25 business address, current job title, and job

1 responsibilities for the record.

2 MR. EDENS: Yes. My name is Kent Edens,
3 E-d-e --

4 MS. DENT: He needs to be sworn in. I'm
5 sorry.

6 HEARING OFFICER VALKOSKY: Swear the
7 witness, please.

8 (Thereupon Kent Edens was, by the
9 reporter, sworn to tell the truth,
10 the whole truth, and nothing but
11 the truth.)

12 TESTIMONY OF

13 KENT EDENS

14 called as a witness on behalf of the City of San
15 Jose, having been first duly sworn, was examined
16 and testified as follows:

17 MR. EDENS: My name is Kent Edens, E-d-
18 e-n-s. My business address is the City of San
19 Jose, Department of Planning, Building and Code
20 Enforcement, 801 North First Street, San Jose,
21 95110. My current job title is Deputy Director of
22 Planning, and my job responsibilities are to,
23 first of all, to act on behalf of the Director of
24 the Department of Planning, Building and Code
25 Enforcement as needed and as directed by him.

1 I manage the planning services division
2 of the department, which is responsible for, has
3 the lead responsibility for all of the City of San
4 Jose's long-range planning. I'm responsible for
5 general planning, specific planning, neighborhood
6 revitalization planning, all other forms of
7 planning, and policy development. I'm also
8 responsible for the public information function,
9 the data management function, and the public --
10 the public information function and the zoning
11 code maintenance update interpretation function.

12 DIRECT EXAMINATION

13 BY MS. DENT:

14 Q And how long have you been employed in
15 your current position?

16 A I have been in my current position as
17 Deputy Director of Planning, managing the Planning
18 Services Division, for 11 years.

19 Q And how long have you been with the
20 city?

21 A Thirty-two years.

22 Q Can you please describe your education,
23 training, and professional affiliations pertaining
24 to your employment with the city?

25 A My relevant education is that I have a

1 Master of Urban Planning degree from the
2 University of Washington. As to training, I have
3 attended innumerable workshops, conferences,
4 seminars, courses in planning and land use, and
5 have also been a presenter/trainer at local,
6 state, national conferences, workshops. I am a
7 member of the American Planning Association and a
8 member of the American Institute of Certified
9 Planners.

10 Q Now, Mr. Edens, have you reviewed the
11 written testimony that was filed in this
12 proceeding bearing your signature?

13 A I have.

14 Q And was that testimony prepared by or
15 under your direction?

16 A It was prepared under my direction.

17 Q And is that testimony true and accurate
18 to the best of your knowledge?

19 A It is.

20 Q Mr. Edens, could you please describe
21 your involvement on behalf of the city with the
22 Metcalf Energy Center project? How did you become
23 involved with the Metcalf Energy Center project?

24 A The planning staff that are involved
25 have been and continue to be involved with this

1 project work at my direction. I have personally
2 been involved as the lead staff person for the
3 city administration on this project, liaison with
4 the city manager's office, and other departments
5 of the city that are involved in the project. I
6 have attended numerous workshops, prehearing
7 conferences, and -- and other meetings on this
8 subject, so I have been personally very much
9 involved in the project.

10 Q Now, Mr. Edens, going to your -- your
11 knowledge of the current physical characteristics
12 of the proposed MEC site. What is your
13 understanding of the current physical environs
14 around the site of the proposed energy center?

15 A The relevant features are that the site
16 is adjacent to Fisher Creek, to Tulare Hill, to
17 the major Union Pacific Railroad tracks, and to
18 the Passantino property. The railroad tracks,
19 which are just east of the site, is a main line
20 route from San Francisco to LA, a major carrier of
21 freight trains, Amtrak passenger service, as well
22 as the Caltrain commuter rail.

23 It has also been identified in the high
24 speed rail -- rail service corridor that is in
25 process of being development -- developed to

1 provide high speed rail between southern
2 California and northern California. This is one
3 of the potential routes.

4 Tulare Hill, a significant feature that
5 separates the North Coyote Valley, which is the
6 city's term for the area of which the proposed MEC
7 site is a part, Tulare Hill separates it from by
8 about a half a mile from the edge of the existing
9 urbanized San Jose and -- and northern Santa Clara
10 Valley, and the Santa Teresa neighborhood is that
11 portion of -- of San Jose which is most proximate,
12 about a half a mile north of the site. There is
13 planned residential to the east on the other side,
14 northerly of the Coyote Creek and a county park
15 chain trail system, which are about a half a mile
16 to the east.

17 Q Now, the entire site is not located
18 currently within the City of San Jose; is that
19 correct?

20 A That is correct. The northern ten acres
21 of the site on which the majority of the proposed
22 plant facilities are proposed to be located, is
23 not within the City of San Jose, but is within the
24 city's urban service area, and the remaining
25 southern ten acres is -- is within the city's

1 corporate limits.

2 Q Could you please describe the current
3 land use designations for the site; that is, the
4 city's current land use designations for the site,
5 and also, if you know, the land use designations
6 for the site under the county.

7 A The city's general plan designation for
8 -- for the site is campus industrial. And under
9 the county's general plan, it is the city's
10 general plan designation which controls
11 development of the site, because the portion of
12 the property that is located within the county is
13 within the city's urban service area. And as to
14 the zoning of the site, both within the city and
15 within the county, it is agricultural.

16 Q Now, please describe what effect the
17 city urban service area designation has on
18 proposed -- any proposed development on the MEC
19 site. How does that impact the proposed
20 development on the site?

21 A Well, under the -- the county's zoning
22 ordinances, the portion of the site that's within
23 the county would have to be annexed to the city in
24 order to obtain development entitlements. And
25 this requirement in the county's ordinance

1 recognizes that the county does not. in fact,
2 provide or plan to provide urban services such as
3 water, sewer service, fire, police.

4 Q Does the city provide urban services
5 currently to the MEC site?

6 A The city does not at present, but
7 consistent with the city's urban service area
8 designation for the area, the city does anticipate
9 that urban services that would be required for
10 development of the site in the future, in
11 accordance with the city's general plan, would be
12 provided by the city.

13 Q So explain what you mean in saying that
14 urban services would be provided by the city.

15 A Well, under the -- under a tax
16 allocation agreement between the -- between the
17 city and the county, and that, in fact, is
18 attached to my written testimony as Exhibit A, the
19 urban service area designation means that the
20 city, not the county, would -- would provide, or
21 would operate urban services that would serve this
22 site.

23 Q Now, does the site's urban service area
24 designation mean that the city actually would
25 expect to annex the property automatically,

1 without consideration of any other features or
2 factors?

3 A No. It -- it would not. Inclusion
4 within the urban -- urban service area is a -- is
5 a necessary condition, but not a sufficient
6 condition. It is not the practice of the city to
7 annex property for which uses are proposed that do
8 not conform to the city's general plan either as
9 to major goals, policies and strategies, or as to
10 land use designation.

11 Q Now, Mr. Edens, is recycled water
12 considered an urban service?

13 A No. We would not consider it to be an
14 urban service. It isn't available to all parts of
15 the city. In fact, recycled water is available to
16 only select portions of the city, even as to
17 existing development, and we do not consider it to
18 be an essential urban service for which it must
19 exist for development to occur.

20 Q Would the proposed MEC power plant be a
21 permitted use under current land use designations
22 on the MEC site?

23 A No, it would not. The power plant is
24 not a permitted use under the city's general plan
25 designation of campus industrial. And in

1 addition, the city's agricultural zoning would not
2 allow a power plant.

3 Q Could you describe for the Commission
4 the types of uses that are permitted under the
5 campus industrial area designation?

6 A The uses allowed under the campus
7 industrial designation, as delineated in the
8 general plan, are -- are limited and are, by
9 design, restrictive. They include research and
10 development, administration, marketing, assembly,
11 and manufacturing, and also development within the
12 Coyote Valley campus industrial area is further
13 restricted as is set forth in page 210 of the
14 general plan, which provides the parameters for
15 North Coyote Valley.

16 And also, in the North Coyote Valley
17 Master Development Plan, which in addition to the
18 uses, it -- limiting uses, it limits development
19 to very large single user, high prestige
20 industrial developments which meet tests of being
21 sensitive to the -- to the important natural
22 features of the area, and meeting unusually high
23 design standards.

24 Q Were you involved in the development of
25 the North Coyote Valley Master Plan and the

1 decision to designate the MEC site and the area
2 around that for campus industrial development?

3 A Yes, I -- I was.

4 Q Could you please provide a historical
5 overview in context for that decision for the
6 Commission?

7 A The planning for -- for North Coyote
8 Valley began before 1983, but was -- was
9 officially adopted for North Coyote Valley in
10 1983. The impetus for -- for the creation of the
11 North Coyote Valley campus industrial area through
12 general plan amendment in 1983 was that the city
13 was looking for the long-term economic health of
14 the city, recognizing that particularly in that --
15 in that timeframe the city was very much the
16 bedroom community for the at that time referred to
17 as electronics industry. The city knew that to be
18 able to provide adequate services for the city's
19 residents, there had to be a stronger job base
20 developed.

21 The city came to the conclusion that we
22 -- we did need to look to the future. We needed
23 more land for industrial development, where there
24 were -- would be existing large parcels that could
25 accommodate large campuses, aggregation of -- of

1 parcels. This area was created through the 1983
2 general plan amendment to -- to help improve the
3 city's jobs/housing balance. We did not want to
4 just leave it at the creation of a new industrial
5 area, but to ensure that the -- the vision of the
6 area, which was articulated in the general plan as
7 a world-class technology area, the city developed
8 the master development plan which was adopted in
9 1985, and -- and that master development plan does
10 include the public and private improvement
11 guidelines and the very restrictive development
12 standards.

13 Q So now, the plan was originally created
14 in 1985. The situation with respect to jobs and
15 housing, is it still true that the bulk of the
16 jobs are still located in the northern part of San
17 Jose, with the bulk of the housing still in the
18 southern part of the city?

19 A That -- that fact is -- is true. While
20 San Jose has had aggressive job growth in recent
21 years, it has had even more aggressive housing
22 production, and the city's job/housing balance has
23 not improved appreciably and is not, in fact,
24 contemplated to change in the near future. So
25 that situation still exists, and the city is still

1 very much concerned about the full development of
2 the North Coyote Valley as has been envisioned
3 since -- since 1985.

4 Q So could you now describe how the
5 planned use for the site, the Metcalf Energy
6 Center site, fits within the overall plan for the
7 vicinity, for the entire North Coyote Valley
8 industrial -- campus industrial area?

9 A Well, the site is, as I stated, is
10 planned for campus industrial use, as are the
11 lands immediately to the south, and part of the
12 larger 1400 plus acre North Coyote Valley. The
13 most proximate property, the Passantino property,
14 immediately adjacent to the MEC site, is also
15 planned for campus industrial use. In other
16 words, what the city contemplates would occur on
17 that property would be a very high quality campus
18 industrial facility, anticipated potentially
19 within a hundred feet of the MEC property line.

20 And in addition to the context of
21 planned uses, in addition to the housing that is
22 -- exists just north of Tulare Hill, the city also
23 has planned housing about a half a mile northeast
24 of the site, as well. And the city is very
25 concerned about the context of these planned uses

1 along and around the Metcalf Energy Center site,
2 because land use decisions on any one parcel have
3 a potentially great effect on the larger environs
4 around that subject parcel.

5 Q Mr. Edens, you've described the Metcalf
6 Energy Center as a heavy industrial use in your
7 testimony. Could you describe your rationale for
8 that characterization, and how you distinguish the
9 Metcalf Energy Center from a campus industrial
10 type facility?

11 A Well, the -- the MEC would -- would have
12 the characteristics that we would normally
13 associate with -- with heavy industrial uses, as
14 they are described in the city's general plan.
15 And I would refer to page 212 of the general plan,
16 which is included in my testimony, which defines
17 heavy industrial uses as uses which would have a
18 -- potentially have effects on health, safety,
19 and/or the environment, which would dictate that
20 they be segregated from other uses. And it is my
21 -- my understanding from research that -- that
22 staff has done, is that CEC licensing decisions
23 recognize the heavy industrial nature of power
24 plants such as MEC.

25 We, in fact, reviewed other siting cases

1 and we -- we see that of the nine recently
2 approved power plants, they are situated either
3 with existing heavy industrial uses, or they are
4 in remote or rural locations where zoning and/or
5 general plan is agricultural inclusive of mineral
6 and petroleum production -- production or
7 extraction. And in addition to that, of the 12
8 pending siting cases before the CEC, seven of
9 those we note are in existing power plant sites.

10 Q Now, could you describe the San Jose
11 General Plan designation under which power plants
12 would be allowed?

13 A They could be allowed under either the
14 public, quasi public designation, for which MEC
15 sought approval. Or they could be allowed under
16 the heavy industrial designation of the general
17 plan.

18 Q Now, in your testimony you indicated
19 that the city's general plan designates hundreds
20 of acres for heavy industrial use. Are these
21 lands shown on the general plan land use diagram
22 that was produced with your testimony?

23 A Yes, they are. We included in our
24 estimate all of the lands designated for heavy
25 industrial use, which when we're looking at the

1 general plan, what they would see was the -- the
2 dark gray area on the land use transportation
3 diagram. Our estimate is that is, in gross terms,
4 a total of 1600 acres.

5 Q Now, when you made that estimate did you
6 make a distinction between vacant and improved
7 property in your estimate of land available and
8 designated in the city for heavy industrial uses
9 such as power plants?

10 A We -- we did not make that distinction.
11 It is very common within the City of San Jose that
12 we see applications for conversion of currently
13 improved property from one permitted use to
14 another, be it for housing, be it for commercial
15 use, or other. As the city fills in and there is
16 less and less vacant land, we make more and more
17 use of -- of land which sustains economically
18 obsolescent or undervalued land, and so much of
19 our development increasingly comes on land that is
20 not vacant.

21 Q Now, do you agree with Calpine's
22 testimony that the city's recent approval of the
23 two Cisco campuses in the vicinity of heavy
24 industrial uses in the Alviso area are some
25 indication that heavy industrial uses are

1 compatible with and should be located adjacent to
2 campus industrial type uses?

3 A No, we -- we would not -- not agree with
4 that conclusion. The -- the situation in -- both
5 in Alviso and in North San Jose mentioned is
6 really the reverse of the situation we have in
7 North Coyote Valley. In those cases, we are
8 talking about new uses dealing with existing uses,
9 whether it's a treatment plant or the cogen
10 facility, those are uses that exist and one can
11 make a judgment about what exists and whether or
12 not a prospective use can live with it. The
13 operational characteristics of it, various aspects
14 of it, are known quantities, and a judgment can be
15 made as to whether or not, on the part of the new
16 use, whether the compatibility exists and whether
17 you want to locate next to -- to such a facility.

18 In North Coyote Valley we're trying to
19 avoid that situation from occurring. What we
20 don't want to do is create impediments to the sort
21 of development that we have planned for a long
22 time. And if there are impediments that exist,
23 our options for dealing with that are quite
24 limited.

25 Q Now, in what city zoning district would

1 a power plant be allowed?

2 A Power plant would be an allowable use in
3 what is at present, until February the 19th, known
4 as the M4 zoning district. The new zoning code
5 that was adopted will become effective February
6 19th, basically changes the -- the title of the M4
7 zoning district to call it heavy industrial to
8 match the heavy industrial designation of the
9 general plan. And power plants would be
10 appropriate in a heavy industrial zoning district
11 subject to the findings required for conditional
12 use permit being able to be made, and subject to
13 consistency with the general plan.

14 Q Now, the other instance where a power
15 plant could be permitted would be, for example,
16 with a PD permit, which was applied for, would've
17 eventually gone forward for MEC; is that correct?

18 A A planned development pre-zoning
19 rezoning, I assume you're -- you are referring to.
20 Yes.

21 Q Now, did the -- did the San Jose
22 Planning Commission and City Council recently have
23 occasion to consider whether the Metcalf Energy
24 Center facility could be considered consistent
25 with the city's general plan designation?

1 A Yes. That is true. In November of
2 2000, both the planning commission and the city
3 council considered a request by Calpine to change
4 the zoning on the Metcalf Energy Center property
5 from agricultural to planned development, and --
6 which would've permitted the development of the
7 proposed MEC facility on that site. And although
8 the proposed change in zoning was considered in
9 conjunction with the proposed general plan
10 amendment, the council could have approved a plan
11 development pre-zoning rezoning request without
12 amending the general plan, if the council had
13 determined that the power plant would be
14 consistent with the current campus industrial
15 designation for the site.

16 Q So is it your testimony, then, that in
17 rejecting both the pre-zoning rezoning and the
18 general plan amendment, the city council rejected
19 Calpine's suggestion that Metcalf Energy Center is
20 compatible with the site's campus industrial
21 designation in the general plan?

22 A Yes, I think the council clearly agreed
23 with city staff that power plants are not, in
24 fact, an allowable use under the campus industrial
25 designation.

1 Q Now, did the city -- did the planning
2 commission and the San Jose City Council also
3 recently have occasion to consider amending the
4 general plan designation to a designation under
5 which a power plant would be an allowable use?

6 A Yes, in November of 2000 the planning
7 commission and the city council also considered
8 Calpine's application to change the general plan
9 land use designation from campus industrial to
10 public, quasi public.

11 Q Were the changes to the zoning
12 designation and general plan designation proposed
13 by Calpine the only changes that they could've
14 proposed to conform the proposed use to the city's
15 general plan zoning designation, or were there
16 other alternatives or combinations that they
17 could've chosen?

18 A There were other alternatives. Calpine
19 could have proposed to change the campus
20 industrial designation to a heavy industrial
21 designation, and they could have proposed to
22 change the zoning of the property from agriculture
23 to heavy industrial zoning, instead of the planned
24 development district. A power plant would also
25 have been allowed under this combination of

1 general plan and zoning designation.

2 Q Now, if Calpine had elected to propose a
3 combination of heavy industrial, general plan, and
4 heavy industrial zoning designation for the site,
5 instead of the quasi public general plan
6 designation, and the PD zoning designation, how
7 would the city have reacted to that proposal, in
8 terms of evaluating specifically environmental
9 documentation?

10 A Well, a more comprehensive analysis
11 would've been required if the proposal were for a
12 more generic heavy industrial general plan
13 designation, zoning designation. There would've
14 been a need to analyze a wider variety of uses,
15 and which would have applied a wider variety of
16 impacts, rather than just those focusing on a
17 power plant. It would've been necessary to
18 address a number of hypothetical uses that could
19 occur under a heavy industrial designation.

20 Q So would the city have required more
21 extensive documentation under CEQA than was
22 provided in the CEC Final Staff Assessment, if the
23 change -- if the request had been for a change to
24 heavy industrial instead of this specific use?

25 A I believe that under CEQA the city

1 would've -- would not have considered an
2 environmental document which analyzed only the
3 environmental impacts of a power plant. I don't
4 think that would've been adequate for a generic
5 change in land use designation which would have
6 allowed for a much wider variety of industrial
7 uses.

8 Q Could you summarize the process history
9 for the proposed general plan amendment and
10 planned development pre-zoning rezoning
11 application, as it came through the city process.

12 A Yes. The -- the general plan amendment
13 for the proposed power plant was filed in March of
14 1999, and by the time of the full general plan
15 hearings October, November timeframe, there was no
16 -- yet no environmental document. And Staff and
17 the Applicant agreed that what should be relied
18 upon as an environmental document would be the CEC
19 environmental clearance document, and therefore
20 there not being one at that point in time, the
21 planning staff recommended, and the Applicant
22 agreed, that the best course was to defer the
23 requested amendment until the CEC environmental
24 document would be available.

25 And at the 1999 general plan hearings,

1 there was considerable interest expressed by the
2 community to simply deny the general plan
3 amendment outright, without further study. The
4 city council agreed with planning staff that we --
5 that we should continue to pursue the analysis of
6 the project, and the amendment should be deferred
7 until completion of an adequate environmental
8 document.

9 In the fall of -- of this past year,
10 2000, the general plan amendment and the pre-
11 zoning rezoning were heard before the planning
12 commission and the city council, and the requested
13 action on these requests were scheduled after the
14 CEC Final Staff Assessment became available, and
15 the commission's hearing occurred about a month
16 after the Final Staff Assessment was issued, and
17 the city council hearing was about two weeks after
18 that.

19 Q So all of the city actions were taken
20 within about six weeks after the Final Staff
21 Assessment became available?

22 A That -- that is correct.

23 Q Could you summarize the San Jose City
24 staff recommendations and planning commission and
25 council action on the proposed general plan

1 amendment, just run through them very quickly.

2 A Exhibit F of my -- my written testimony,
3 as it indicates, planning department staff
4 recommended denial of the proposed general plan
5 amendment, and the pre-zoning rezoning. And as
6 indicated in Exhibits G and H of my testimony, the
7 planning commission voted five to two in favor of
8 the proposed changes. And as indicated in
9 Attachments I and J to my prepared testimony, the
10 city council, by an eleven to zero vote, denied
11 the request for a general plan amendment and PD
12 pre-zoning rezoning to permit development of the
13 power plant.

14 Q Now, prior to making a recommendation to
15 the planning commission and city council on the
16 proposed general plan amendment and PD pre-zoning
17 rezoning, did planning department staff review the
18 project for consistency and compatibility with
19 local laws, ordinances, regulations and standards?

20 A We did.

21 Q And please summarize the planning
22 department's conclusion with respect to
23 consistency and compatibility of the project with
24 LORS.

25 A Planning staff concluded that the

1 proposed power plant would be inconsistent and
2 incompatible with the campus industrial
3 designation for the -- for the site in the general
4 plan, and as -- as well as with the North Coyote
5 Valley Master Development Plan.

6 Q Now, would you please identify and
7 briefly describe each area of incompatibility or
8 inconsistency of the project with the general plan
9 campus industrial designation in the North Coyote
10 Valley campus industrial area master plan.

11 A Well, the first and foremost
12 inconsistency and incompatibility under both the
13 general plan and the master development plan for
14 the North Coyote Valley is that the MEC land use
15 is inherently incompatible with the plan campus
16 industrial use. The MEC site is at one of the
17 northern entrances to North Coyote Valley, and it
18 should, per the general plan, and/or the county
19 master development plan, be developed with a large
20 campus or corporate industrial use that would set
21 the tone for the entire North Coyote Valley area,
22 rather than with a power plant that would dominate
23 the area, provide the image of a heavy industrial
24 use.

25 And this inconsistency is particularly

1 important because the North Coyote Valley is -- is
2 in its formative years. It's a vision yet to --
3 to be realized, and on the brink of that starting
4 to occur. And the concern, strong concern of the
5 city is with the power plant inhibiting the
6 planned campus industrial development actually
7 taking place, as -- as envisioned.

8 The -- we cite the visual dissonance
9 between the plan campus industrial development,
10 buildings of predictable character, regular
11 volumes, as opposed to some unusual shapes and
12 structures, something that's very much not campus
13 industrial, regardless of -- of intent and
14 architectural treatment. We note the MEC's
15 inherent incompatibility with -- with the plan --
16 planned uses.

17 In addition, water vapor plumes from
18 cooling towers and the heat recovery steam
19 generator stacks is still a concern of that
20 occurring, which would earmark the area as -- the
21 entire area as heavy industrial, which is not a
22 characteristic common to the kind of area that we
23 are envisioning.

24 And then finally, a power plant in this
25 location would not be consistent with the city's

1 plans for the usual residential community and the
2 nearby -- in Coyote Valley.

3 Q Other than the incompatibility with the
4 campus industrial general plan designation and the
5 master development plan, did the planning staff
6 find any other incompatibilities or
7 inconsistencies of the project with city LORS?

8 A Yes. Inconsistency with the city's
9 riparian corridor policy, in some respects, and
10 also with the development standards of the North
11 Coyote Valley Master Development Plan.

12 Q And could you please identify and
13 summarize the areas of project incompatibility and
14 inconsistency with the riparian corridor policy?

15 PRESIDING MEMBER LAURIE: Ms. Dent, how
16 much longer is your brief summary of his prefiled
17 testimony going to take?

18 MS. DENT: About half as long as it's
19 taken so far.

20 PRESIDING MEMBER LAURIE: Do you -- do
21 you want that, Mr. Valkosky?

22 Okay. Mr. Valkosky finds it helpful, so
23 continue.

24 MR. EDENS: Yes, I'm sorry.

25 PRESIDING MEMBER LAURIE: I will note

1 that the testimony has been prefiled. And so I'm
2 acquiescing because Mr. Valkosky indicates that
3 it's helpful to him. I'm going to ask you to
4 focus.

5 MS. DENT: I will state for the record
6 that the testimony is not identical to what was
7 prefiled.

8 MR. HARRIS: And on that basis, we
9 object.

10 (Laughter.)

11 MS. DENT: In substance, there -- there
12 is rebuttal material in here, as well.

13 MR. EDENS: Shall I continue?

14 PRESIDING MEMBER LAURIE: Yes.

15 MR. EDENS: As regards the riparian
16 corridor, the MEC facility plans does -- does have
17 an incursion into the riparian corridor setback
18 during construction. Beyond that, while building
19 setbacks are 100 feet, the project will
20 permanently encroach into the hundred foot setback
21 by the provision of a vegetation free clear space
22 within the setback area, rather than that clear
23 space being on the project site.

24 The project in its operation will also
25 violate the noise component of the riparian

1 corridor policy, which limits noise levels from
2 mechanical equipment in and adjacent to riparian
3 corridors to background level.

4 BY MS. DENT:

5 Q Mr. Edens, I'd like you next to skip to
6 identifying the -- and summarizing the areas of
7 project incompatibility and inconsistency with the
8 development standards in the North Coyote Valley
9 Master Development Plan.

10 A Okay. In addition to, as I've stated,
11 the fundamental land use inconsistency, the MEC
12 project design does not meet the development
13 standards, all of the development standards of the
14 North Coyote Valley Master Development Plan. And
15 I would -- I would note quickly that the
16 development standards are taken very seriously.
17 The purpose statement of the master development
18 plan, in fact, states that the unusually
19 restrictive nature of these is deliberate. North
20 Coyote Valley will attract and retain the major
21 high technology users that are -- that it is
22 intended to accommodate only if there is a clearly
23 established standard of excellence and a
24 commitment to meet that standard.

25 Specific standard that is not met is the

1 required minimum 50 foot wide landscape area
2 between the proposed structures and the Union
3 Pacific Railway. The project proposes less than
4 that. The plan also includes a standard of a
5 hundred foot setback for -- for areas adjacent to
6 neighboring campus industrial uses. The project
7 does not meet that standard.

8 The project also includes an
9 environmental performance standard related to air
10 quality that basically requires there be no
11 production of odors, fumes, smoke, or other
12 airborne pollutants detectable without instruments
13 at the property lines. And the MEC does not
14 conform to this standard as a result of documented
15 emissions from criteria pollutants and toxic
16 pollutants, and as well as the visible plume, and
17 we think that standard is important in order to
18 maintain compatibility with the future campus
19 industrial use.

20 Q Now, did planning staff also look at the
21 general plan air quality goal to maintain
22 acceptable levels of air quality for the residents
23 of San Jose and to minimize air pollution produced
24 by new development?

25 A We did.

1 Q And did you find that MEC met that goal?

2 A No. We -- we concluded that it didn't,
3 based on the evidence produced by the MEC as of
4 the date of our November 13th staff report, we
5 concluded that there was an unacceptable degree of
6 uncertainty as to whether the acceptable levels of
7 air quality would be maintained or air pollution
8 would be minimized. And specifically, planning
9 staff's concern was that allowing MEC to purchase
10 emission reduction credits from locations in North
11 San Jose and Mountain View and allowing the use of
12 interpollutant trading would not mitigate or
13 minimize the immediate local air quality impacts
14 of MEC.

15 Q Now, did the planning staff make any
16 analysis as to whether a change in the city's
17 general plan or other applicable LORS was
18 warranted by the need for the MEC project?

19 A We did, because Calpine had -- Calpine
20 had applied for an amendment to the general plan,
21 we looked at whether or not a need for the energy
22 that would be produced by Metcalf would justify
23 siting Metcalf in conflict with established
24 general plan policy and -- and other applicable
25 LORS.

1 Q And what was your finding with respect
2 to that issue?

3 A Well, we determined that -- that MEC,
4 which we understood would -- at that time would
5 not be operational until 2003, would not be a
6 solution to anticipated peak period shortfalls in
7 2001. And it was our conclusion that the first
8 priority should be given to less extreme measures
9 than siting a power plant in conflict with local
10 land use policy, such as upgrades to existing
11 efficient power plants, improvements of adequate
12 transmission facilities, and expansion of
13 conservation programs.

14 Q I want to go now just to a couple of
15 aspects of the rebuttal testimony, Mr. Edens. To
16 Calpine's testimony concerning the number of
17 general plan amendments that the city considers
18 each year. Could you please indicate for the
19 Commission whether the number of proposed
20 amendments was unusually high last year, and why?

21 A Yes. Actually, last year, the 2000
22 annual review was -- did have a larger number of
23 amendments than is typical in our annual review
24 process, and that was because of a council
25 directed housing opportunity study. We were

1 directed by council to vigorously look for
2 additional housing opportunities, particularly
3 along the light rail corridors. And as a result
4 of that study and analysis, we brought forward an
5 unusually large number of staff initiated
6 amendments.

7 Q Now, in your view --

8 MR. ELLISON: Commissioners, I really
9 have to object at this point. This testimony goes
10 quite a way beyond the direct testimony that is
11 supposedly being summarized here, and constitutes,
12 I think, an unfair practice.

13 MS. DENT: This is rebuttal testimony to
14 the testimony that was presented today, that is in
15 the written testimony that Calpine presented.
16 It's in their written testimony concerning -- it's
17 in Appendix F, concerning the number of general
18 plan amendments that the city considers every
19 year, and concerning the number that are approved
20 and denied. It's rebuttal testimony on that
21 issue.

22 MR. ELLISON: Rebuttal testimony was --
23 was supposed to be prefiled, in writing, according
24 to the --

25 MS. DENT: It would've had to have been

1 prefiled on the same day as yours was prefiled.

2 HEARING OFFICER VALKOSKY: Yeah. I
3 think essentially we're talking surrebuttal
4 testimony.

5 I am going to -- to allow it, Mr.
6 Ellison, because this is the first time, at least
7 I am aware, we're getting some of these matters
8 out into the open. I will allow it on the
9 condition that if you feel disadvantaged, you may
10 move -- and I assume the city will provide the
11 witness for further examination. Okay?

12 So with that, proceed.

13 BY MS. DENT:

14 Q Well, I think we had answered the
15 question I asked, and there's really just one
16 follow-up question.

17 Do you consider the city's denial of the
18 proposed general plan amendment for the Metcalf
19 Energy Center to be consistent with actions that
20 it has taken on other general plan amendments in
21 previous years and in previous cases, general plan
22 amendments that you are familiar with?

23 A Yes. The -- the -- I can -- I can think
24 of examples in -- in recent years where general
25 plan amendment requests have, in fact, been

1 denied, and been denied on -- on the basis that
2 they were not consistent with -- with broader
3 applicable general plan policies or strategies. A
4 couple of examples that -- that come to mind were
5 proposed general plan amendments for high density
6 residential that were judged to -- to be in
7 conflict with general plan policies having to do
8 with the protection of existing single family
9 neighborhoods and -- and not -- them not suffering
10 incursion from incompatible uses. And a general
11 plan amendment that would've increased densities
12 in the foothill area that was deemed to be
13 inconsistent with the city's policies with respect
14 to limiting development in foothill areas.

15 So denials that were on policy grounds,
16 not just on the merits of a particular -- a
17 particular project design.

18 Q Now, Mr. Edens, did both the planning
19 commission and the San Jose City Council hold
20 lengthy hearings and hear lengthy testimony on the
21 Metcalf Energy Center project and on the proposed
22 general plan amendment and zoning designation?

23 A Yes, they did.

24 Q And they deliberated on -- in those
25 proceedings?

1 A Yes, they did.

2 Q And you've provided the Commission with
3 the resolution of the city council denying the
4 general plan amendment and the pre-zoning
5 rezoning?

6 A Yes. Yes, I did. Exhibit J, in fact,
7 in my testimony, is a copy of the city council's
8 resolution denying the general plan amendment and
9 PD pre-zoning and rezoning, and directing staff to
10 continue to participate in the proceedings and to
11 protest any contrary decision by the state.

12 MS. DENT: Thank you. That's the end of
13 the direct testimony.

14 HEARING OFFICER VALKOSKY: Does that
15 conclude -- okay.

16 MS. DENT: I'd move Mr. Edens' written
17 testimony into evidence.

18 HEARING OFFICER VALKOSKY: Okay. Is
19 there objection to moving Exhibit 76?

20 Hearing no objection, Exhibit 76 is
21 admitted.

22 (Thereupon Exhibit 76 was
23 received into evidence.)

24 HEARING OFFICER VALKOSKY: Mr. Edens, a
25 couple of questions for -- for my understanding.

1 Are you familiar with Appendix A to the Staff FSA,
2 that's pages 245 to 249, which is entitled Summary
3 of MEC's Consistency with Applicable Laws,
4 Ordinances, Regulations and Standards?

5 MR. EDENS: Actually, I'm -- I'm not.
6 I'm aware it exists, but I'm not personally
7 familiar with it. But I will --

8 HEARING OFFICER VALKOSKY: Okay. I --
9 well, I don't know if you can help me, then. My
10 next question was -- was whether or not you agreed
11 or disagreed with the characterizations that Staff
12 has indicated on that table.

13 MR. EDENS: I -- if -- if I can, Mr.
14 Valkosky, I -- based on the conversation -- I -- I
15 had glanced it quite some time back, so I don't
16 have current recall, but based on the conversation
17 that has occurred as to what is in here, I can
18 make a couple of comments if that would --

19 HEARING OFFICER VALKOSKY: Would you,
20 please.

21 MR. EDENS: Yes. The one -- well, there
22 are two -- two issues, I guess, that I would speak
23 to in -- in terms of the conversations that I --
24 that I have heard.

25 The one -- the one point that I would --

1 would make would be with respect to Mr. Knight's
2 determination that the project would be consistent
3 with the -- with the city's economic development
4 major strategy. Staff would disagree with that,
5 and would say that while it might be supportive of
6 some aspect of -- of the city's economic
7 development strategy, that we would not consider
8 it overall to -- to be consistent, because the
9 basic linchpin of the fundamental reason for being
10 of the city's economic development strategy really
11 is to improve the city's overall economic base
12 through -- through job growth, through industrial
13 development, commercial and industrial
14 development.

15 And our -- our conclusion is that
16 because the proposed project we think would
17 inhibit development of what we really bank on for
18 the 21st Century for the city's economic
19 development, our overall conclusion would be that
20 it would not be -- that it would not be
21 consistent.

22 HEARING OFFICER VALKOSKY: Okay, thank
23 you.

24 MR. EDENS: And if -- if I could, Mr.
25 Valkosky, it -- I understand that there is the

1 assertion that the proposed project would -- would
2 meet the general -- excuse me, the general goals
3 of the North Coyote Master Development Plan. We
4 would -- we would suggest that -- that that is not
5 -- not at all the case. We do not see that it
6 would contribute to the development of the area as
7 envisioned, and concerned, in fact, that it would
8 have quite the -- quite the contrary effect.

9 HEARING OFFICER VALKOSKY: Are there any
10 further comments that you have on that appendix?

11 MR. EDENS: I think that exhausts my
12 knowledge on the subject.

13 HEARING OFFICER VALKOSKY: Thank you.

14 Next, could the city provide urban
15 services to an unannexed area?

16 MR. EDENS: I don't know if that's a
17 question of fact, whether the city would have the
18 physical ability to do so or whether that is a
19 legal question. It would be contrary to -- as has
20 been stated in this process -- would be contrary
21 to ordinances and policies of the city, the
22 county, and the Local Agency Formation Commission.
23 So could, in the -- in the sense of appropriate,
24 consistent with LORS, the answer would be no.

25 HEARING OFFICER VALKOSKY: Okay. Next,

1 going to the -- the LAFCO. Can you answer the
2 question as -- that I have been posing all
3 evening, as to whether LAFCO has a role in the
4 further permitting/development of the MEC project
5 and if so, what that role is.

6 MR. EDENS: Well, I'd certainly hate to
7 disappoint you, so I -- I won't. LAFCO actually
8 very much does -- does have a role. LAFCO, which
9 is a creation of -- of the state and exists in
10 every county, not only has authority with respect
11 to spheres of influence of cities, they have
12 authority over urban service area boundaries, and
13 -- and they have specific authority with respect
14 to annexation of -- of territory by -- by cities.
15 So annexation of the property -- of property is
16 subject to LAFCO approval.

17 They also have authority with respect to
18 extension of services. The creation of service
19 providers or expansion of the territory of service
20 providers all boils down to it would -- the
21 decision to provide -- I think the appropriate
22 term is out of -- out of area service, would
23 require LAFCO approval. If the City of San Jose
24 were to propose to provide water service to an
25 unincorporated area or to provide sanitary

1 discharge to an area not a part of the corporate
2 limits of the city, that would require LAFCO
3 approval, as well.

4 HEARING OFFICER VALKOSKY: Okay. Do you
5 have an estimate as to how long the LAFCO approval
6 process would take?

7 MS. JACKSON: Well, I --

8 MR. EDENS: I will --

9 HEARING OFFICER VALKOSKY: No, I'm --
10 I'm asking Mr. Edens. Okay.

11 MR. EDENS: I was going to start with
12 not a specific date, but to say that they -- they
13 meet bi-monthly, don't -- don't meet every month.
14 There is -- but the time, I mean, I'd have to
15 speculate in terms -- if -- if the question were
16 from the time one submitted an application it
17 would obviously be some number of months, and --
18 and the exact timeframe would depend in part upon
19 when the filing in relationship to --

20 HEARING OFFICER VALKOSKY: I'm --

21 MR. EDENS: -- the meeting that --

22 HEARING OFFICER VALKOSKY: -- I'm not
23 looking --

24 MR. EDENS: -- so it's months --

25 HEARING OFFICER VALKOSKY: -- believe

1 me, I'm not looking at a specific timeframe, just
2 -- just a general bracket, whether it's a question
3 of weeks, a question of months, a question of
4 years.

5 MR. EDENS: It would be more like six
6 months, four to six months would be a speculation.
7 Educated speculation.

8 HEARING OFFICER VALKOSKY: Understand
9 the speculative nature. Thank you.

10 PRESIDING MEMBER LAURIE: Mr. Edens, is
11 it your testimony that annexation of this project
12 to the city is subject to LAFCO approval?

13 MR. EDENS: LAFCO approves annexations.
14 There is an exception in -- in the law for Santa
15 Clara County, if -- if property is consistent with
16 the general plan, it -- if land proposed to be
17 annexed is consistent with the general plan and
18 within the urban service area, then it would not
19 have to go to LAFCO.

20 PRESIDING MEMBER LAURIE: Okay. So --

21 MR. EDENS: Otherwise, it would be
22 required to -- to be acted upon by LAFCO.

23 PRESIDING MEMBER LAURIE: Had the city
24 approved the general plan amendment, LAFCO
25 approval for annexation would not be necessary.

1 MR. EDENS: If the -- yes. If the city
2 approved general plan amendment, that would -- a
3 designation that would enable a power plant, the
4 property could be annexed without LAFCO action.
5 Just -- just the annexation.

6 HEARING OFFICER VALKOSKY: Thank you.
7 In Appendix F of your testimony, you have
8 conditions which I understand are conditions
9 recommended by planning staff for inclusion in the
10 Staff's proposed condition. Is that -- is that a
11 correct understanding?

12 MR. EDENS: We -- I believe what you are
13 referring to, Mr. Valkosky, are standards and
14 conditions that would be incorporated, proposed to
15 be incorporated in the general development plan,
16 which is -- is what a, you know, that's sort of
17 the heart and soul of a planned development
18 zoning. So were a planned development rezoning
19 pre-zone to be improved -- excuse me, to be
20 approved, then, you know, this is what we would
21 propose to be included in it. So that the
22 relevance of this is to if a PD pre-zoning
23 rezoning were to be approved.

24 HEARING OFFICER VALKOSKY: Okay. To
25 your knowledge, has the -- have the Conditions of

1 Certification proposed by Staff in the FSA
2 incorporated these or similar conditions?

3 MR. EDENS: I -- my recollection is that
4 we had concluded that it did not, in fact, include
5 all of them, but I cannot recall the specific ones
6 which we felt were not covered.

7 HEARING OFFICER VALKOSKY: Okay, thank
8 you.

9 Are you familiar with the Conditions of
10 Certification Land Use 2 and 3, as proposed by
11 Staff?

12 MR. EDENS: If I look at it, I may have
13 recall.

14 I have probably read those in the past,
15 but I don't recall those. I believe you referred
16 to LAND-2 and LAND-3?

17 HEARING OFFICER VALKOSKY: LAND-2 and
18 LAND-3. That's correct.

19 MR. EDENS: Okay.

20 HEARING OFFICER VALKOSKY: Now, are you
21 familiar also with the changes to those conditions
22 proposed by the Applicant?

23 MR. EDENS: I heard reference of those
24 today, but do not recall the specific proposal.

25 I -- now that I've found it, I'm sorry,

1 I've forgotten your question with respect to it.

2 HEARING OFFICER VALKOSKY: I just -- I
3 just wanted to make sure you were familiar. The
4 basic --

5 MR. EDENS: Okay. Yes.

6 HEARING OFFICER VALKOSKY: -- the basic
7 question is if you have a comment as to the
8 desirability of either of those sets of conditions
9 from the city's perspective, land use perspective.

10 MR. EDENS: I would say from the city's
11 perspective with respect to LAND-2, the orchard
12 parking, we think within -- within the campus
13 industrial guidelines, that that is very
14 important, that it has great benefit in terms of
15 providing shade, reducing heat, and a conservation
16 measure, in fact, in terms of -- of landscaping,
17 to some extent reducing need for heating.

18 As regards this specific site, this is
19 not a higher order of -- of standard. If we're
20 talking in relative terms of -- of meeting
21 standards, I would say that this is not one of the
22 more critical standards as applied to this
23 proposed project.

24 HEARING OFFICER VALKOSKY: Okay.

25 Clarify one more point for me. I understood your

1 testimony to be essentially that planning staff
2 considered whether the proposed air quality offset
3 purchases would be from the local area or a more
4 distant area. Was that -- was that a correct
5 understanding?

6 Well, I could rephrase it.

7 MR. EDENS: What -- what staff had
8 concluded was that we -- we had lingering concerns
9 as to whether or not, while the project meeting
10 regional air quality standards, whether -- in
11 fact, we -- we still have the lingering concern as
12 to whether or not there would still be air quality
13 impacts in the more immediate area.

14 HEARING OFFICER VALKOSKY: Okay. So --

15 MR. EDENS: That was --

16 HEARING OFFICER VALKOSKY: -- okay. So
17 that concern was not based on a consideration that
18 the project did not, in fact, meet the applicable
19 state and federal regional air quality standards?

20 MR. EDENS: We -- we did --

21 HEARING OFFICER VALKOSKY: Is that
22 correct?

23 MR. EDENS: -- we did not claim that it
24 did not meet --

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. EDENS: -- we made no claim that it
2 did not meet state or federal air quality
3 requirements.

4 HEARING OFFICER VALKOSKY: Okay. But
5 this -- this is based on a more particularized
6 concern about local area impacts?

7 MR. EDENS: That's correct.

8 HEARING OFFICER VALKOSKY: Okay. And
9 what is the basis for that particularized concern?
10 I mean, is it -- is it a specific directive you
11 have, is it staff policy, or what's the genesis of
12 it?

13 MR. EDENS: Well, the -- the genesis of
14 it would be that we -- we do have an air quality
15 goal. We are concerned generally as to whether or
16 not any -- any proposed use we feel, based on a
17 number of criteria in this case, in terms of air
18 quality, whether we are -- feel confident and
19 comfortable that, in fact, it would be consistent
20 with -- with our -- with the policies of not --
21 not detrimentally affecting existing neighborhoods
22 in terms of -- or populations in terms of air
23 quality. And our -- our feeling that we were not
24 absolutely certain that in meeting regional
25 standards, that it eliminated any question about

1 whether or not there -- there might be more
2 localized impacts.

3 HEARING OFFICER VALKOSKY: Okay. So
4 your air quality goal is separate and distinct
5 from the general --

6 MR. EDENS: Well, there is a general --

7 HEARING OFFICER VALKOSKY: -- standards
8 adopted by the Bay Area District? Is -- is that
9 correct? Or --

10 MR. EDENS: The general plan goal is not
11 a quantitative one. I wasn't referring to a
12 quantitative statement, or standard, but -- but a
13 more -- a more qualitative one. And our -- our
14 conclusion that we simply -- we're not debating
15 whether the project meets the requisite state and
16 -- and federal air quality standards. That is not
17 the issue. The point is, staff was concerned as
18 to whether, in meeting those standards, whether or
19 not there was still some residual effect in terms
20 of the more immediate neighborhood.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. EDENS: Not with respect to any
23 quantitative standard.

24 HEARING OFFICER VALKOSKY: Okay. Thank
25 you for that clarification. I appreciate it.

1 MR. SCHOLZ: Good evening, Mr. Edens.
2 I'm sorry, right here? Oh, okay. I didn't know
3 where the voice was coming from. Sorry.

4 (Laughter.)

5 MR. SMITH: I have a couple of questions
6 regarding the substation that's located across
7 from the Metcalf site.

8 Can you tell me, just for my own
9 edification, is that substation within the city
10 limits?

11 MR. EDENS: I do not know. It -- the --
12 the boundary gets a little strange easterly of --
13 of Monterey Highway in that area. I do not know
14 whether it's in the city or not. It was not
15 subject to the city's land use controls, in any
16 event, so it's not subject to our zoning even if
17 it were in the city, so I -- I actually don't know
18 if it's in the city or not.

19 MR. SMITH: Okay. Do you know when the
20 public, quasi public land use designation was
21 approved for that area?

22 MR. EDENS: I probably -- I was in a
23 leadership capacity in -- in the city's conference
24 of update of the general plan that was adopted in
25 1975, the so-called GP75. I believe that we did

1 so then. Most of the public, quasi public
2 designations on the general plan have been applied
3 after the fact. Many of them, such as Metcalf,
4 were uses over which we had not authority. One of
5 the major roles of the general plan is as an
6 information device, and so having some sort of a
7 clue as to what is there, we have found it
8 advantageous.

9 So things like -- where we are aware of
10 them, we have designated utility substations, we
11 have applied that designation, and for the most
12 part it's been after they've already been in
13 existence.

14 MR. SMITH: I see. Okay, thank you.

15 You mentioned early in your testimony
16 about other industrial sites that were surveyed by
17 staff, heavy industrial sites that could be
18 potentially power plant sites. In conducting that
19 survey, in identifying those sites, did your staff
20 consider any of the adjacent or nearby land uses
21 or designations that might be incompatible with a
22 power plant?

23 MR. EDENS: I need to -- to clarify that
24 we did not, in fact, do an analysis of heavy
25 industrial lands with a view to determining which,

1 if any of them, would be appropriate --
2 specifically be desirable as a power plant site.
3 We did a survey as a -- as a, you know, a -- a
4 first step in terms of looking at how much heavy
5 industrial land is there. And that's all we -- we
6 claim that analysis at this point to be. We did
7 not do a site by site analysis of physical
8 conditions, existing land uses, adjacent land
9 uses, et cetera.

10 MR. SMITH: Okay.

11 MR. EDENS: We did not do that.

12 MR. SMITH; Okay. Back to what you were
13 saying a minute ago, about the air quality. Your
14 written testimony seems to be more definitive than
15 just staff is concerned. It's -- and on page 20,
16 it specifically says the Metcalf Energy Center
17 does not conform to the standard. So the written
18 testimony seems much more definitive than your
19 oral testimony. And I go back to the question
20 that Mr. Valkosky was asking, what is the basis
21 for that determination?

22 MR. EDENS: Excuse me. The -- well, the
23 written testimony, of course, wasn't -- wasn't
24 done off the top of the head, so it -- it -- oh,
25 sorry -- so, you know, my -- my recollection's not

1 as definitive as the -- as the written word, and
2 we had, if you'll bear with us, we had --

3 MR. SMITH: Sure.

4 MR. EDENS: -- we had found some
5 relevant -- we found some relevant language.

6 In the -- in the staff report to the
7 planning commission, I would make reference to --
8 to some -- to a statement that may be relevant.
9 We made the comment that in the context of -- this
10 is in the context of startups and -- and
11 shutdowns, and the effect that that might have on
12 air quality and recollection -- my recollection
13 being that we had had a concern about the
14 valuation being at a -- a higher level of
15 operation, rather than a lower level.

16 MS. DENT: For the record, the planning
17 commission staff report that Mr. Edens is
18 referring to is -- is Attachment F to his prepared
19 testimony.

20 HEARING OFFICER VALKOSKY: I'm sorry,
21 Attachment F?

22 MS. DENT: Attachment F to his prepared
23 testimony.

24 MR. SMITH: Thank you.

25 MS. DENT: And the section of his

1 prepared testimony I think that you were dealing
2 with is pages -- mostly page 20, it looks like.

3 MR. EDENS: Right. I was reading from
4 the bottom of page 20. The paragraph beginning,
5 the MDP includes, et cetera, et cetera.

6 Okay. If -- I'm sorry, if you would
7 repeat your question. It's to the statement at
8 the bottom of -- of page 20 of my written
9 testimony; is that correct?

10 MR. SMITH: Yes.

11 MR. EDENS: The master development plan
12 includes environmental performance standards for
13 air quality.

14 MR. SMITH: Do you want me to repeat my
15 question?

16 MR. EDENS: Was -- yes, please.

17 MR. SMITH: Okay. Just a minute ago in
18 your oral testimony you said that staff was
19 concerned that the very particular, or the very
20 localized air quality might be jeopardized --
21 those weren't your words -- but could be
22 jeopardized to some degree by the operation of the
23 plant. And it was, to me it sounded somewhat
24 soft.

25 In reading your testimony, written

1 testimony at the bottom of page 20, it's much more
2 definitive. And when Mr. Valkosky was questioning
3 you about the basis for staff's concern, it seemed
4 that it was just that, a concern, in your oral
5 testimony. In your written testimony it's much
6 more definitive. It says, the Metcalf Energy
7 Center does not conform to the standard. Not that
8 staff is concerned that it may not, but it's quite
9 definitive.

10 So I wanted to follow up with Mr.
11 Valkosky's question, what is the basis for that
12 statement that it does not conform to the
13 standard?

14 MR. EDENS: Let's see. Well, one
15 response would -- would be that the -- that the
16 softness has to do with my recall of the details
17 of -- of the consideration and analysis that went
18 into the preparation of the written testimony.
19 And that was based on the analysis we had done for
20 planning commission and the city council staff
21 reports, and -- and what we had incorporated into
22 -- into my written testimony.

23 I'm not intending by my comments to
24 diminish the concern that is expressed in writing.
25 I am -- I simply do not have, not having reviewed

1 that -- that information in detail prior to -- to
2 this hearing, simply did not have immediate recall
3 of the details related to it.

4 From the -- our staff report to the
5 planning commission, we -- we had expressed
6 concern regarding the plant's potential to
7 exacerbate existing air quality problems, as the
8 area air basin is currently in violation of the
9 federal and state ozone standards and state
10 standards for particulate matter, specifically
11 PM10. Power plant being a major stationary source
12 of pollutants, you know, concern that impacts are
13 more concentrated than the air quality effects
14 from campus industrial development.

15 We do have much more detail in -- in the
16 staff report. I simply do not have personal
17 recall of -- of those details. It's not the area
18 of my specific expertise, so it does not come as
19 readily to memory as other topics.

20 MR. SMITH: Okay. Just one other
21 question. On page 14 of your written testimony,
22 at the very top, again, it says, planning staff is
23 concerned that the eventual build-out -- that --
24 that paragraph beginning with that sentence, the
25 eventual build-out of the CVRP/Cisco project, as

1 well as future campus industrial development may
2 be threatened by the location of a power plant in
3 North Coyote.

4 Similar question. What is the basis for
5 that concern? Is it this -- their analysis, or
6 experience that staff has that they can point to,
7 or that you can point to, that would support this
8 concern that future development would be
9 threatened?

10 MR. EDENS: I would say that there are
11 -- there are a couple of things involved, and --
12 and part of it is from knowing that development of
13 North Coyote Valley is -- is very expensive, some
14 \$300 million in infrastructure costs will have to
15 be incurred for all the necessary infrastructure
16 for that area to be -- to build out.

17 It's -- means that a company that wants
18 to -- to locate there and has to pay its fair
19 share has to feel very confident, very comfortable
20 about the investment. I know from -- from 32
21 years of -- of professional experience that --
22 that companies look very carefully at real estate
23 purchases. They are always looking for exit
24 strategies if company fortunes change, or the area
25 turns not -- out not to work as well for them as

1 they had thought, whatever. They are concerned
2 about maintaining the value of their investment
3 and being able to -- to sell and -- and depart, or
4 not be committed to utilization of all the
5 property they control if their -- their plans
6 change.

7 I know from long experience in dealing
8 with both companies themselves, with facilities
9 people, with real estate brokers and developers,
10 land speculators, et cetera, that a lot of things,
11 as with the stock market, a lot of things and a
12 lot of psychology go into locational decisions,
13 and I do know, and, in fact, expressions from --
14 from people involved in the development arena as
15 to whether or not that might, in fact, be a
16 detrimental factor, make the area less attractive,
17 it's -- it's not the sort of thing that's --
18 that's subject to an analysis. It is more a
19 matter of experience with people involved in -- in
20 those sorts of decisions, and the kind of things
21 that -- that can affect their decisions to -- to
22 commit or stay committed to -- to a land use.

23 MR. SMITH: Thank you.

24 HEARING OFFICER VALKOSKY: Mr. Ellison.

25 MR. ELLISON: Thank you.

1 CROSS EXAMINATION

2 BY MR. ELLISON:

3 Q Mr. Edens, my name is Chris Ellison.
4 I'm representing Calpine/Bechtel.

5 Let me begin by taking up this issue
6 that we've just been discussing, the question of
7 the local area impacts of the project.

8 Is it your understanding that the way
9 that applicable air quality laws address what
10 you've characterized as the local air quality
11 impacts is through the purchase of emission
12 reduction credits?

13 A It -- it is my understanding that --
14 that -- that that is -- is one of the ways that
15 air quality regulations can be met.

16 Q Let me repeat my question, because I
17 think I may not have made myself clear.

18 I'm referring to the local air quality
19 impacts, as distinct from the regional ones that
20 you've described in your testimony. Do you
21 understand that distinction?

22 A Yes.

23 Q Okay. With respect to the local air
24 quality impacts, is it your understanding that
25 emission reduction credits are the means by which

1 applicable air quality rules address those local
2 impacts?

3 A No.

4 Q Would --

5 A The whole point of -- of those credits
6 have to do with -- with the regional air quality
7 benefits. They're not designed to -- to assure
8 maintenance or improvement of air quality in any
9 specific locale or a portion of the region.

10 Q Would you agree that there are other
11 provisions of applicable air quality standards
12 intended to address local, as distinct from
13 regional, impacts?

14 A I don't -- I don't know.

15 Q Turning to page 20 in the policy that we
16 were just discussing a moment ago --

17 A I'm sorry, page 20 of my written
18 testimony?

19 Q Of your written testimony, yes. And
20 specifically the -- the policy at lines 18 through
21 26, that paragraph that we've just been
22 discussing.

23 You testify, beginning on line 21, the
24 Metcalf Energy Center does not conform to this
25 standard as a result of the documented emissions

1 of criteria and toxic pollutants, as well as the
2 visible plume.

3 Isn't it true that the Coyote Valley
4 Research Park also involves the emissions of
5 criteria and toxic pollution -- and toxic
6 pollutants?

7 A I -- I believe that's true.

8 Q Is it your opinion that the Coyote
9 Valley Research Park fails to meet this standard?

10 A I -- I don't -- I don't know. I do not
11 recall the details of -- of the environmental
12 assessment of -- of the project, so I -- I can't
13 answer questions as to specifics.

14 Q Well, I'm asking for your opinion.
15 Having -- having acknowledged that CVRP also
16 involves the emissions of criteria and toxic
17 pollutants, in your opinion --

18 A Well, actually I should correct that,
19 because I don't actually have -- have recall of
20 that. I think I was, you know, responding that
21 that may well be the case. But in fact, I -- I
22 don't have personal knowledge of that being the
23 case.

24 Q Are you aware that the research park
25 involves diesel generation?

1 A I don't recall if that specifically --
2 that is the sort of thing that would back up
3 generation and projects would typically be
4 addressed at the PD permit stage. It -- whether
5 or not CVRP does, in fact, include -- include
6 diesel generation, I don't know.

7 Q Accepting hypothetically that CVRP does
8 involve the emissions of criteria and toxic
9 pollutants, would it be your opinion that it fails
10 to meet this standard?

11 A I -- I don't know.

12 Q If CVRP did fail to meet the standard,
13 would that change staff's opinion on the project
14 overall?

15 A Fundamental distinction would be that it
16 is a planned use, exactly the sort of use we've
17 been trying to attract there since 1983.

18 Q So is it your testimony that even if
19 CVRP failed to meet the standard, the staff would
20 continue to support it for -- because it is, in
21 your eyes, more compatible with the existing land
22 use designations?

23 A Well, I wouldn't be -- I wouldn't be
24 willing to speculate, because I don't know -- I
25 don't know what we're talking about. I don't know

1 what sort of magnitude of an issue, and I think
2 that's far too speculative of a -- of a question
3 that I don't -- I don't care to respond to.

4 Q Do you know whether staff looked at this
5 issue with respect to the approvals necessary for
6 CVRP?

7 A CVRP was subject to an environmental
8 impact report that -- that had, in my personal
9 experience, 32 years, the most exhaustive analysis
10 and most exhaustive public testimony ever. I'd be
11 surprised if there was anything that wasn't
12 addressed.

13 Q Do you know from your own personal
14 knowledge whether conformance with this policy was
15 looked at?

16 A I don't from my own personal knowledge,
17 no.

18 Q Turning to page 8 of your testimony, in
19 your brief summary of your -- of your prefiled
20 testimony, Ms. Dent asked you some questions about
21 what the consequences would've been had
22 Calpine/Bechtel sought a designation as heavy
23 industrial, as opposed to public, quasi public.
24 Do you recall that?

25 A Yes.

1 Q Okay. At page 8, beginning at line 9,
2 you testify that you suggested to Calpine that
3 they request the designation of public, quasi
4 public. Is it fair for me to assume that you made
5 that recommendation to Calpine because you
6 believed that was the most appropriate method of
7 seeking council approval for this project?

8 A No. Because I did not know at that
9 point whether or not we would want council
10 approval, what I thought was that -- and the
11 conversation that -- that I had with
12 representatives of Calpine/Bechtel, and I think it
13 was a conclusion that we had agreed upon -- was
14 that the public, quasi public designation would
15 get specifically to the issue of the power plant,
16 so the proposed project would be the subject of
17 the analysis, as opposed to some potentially broad
18 range of speculative industrial uses, most of
19 which there was no contemplation that they be
20 pursued. So it would seem to be the most
21 effective, the most efficient way to address the
22 project, i.e., the power plant.

23 Q Thank you. Is it your understanding
24 that the Energy Commission certification --
25 actually, let me direct you to page 24 of your

1 testimony, please. And specifically, the very
2 bottom of the page. At the bottom of the page you
3 list four reasons for the city council's decision
4 regarding Metcalf, and at page -- at line 27 is
5 the fourth reason that you give.

6 Quote, Local government has control over
7 local land use decisions, not the State of
8 California.

9 Is it your opinion that a thermal power
10 plant greater than 50 megawatts constitutes a
11 local land use decision?

12 MS. DENT: I'd like to object to the
13 question on the grounds that it misstates the --
14 and mischaracterizes the testimony. The testimony
15 leads with among the reasons given by council
16 members were.

17 MR. ELLISON: With that correction --

18 MS. DENT: This is simply a recital of
19 the council resolution.

20 MR. ELLISON: I stand corrected.

21 BY MR. ELLISON:

22 Q With that correction, is it your
23 understanding that a thermal power plant in
24 California, larger than 50 megawatts, is a local
25 land use decision?

1 MS. DENT: I'm going to object to that
2 question on the grounds that it calls for a legal
3 conclusion on the part of the witness.

4 HEARING OFFICER VALKOSKY: Overruled.
5 The witness can provide the answer to the best of
6 his ability. We understand that it is not a legal
7 conclusion.

8 Please answer the question.

9 MR. EDENS: And would you just once more
10 repeat the question.

11 BY MR. ELLISON:

12 Q Is it your understanding that a thermal
13 power plant larger than 50 megawatts in California
14 is a local land use decision?

15 A It is my understanding that the
16 requirement under the law is that the siting of
17 power plants must be consistent with LORS, and
18 therefore it is the local determination as to
19 whether or not a proposed plant siting of 50
20 megawatts or greater would, in fact, be consistent
21 with the applicable zoning and general plan, and
22 other relevant ordinances and statutes.

23 Q Is it your understanding that the Energy
24 Commission's permit is in lieu of all state,
25 local, and regional permits in California for such

1 a power plant?

2 MS. DENT: I'm going to object again to
3 the question on the grounds that it calls for a
4 legal conclusion on the part of the witness.

5 HEARING OFFICER VALKOSKY: Overruled.
6 We understand it's not a legal conclusion. The
7 witness should answer to the best of his knowledge
8 and ability.

9 MR. EDENS: I will state -- I will
10 simply accept your statement that that is true.

11 BY MR. ELLISON:

12 Q Okay. Accepting the statement as true,
13 if this Commission were to grant certification for
14 the Metcalf project, and all appeals of that were
15 exhausted, and any federal permit necessary for
16 the project was obtained and any appeals of those
17 permits were exhausted, the project would have all
18 the permits necessary and be a fully permitted
19 lawful use; correct?

20 A I -- I wouldn't conclude that. I think
21 that, in fact, is -- the term fully lawful -- I'm
22 sorry, fully lawful, permitted -- whatever the
23 language was, I -- I don't -- those aren't terms
24 that I would choose to use, and I simply won't,
25 you know, won't respond to that.

1 Q Let me rephrase the question. If the --
2 if all of the permits required for the Metcalf
3 Energy Center were obtained, the Metcalf Energy
4 Center would be fully permitted; correct?

5 A I would -- it would, as I understand, it
6 would supplant the need for -- could supplant the
7 need for general plan zoning or building permit
8 approvals.

9 Q So if the Energy Commission -- is it
10 your understanding that if the Energy Commission
11 grants certification, that the Metcalf Energy
12 Center would not need any permits from any
13 regional or local agencies, in particular the City
14 of San Jose; correct?

15 MS. DENT: I'm going to object to the
16 question again on the grounds that it calls for a
17 legal conclusion on the part of the witness as to
18 an interpretation of both the Public Resources
19 Code and the California Constitution.

20 HEARING OFFICER VALKOSKY: To the extent
21 the witness can answer the question, he should.

22 MR. ELLISON: Let me clarify, I am not
23 asking for the truth of the statement, but for the
24 witness' understanding, upon which his testimony
25 is based.

1 HEARING OFFICER VALKOSKY: We are not
2 going to be swayed by the witness' legal
3 conclusion, or lack thereof. Please answer the
4 question.

5 MR. EDENS: I -- I don't know how to
6 respond to that -- to the term, "any permit". I
7 don't know.

8 BY MR. ELLISON:

9 Q Are you aware of any permit that the
10 City of San Jose would require of the project if
11 the Energy Commission were to certify it?

12 A I don't know if the -- I don't, in fact,
13 know if -- if an Energy Commission override in
14 fact overrides any and all decisions that have to
15 be made. I don't know that that's the case.

16 Q Okay. Well, I'd like you to accept,
17 just as a -- an assumption, and I understand that
18 this is just an assumption. I'd like you to
19 assume that the Energy Commission permit is in
20 lieu of all state, regional, and local permits for
21 the Metcalf Energy Center.

22 A Okay.

23 MR. WILLIAMS: Mr. Valkosky, I'd like to
24 object on the grounds that the subject of the
25 override --

1 HEARING OFFICER VALKOSKY: Okay. Well,
2 it's -- Mr. Williams, it's not your witness. I
3 want to see where Mr. Ellison is going with this.

4 Continue, Mr. Ellison.

5 BY MR. ELLISON:

6 Q Okay. Do you have that assumption in
7 mind?

8 A If you would repeat it, please.

9 Q The assumption is that the Energy
10 Commission certificate is in lieu of all state,
11 regional, and local permits for the Metcalf Energy
12 Center.

13 A Assuming.

14 Q Okay. With that assumption in mind, and
15 assuming that all appeals are exhausted, would the
16 city be able to annex the Metcalf site without
17 LAFCO approval?

18 A I think that in fact is a legal question
19 that I don't care to answer. I -- I should say, I
20 don't have an answer.

21 Q You have -- you have no understanding
22 one way or the other?

23 A Yeah, I do not know if that's the case
24 or not.

25 Q Regardless of whether LAFCO approval

1 were required, if the city were to annex, in that
2 circumstance, isn't it true that all issues
3 regarding compliance with county LORS would be
4 resolved?

5 A I believe that would be the case.

6 Q And is it not also true that all issues
7 with respect to service outside the city
8 boundaries would also be resolved?

9 A That would be true.

10 Q Do you know of any reason why the city
11 could not annex the property in that circumstance?

12 A It is contrary to city and -- and other
13 -- city and LAFCO and county policies to -- to --
14 the reason -- I'm sorry. Repeat the question, and
15 I'll get it right.

16 Q The question was, do you know of any
17 reason that the city could not annex the property
18 in that circumstance?

19 A Well, it would be contrary to annex the
20 property to -- for a purpose not consistent with
21 the city's general plan. It would be contrary to
22 the city's policy to do so.

23 Q If you accept, accepting hypothetically
24 that the Metcalf Energy Center is fully permitted,
25 is it your opinion that the -- or is it your

1 testimony that in that circumstance, the city
2 could not annex the property?

3 A I did not say that the city could not --
4 excuse me. I didn't say that the city could not
5 annex the property. I don't know of a
6 circumstance whereby -- I'm not familiar of
7 anything in the law that would force the city to
8 annex a property which they did not choose to
9 annex. I'm not aware of any such law.

10 Q What's your understanding of the
11 definition of urban services area?

12 A Basically, the -- the point of the -- of
13 the urban service area boundary is -- is really to
14 define the container within which urban
15 development should occur, and the area in which it
16 should not occur.

17 Q Isn't it true that it is the intention
18 to annex uses within the urban services area to
19 the city?

20 A The presumption -- the presumption with
21 respect to the city's urban service area policies
22 and -- and other growth management policies, is
23 that area within the defined urban service
24 boundary of the city either have services
25 available, or services can be provided within --

1 within the -- some timeframe, and the presumption
2 is that the -- the property, barring other
3 considerations, absent conflicts with other
4 policies of the general plan that the area would
5 be annexed, it is not the city's practice. I'm
6 not aware of any -- any exception to that.

7 It is not the city's practice to annex
8 land even within the urban service area, and we
9 wouldn't annex if it were not, it is not the
10 city's practice to annex land for purposes other
11 than the -- than the planned land use. I know of
12 cases where we have declined, in fact, to do so.

13 Q Do you know of any cases where the city
14 has declined to annex a fully permitted use within
15 an urban services area?

16 A Well, if it were fully permitted, if the
17 city in fact -- it wouldn't be an issue. The --
18 the answer to the question is no, I'm not
19 familiar, it's never been a -- I'm not -- not
20 aware of the issue ever having arisen, because it
21 wouldn't be fully permitted if it weren't already
22 in the city. I mean, it couldn't already have all
23 the necessary permits were it not in the city.

24 Q Ms. Dent asked you some questions about
25 the process by which the city council reached its

1 -- the planning commission and the city council
2 reached its conclusions on this project. And I'd
3 like to follow up on those questions for a moment.

4 I believe you testified something to the
5 effect that the city and the planning -- city
6 council and the planning commission conducted
7 extensive hearings. Do you recall that testimony?

8 A I made a statement with respect to the
9 hearings, yes.

10 Q Okay. How many hearings on the merits
11 of the Metcalf project did the planning commission
12 conduct?

13 A The planning commission conducted two
14 public hearings on -- on the proposed general plan
15 amendment and PD pre-zoning rezoning.

16 Q And how many hearings on the merits of
17 the Metcalf Energy Center did the council conduct?

18 A The council conducted one hearing on the
19 proposed general plan amendment, and PD pre-zoning
20 rezoning.

21 Q Okay. And the council hearing was the
22 hearing on November 28th; correct?

23 A I stand corrected on the number of
24 hearings. I was -- I was referring to the
25 hearings conducted in -- in 2000. Both the

1 planning commission and city council held hearings
2 in -- in 1999, on -- on the Metcalf Energy Center.

3 Q With respect to the council hearings in
4 1999, am I correct in my understanding that those
5 hearings were not on the merits of the project,
6 but rather on issues of whether to dismiss it at
7 the outset?

8 A Well, I think that very much got in the
9 minds of the participants, the issue of the merits
10 of the project. In fact, that was -- that was
11 very substantial testimony to the city, to the
12 planning commission and to the city council, that
13 on its merits, the project should be summarily
14 denied, which would've been a procedural option,
15 rather than deferral for completion of
16 environmental review.

17 Q And it was the council's decision that
18 it was premature to take that action at that time;
19 correct?

20 A Both. The planning commission came to
21 that conclusion, recommended to the city council.
22 The city council did agree.

23 Q So at least with respect to hearings
24 after the environmental documentation from the
25 Energy Commission were available, the council's

1 hearing was the one on November 28th, 2000;
2 correct?

3 A That's correct.

4 Q Now, with respect to the planning
5 commission, the planning commission voted in favor
6 of the project; correct? In favor of the changes
7 sought by the project.

8 A By a five to two vote, that's correct.

9 Q And the concerns that you have expressed
10 in your staff report were considered by the
11 planning commission, were they not?

12 A They were considered, and the concerns
13 were reflected in their -- in their vote.

14 Q Is it your view that the planning
15 commission is familiar with all of the plans and
16 policies of the City of San Jose that we've been
17 discussing today?

18 A I think that would be too broad a
19 standard. I would -- I would say that the
20 individual commissioners vary in their degree of
21 knowledge. I would -- I think it would be fair to
22 say that the commission, as a whole, has -- has
23 some general familiarity with the city's policies
24 and -- and goals. Some of the commissioners who
25 are not as new.

1 But I -- I would -- I would agree that
2 the commission had -- had a fair level of -- of
3 awareness of the city's policies.

4 Q Would you also agree that the planning
5 commission had an understanding of the city's
6 desires for the development of Coyote Valley?

7 A Yes.

8 Q With respect to the council's decision,
9 isn't it true that a majority of the council
10 authored two memorandums stating that they had
11 made up their minds with respect to the Metcalf
12 Energy Center prior to the November 28th hearing?

13 A As is very common with major issues,
14 land use or otherwise, council members will --
15 will frequently singly, or in some combinations,
16 indicate in -- in writing what -- what their views
17 might be.

18 Q That wasn't my question. My question
19 was in this case, in the Metcalf case, isn't it
20 true that a majority of the council, in two
21 different memorandums, stated their conclusion
22 prior to the November 28th hearing that the
23 project should be rejected?

24 A There were two memos that I'm personally
25 aware of. I don't know the actual -- I don't -- I

1 don't know the -- remember the number of actual
2 signatures on the one. But certainly several
3 council members did -- did sign on two memos.

4 Q To refresh your recollection, Mr. Edens,
5 I'm going to ask my colleague to show you the two
6 memoranda.

7 MR. WILLIAMS: Mr. Valkosky, may I ask
8 that the memorandum be put in as evidence?

9 HEARING OFFICER VALKOSKY: That, sir, is
10 the Applicant's option at this time, not yours.

11 MR. ELLISON: We have no objection to
12 those being received in evidence, if that's what
13 Mr. Williams desires.

14 HEARING OFFICER VALKOSKY: Okay. If you
15 could provide me with a copy so I can identify
16 them, please.

17 MR. ELLISON: I would like those
18 individual copies returned to me, however.

19 (Inaudible asides.)

20 BY MR. ELLISON:

21 Q Mr. Edens, have you had an opportunity
22 to refresh your recollection with respect to those
23 memos?

24 A Yes, and I -- and I note that the -- the
25 one memo from Council Member Lazotte was signed.

1 I note that the other memo from five council
2 members was not a -- it's not a signed copy. It
3 was not signed or initialed by -- by -- it's not
4 the final version of the memo. I -- I do recall
5 having seen the memo. I didn't remember the
6 individual -- all of the individual council
7 members that had -- had signed. But there are no
8 signatures on -- on your copy of the memo.

9 Q Well, notwithstanding the signatures
10 issue, having seen these --

11 A But there were five names on the memo.

12 Q And there was a sixth in the separate
13 memo. Correct?

14 A Yes.

15 Q Okay.

16 HEARING OFFICER VALKOSKY: Okay. Mr.
17 Ellison, do you want me to identify those letters
18 that you're talking about?

19 MR. ELLISON: Please. Why don't we
20 identify them separately.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. ELLISON: The first would be a memo
23 from Mayor Ron Gonzales, Council Members Powers,
24 Dando, Fiscalini and DeCuesto, to the City
25 Council, dated November 20th, 2000.

1 HEARING OFFICER VALKOSKY: Okay. I'll
2 identify that as Exhibit 93.

3 (Thereupon Exhibit 93 was marked
4 for identification.)

5 MR. ELLISON: The second would be a memo
6 dated November 28th, 2000, from Linda Lazotte to
7 Mayors -- Mayor, pardon me, singular, and Council
8 Members.

9 HEARING OFFICER VALKOSKY: And that'll
10 be Exhibit Number 94.

11 (Thereupon Exhibit 94 was marked
12 for identification.)

13 BY MR. ELLISON:

14 Q I'll ask you to turn, Mr. Edens, to page
15 14 of your testimony. Beginning on line 4, and
16 continuing down to line 6, you state, for example,
17 companies may not be able to attract and retain
18 employees to a Coyote Valley campus with the
19 presence of a power plant due to concerns
20 regarding air quality and hazardous materials.

21 And then you continue in the next
22 paragraph, to say that Calpine argues that power
23 plants can be good neighbors to high technology
24 uses, and point out Calpine's testimony citing
25 Cisco Systems North San Jose campus and the

1 cogeneration facility near Stanford Hospital, both
2 being near power plants.

3 And then you state, beginning at line
4 10, both of these facilities are significantly
5 smaller in scale in terms of generation capacity,
6 as well as building mass and footprint, than the
7 proposed Metcalf Energy Center.

8 Do you see that testimony?

9 A Yes.

10 Q And with respect to the number of
11 megawatts of the Metcalf Energy Center versus the
12 facilities that you're comparing to in this
13 paragraph, is it your testimony that the air
14 emissions and hazardous waste impacts of an
15 electric power plant are a function of the amount
16 of electricity that it produces?

17 A That wasn't the thought behind the
18 statement.

19 Q Is that your understanding?

20 A No. I -- I don't assume that's
21 necessarily the fact.

22 Q So it's possible that a power plant that
23 produces a relatively small amount of electricity
24 compared to one that produces a larger amount
25 might have equivalent environmental impacts?

1 A If -- if I could ask you if your
2 question is directed at air quality, I would agree
3 that that certainly could be the case.

4 Q Okay. And with respect to hazardous
5 materials?

6 A I would assume that that could be the
7 case, as well.

8 Q And would you also agree that with
9 respect to compatibility, it's the impacts that
10 matter and not the amount of electricity that's
11 produced?

12 A I'm sorry, I don't think I follow the
13 question.

14 Q With respect to compatibility with
15 neighboring land uses, would you agree that it's
16 the impacts of the power plant that matter, and
17 not the amount of electricity that it produces?

18 A Well, there -- I guess I'm a little
19 puzzled by the question. There are a number of --
20 there are a number of things that are -- that are
21 of concern in terms of the issue of -- if you're
22 getting at the issue of compatibility,, there are
23 quite a number of -- of factors that would come
24 into play. Just the amount of energy --
25 electricity generated wouldn't -- wouldn't be the

1 issue.

2 Q So you agree that there's nothing about
3 the amount of electricity generated, per se, that
4 is the issue in this paragraph; correct?

5 A I would -- I would agree.

6 Q And with respect to the mass and the
7 footprint, Ms. Young testified earlier that the
8 Metcalf project buildings are smaller than those
9 -- than several buildings permitted for the CVRP
10 project. Were you here for that testimony?

11 A I was present.

12 Q And you -- and you heard her testimony
13 on that subject?

14 A Frankly, I -- I wasn't following that
15 carefully. I was reviewing my own.

16 Q Well, she testified that -- that the
17 buildings in the CVRP project, that there were
18 several buildings that were of a dimension of 60
19 feet by 90 feet, and a height of as much as 120
20 feet. Is that correct, according to your
21 understanding?

22 A I -- I don't recall the specific
23 dimensions, but the -- but they are entitled to --
24 to have heights as great as 120 feet, and the
25 specific dimensions of the footprint, I -- I don't

1 recall.

2 Q Do you have any reason to disagree with
3 Ms. Young on this topic?

4 A It's -- it's certainly plausible.

5 Q May I ask you to return to page 24 of
6 your testimony. Again, at the -- at the bottom of
7 the page, where you list among the reasons given
8 by council members. The first reason that you
9 state is that the Metcalf Energy Center would be
10 inconsistent with -- and then you go on to name
11 the general plan, the North Coyote Valley campus
12 industrial area master development plan, and the
13 riparian corridor policy. Do you see that?

14 A Yes.

15 Q First, before I go any further, is it
16 not the practice of the City of San Jose in some
17 cases to grant exceptions to the riparian corridor
18 policy?

19 A Yes, and -- and, in fact, on that
20 subject, staff had been directed by the city
21 council to do an analysis of the implementation of
22 the policy, to evaluate projects that -- for which
23 the riparian -- riparian corridor policy would
24 have been relevant, and to report back to the
25 council in terms of -- of the results of that

1 analysis. And we -- and the conclusion of that
2 analysis on the part of the city council is that
3 while we may have been going through a learning
4 curve, both as the biological community and
5 developers, that we had not fully adhered to the
6 policy and that we needed to do a better job of
7 doing so.

8 There is -- there are built-in, there
9 are some built-in exceptions to the policy in
10 terms of -- of addressing differing situations.
11 Direction from council is -- is to follow the
12 policy.

13 Q If the city council had approved Metcalf
14 Energy Center's request for a change in general
15 plan and zoning, then the inconsistency that you
16 describe here would not have been an issue;
17 correct?

18 A That would not be correct. The
19 inconsistency would still exist.

20 Q Is it your opinion that if the council
21 had granted that request, that the project would
22 still be inconsistent with the City of San Jose's
23 land use policies?

24 A With -- since I -- I believe we're
25 talking about the riparian corridor policy

1 specifically --

2 Q No, no, no. No, I'm not. I'm speaking
3 of all of the policies that you mention in this
4 portion of your testimony, under Item 1.

5 A Well, presumably, if the -- if the city
6 council had approved the general plan amendment
7 and the PD pre-zoning rezoning, they would've
8 articulated the reasons for doing so, and would
9 have spoken to the issue of compatibility.

10 Q Let me turn your attention to the third
11 item that you mention. Quote, there is not
12 conclusive overwhelming need for power in 2003
13 that warrants the siting of the plant in conflict
14 with the general plan.

15 PRESIDING MEMBER LAURIE: Mr. Ellison,
16 before you ask that -- that question, let me
17 inquire as to the basis for this line of
18 questioning.

19 Are you going to be asking the
20 Commission to make a finding of legitimacy or --
21 or illegitimacy regarding the council's action in
22 denying the Applicant's applications before it?

23 MR. ELLISON: No, we're not asking the
24 Commission to make a finding regarding that,
25 Commissioner. I think that the Commission may

1 want to take into account a variety of factors in
2 its override decision, and one of those factors
3 might be the circumstances under which the
4 decisions leading to that override were made.

5 But if your -- if your question is
6 directed to where I was about to go, with respect
7 to the need for power questions, then -- then I
8 would have to say I'm confused, because the need
9 for power questions go to Mr. Edens' testimony at
10 this point, and --

11 PRESIDING MEMBER LAURIE: No. No, I'm
12 not --

13 MR. ELLISON: -- an entirely different
14 topic.

15 PRESIDING MEMBER LAURIE: -- not
16 specifically as to -- not referring specifically
17 as to item 3.

18 I'm questioning two things. One, the
19 fact that the council took action, and that action
20 stands. That is, there was no legal appeal of
21 that action, and so that action is concluded and
22 it is a fact. And -- and thus, I have to think
23 carefully about any questions regarding the basis
24 for that legislative act that the council took.
25 My understanding being that absent abuse of

1 discretion on general plan and zoning items, local
2 agencies have full discretion.

3 I also question the -- the relevancy of
4 what if they had not taken such action, because,
5 in fact, they did. And so before you pursue that
6 line of questioning, I would appreciate an
7 explanation as to your goal.

8 MR. ELLISON: Certainly. Commissioner,
9 with respect to the questions, the hypotheticals
10 that I posed about what if they had taken the
11 action. I posed those questions for two reasons.
12 One of them is the lack of conformity has been
13 raised as an issue, as a reason for denying the
14 requested changes, as an explanation of the city
15 council's decision.

16 And the point that we're making is
17 simply that the council had that in its hands when
18 it made the decision, it could nonetheless have
19 approved the changes that were requested, that
20 that is a tautology that every zoning change,
21 every general plan change begins with the
22 assumption that it's inconsistent. You wouldn't
23 ask for such a change if it were not. And so to
24 say that the reason for denial is that you were
25 inconsistent is a tautology. And that's the point

1 we're making with respect to that.

2 The other questions that we have asked
3 regarding the power of the city to annex, for
4 example. It is our belief that -- that if the
5 Energy Commission permits this project, that as a
6 matter of law it stands in the same position as it
7 would have had the city council approved the
8 requested PD zoning changes. And it is our
9 position that the city has every -- has the same
10 ability to annex the property after an Energy
11 Commission certification that it had after an
12 approval by the city council of the necessary land
13 use changes.

14 PRESIDING MEMBER LAURIE: Okay.

15 MR. ELLISON: Let me elaborate one step
16 further, and that is the reason -- you know, those
17 are issues of law. We -- we don't raise those
18 points here necessarily for that, to -- to
19 establish that issue of law. I think we can do
20 that in our briefs. I think the Commission can
21 make its own judgment on that.

22 The reason that we've gone into this
23 issue at all is that a great deal of Mr. Edens'
24 testimony, and the city's testimony generally, is
25 based upon the fact that the property has not yet

1 been annexed, and therefore you've heard a great
2 deal of testimony about the ability of the city to
3 provide services outside its boundaries. And
4 secondly, the fact that the current land use
5 designation would not permit a power plant.

6 With respect to both of those issues,
7 our essential rebuttal to that testimony is that
8 if the city chooses -- the city can choose to
9 annex after an Energy Commission decision, and if
10 it does so, all of the issues, as Mr. Edens has
11 testified, all of the issues about conformance
12 with the county's policies go away. All of the
13 issues about the ability of the city to provide
14 services outside its boundaries go away. And
15 that's a great deal of the testimony that you've
16 -- that you've heard from the city.

17 PRESIDING MEMBER LAURIE: So absent any
18 evidence that annexation is planned or likely, are
19 you going to be asking the Commission to condition
20 the project on annexation?

21 MR. ELLISON: No, we're not asking the
22 Commission to do that. We're simply pointing out
23 that the city's testimony ignores its own ability
24 to solve the problems that they're testifying to.
25 The issue in this case really comes down to

1 whether -- I think there are two issues in this
2 case. One of them is who decides on an issue of a
3 power plant, whether it's a local decision or
4 whether it's a state decision. And secondly, it
5 comes down to the city's willingness to provide
6 services, for example, to the project. But not
7 its ability.

8 And to the extent issues have been
9 raised and have been raised by the city regarding
10 its ability to provide those services, that's the
11 nature of the inquiry that we are engaged in here.

12 PRESIDING MEMBER LAURIE: Okay. Well,
13 why don't you continue with your line of
14 questioning.

15 MR. WILLIAMS: Can I make just a brief
16 comment, because this last has amounted to some
17 rearguments --

18 PRESIDING MEMBER LAURIE: Yes, sir.
19 Well, I --

20 MR. WILLIAMS: Let me just suggest --

21 PRESIDING MEMBER LAURIE: I understand
22 that.

23 MR. WILLIAMS: -- for the purpose of the
24 record, that the city said they were not annexing
25 because it's a non-compatible use. And because

1 the compatibility is the thing that is at issue,
2 it's not as if the decision not to annex were
3 arbitrary. The decision is based solely on the
4 incompatibility of the use.

5 So to proceed on the basis that
6 annexation can be stuffed down the throat seems
7 incorrect, to me.

8 MS. DENT: In the interest of moving
9 this along, on behalf of the city I'd like to say
10 I look forward to the opportunity to fully brief
11 these issues for the Commission, and I would like
12 --

13 PRESIDING MEMBER LAURIE: Thank you.

14 MS. DENT: -- to have the testimony
15 continue with the witness on matters that the
16 witness can testify to.

17 MR. AJLOUNY: And my comments are I'd
18 like to reflect back on the morning, and how it
19 was opened, Commissioner Laurie, of asking us to
20 respect the fact of focusing, and directing our
21 questions on a -- in a boundary. And also --

22 PRESIDING MEMBER LAURIE: Well, so --

23 MR. AJLOUNY: -- also referencing the
24 alternate -- or the override issue is going to be
25 later on, in March. Thank you.

1 PRESIDING MEMBER LAURIE: Understood.

2 Thank you.

3 Mr. Ellison.

4 MR. ELLISON: Thank you.

5 BY MR. ELLISON:

6 Q Again, directing your attention to line
7 25 of page 24, and the statement there regarding
8 the need for power, as well as -- as a variety of
9 other statements in your testimony regarding the
10 need for power.

11 First of all, let me ask you, Mr. Edens,
12 if -- if staff had concluded that the Metcalf
13 Energy Center project at this site was needed to
14 ensure a reliable supply of electric power for the
15 City of San Jose, would your recommendation to the
16 council have been different?

17 MS. DENT: I'm going to object on the
18 grounds that it calls for speculation on the part
19 of the witness.

20 MR. ELLISON: Well, the witness has
21 testified as to this issue, the need for power,
22 and he's testified as to how that contributed to
23 the city's decision and the staff's position, so I
24 think it's perfectly relevant to ask him.

25 MS. DENT: The question --

1 HEARING OFFICER VALKOSKY: Okay. The
2 witness can answer the question in a speculative
3 nature.

4 MR. EDENS: I believe it is speculative,
5 and I could not answer the question.

6 HEARING OFFICER VALKOSKY: Okay, fine.

7 BY MR. ELLISON:

8 Q Would you agree with me, Mr. Edens, that
9 the staff of the City of San Jose are not experts
10 on the need for power or transmission planning?

11 A Yes.

12 Q And would you also agree with me that
13 the staff's opinions on those issues relied upon
14 the reports of principally the California
15 Independent System Operator and the California
16 Energy Commission?

17 A In large part, yes.

18 Q And would you agree that those two
19 entities are experts on those subjects?

20 (Laughter.)

21 MR. EDENS: I think the electrical
22 energy is, in fact, the subject of the -- of the
23 business of the California Energy Commission and
24 -- and Staff.

25 ///

1 BY MR. ELLISON:

2 Q And would you also agree that the same
3 is true with respect to the California Independent
4 System Operator?

5 A I don't have an opinion.

6 Q Well, you relied upon reports generated
7 by the California ISO, did you not?

8 A Yes. I think probably the most accurate
9 answer would -- would be that certainly is -- that
10 certainly is their -- their business. They have
11 -- certainly have technical expertise.

12 Q Did the city, in reaching its -- the
13 city staff, in reaching its conclusions on the
14 need for power or transmission issues, rely solely
15 on the products of other entities, or did you do
16 any independent analysis?

17 PRESIDING MEMBER LAURIE: Mr. Ellison,
18 let me ask you. You agree that the review
19 standard for general plan or zoning is abuse of
20 discretion standard.

21 MR. ELLISON: I think so, although I
22 haven't spent a lot of time thinking about it.

23 PRESIDING MEMBER LAURIE: I -- I believe
24 that to be the case.

25 So even if the question of the

1 legitimacy of the city action were before us, and
2 I don't believe it to be, absent evidence of a
3 gross abuse of discretion, why should we care
4 about the information that the city relied on to
5 make their decision?

6 MR. ELLISON: Well, I'm responding --
7 I'm raising these issues, Commissioner, largely
8 because the city has testified to you, in this
9 proceeding, on those questions. If it is your
10 opinion that that is irrelevant, that that issue
11 is irrelevant, at least with respect to city land
12 use issues, which is the subject today, then I
13 would withdraw the questions, but I would move to
14 strike all of the testimony of the city with
15 respect to the need for power or transmission
16 planning, or those sorts of issues.

17 PRESIDING MEMBER LAURIE: Okay. Let's
18 go off the record for two minutes, and I'm going
19 to consult with my Hearing Advisor.

20 (Off the record.)

21 HEARING OFFICER VALKOSKY: Mr. Ellison,
22 you indicated you've got approximately five
23 minutes left? The clock is ticking. Continue.

24 MR. ELLISON: I understand. Thank you.
25 See if we can do even better than that, Mr. Edens.

1 BY MR. ELLISON:

2 Q Mr. Edens, when the council made its
3 decision there was discussion of the formation of
4 a energy task force. Are you familiar with that
5 task force?

6 A If you are referring to the -- the
7 recommendation by the mayor that an energy summit
8 be called, et cetera, if that's your reference, I
9 do recall that. Yes.

10 Q That is my reference. Could you briefly
11 describe what the purpose of that summit was, or
12 is to be?

13 A As -- as I understand it, and -- and I
14 do understand that the mayor's staff is -- that
15 that still is -- is something being worked on, and
16 that there -- it is intended that, in fact, there
17 be a summit, so-called summit, a meeting of
18 representatives of various jurisdictions within
19 the South -- South Bay, I don't know if it's all
20 cities or -- or not. But I do understand from the
21 mayor's staff that that is being worked on.

22 Prior -- what is also being -- will be
23 scheduled will, prior to that summit occurring,
24 will be the city council having a study session on
25 the issue of energy and what the city is doing,

1 can do, in the -- in the area, and sort of laying
2 out the whole issue, and -- as kind of preparatory
3 to this summit.

4 My understanding is that it would be to
5 get multiple jurisdictions and -- and perhaps
6 industry groups, as well, talking about the -- the
7 issue of energy and specifically as applies to the
8 South Bay, and talking about whether there are
9 criteria for location of -- of facilities, and,
10 you know, whether there's concurrence among
11 jurisdictions that it would be desirable to have a
12 generating facility somewhere within the South
13 Bay.

14 Q So the summit has not yet occurred;
15 correct?

16 A It has not occurred yet. It is in -- in
17 planning, as I understand it.

18 Q Is there a schedule or a date for that
19 summit that you know of?

20 A I believe that -- I don't think there's
21 a specific day that's at least been announced, but
22 March, I believe, is the -- is the month in which
23 that is planned to be held. That's my
24 understanding.

25 Q And with respect to the council study

1 session, the same question. Is there -- has that
2 been scheduled, and is there a date for that?

3 A The idea was to have that -- to have the
4 summit a couple of weeks subsequent to that study
5 session, and it is planned in -- in February. I
6 don't know the specific date. But I think it is
7 planned to be held in mid to late February.

8 Q Do you know if the participants in the
9 summit have been identified?

10 A I do not know.

11 MR. ELLISON: That's all I have. Thank
12 you.

13 HEARING OFFICER VALKOSKY: Mr. Ellison,
14 would you like to move Exhibits 93 and 94?

15 MR. ELLISON: Oh, yes, I would. I
16 thought they had already been admitted, but if
17 they have not --

18 HEARING OFFICER VALKOSKY: No, they were
19 just --

20 MR. ELLISON: -- I would like to move
21 both of those exhibits.

22 HEARING OFFICER VALKOSKY: Okay. Is
23 there objection?

24 MS. DENT: Well, I'd like to reserve the
25 opportunity to compare those exhibits to signed --

1 to signed exhibits. I don't know about the
2 authenticity of the exhibits.

3 HEARING OFFICER VALKOSKY: Okay. I'll
4 conditionally admit them, subject to --

5 MS. DENT: I'd like to see whether they
6 were indeed signed, and whether --

7 HEARING OFFICER VALKOSKY: Okay.

8 MS. DENT: -- whether the copies that
9 you have --

10 HEARING OFFICER VALKOSKY: All right.
11 We'll hold -- we'll hold the admission in
12 abeyance, and we'll address it as the first order
13 of business at our next set of hearings. Will
14 that give you sufficient time? That's
15 approximately two weeks, Ms. Dent.

16 MS. DENT: Oh, yes, more than enough.

17 HEARING OFFICER VALKOSKY: Staff.

18 MS. WILLIS: Thank you. Before I ask
19 just a few questions, I did want to acknowledge
20 before the Committee that the -- our Energy
21 Commission Staff and the Planning Commission
22 staff, Laurel Prevetti and Rich Buikema, and also
23 Janice Moore, and Mr. Edens, have had a close
24 cooperative relationship through this process, in
25 coordinating events and public workshops. And we

1 just wanted to express our appreciation for that.

2 CROSS EXAMINATION

3 BY MS. WILLIS:

4 Q Mr. Edens, I had a question, and I
5 believe it's related to a question that was
6 previously asked by Mr. Valkosky or Commissioner
7 Laurie. I believe the question was could the city
8 provide urban services to an unannexed area. And
9 my question is somewhat related, is has the city
10 provided urban services to an unannexed area in
11 the past? In your -- in your experience.

12 A I can think of two occasions in my 32
13 years, and -- yes, I can think of two occasions.

14 Q Do you remember what the situation was
15 in those two occasions?

16 A I can remember the -- the most recent
17 occasion was -- was a situation in which a rural
18 subdivision in the -- in the hillsides adjoining
19 San Jose, which was -- the subdivision was
20 approved by the -- by the county. It was
21 contingent upon a municipal water system, wells
22 being drilled, et cetera. And it failed by the
23 time, you know, lots got sold and houses got
24 built. By the time it got -- got built out, the
25 wells failed, and numerous attempts to -- to drill

1 additional wells and find water failed, and there
2 was a health -- health issue.

3 And after considerable deliberation, the
4 city council did eventually approve an extension
5 of the municipal water system to -- to serve just
6 that mutual water company, which was limited to
7 those dozen or so households. It was subject to
8 LAFCO approval, which -- which they did do.

9 And that's -- that's the only occasion
10 within the past 15 years. There was one occasion
11 prior to that, and it had again to -- had to do
12 with an existing development in the county, and
13 failure of -- of a system.

14 Q Thank you. I had a clarifying question
15 regarding issues -- the issue of your economic
16 development major strategy and the number of jobs
17 that was determined to -- I guess, the lost
18 opportunity of jobs if this plant were sited.

19 Are you aware of the PSA comments that
20 were filed by the city, and I believe it was under
21 your signature for Mr. Derryberry, on June 28th,
22 2000?

23 A I don't recall them, but if I look at
24 them I --

25 Q You don't need to refer to them.

1 Actually, I can just read it real quickly.

2 A Okay.

3 Q They are included in the FSA at the
4 beginning, if anybody is interested.

5 Under Socioeconomics, it states, the
6 analysis needs to identify the opportunity cost of
7 not developing 20 acres of campus industrial use.
8 We anticipate a loss of approximately 250 planned
9 jobs. And then in the FSA, on page 463, there is
10 a reference to a communication with Ms. Prevetti
11 that states that it would be a loss of 294 jobs.

12 And then on -- in your testimony, on
13 page 18, line 15, it says approximately 650 jobs,
14 and then I believe Ms. Dent mentioned something
15 about a thousand jobs tonight.

16 So I guess my question is, is what is
17 the correct number of jobs that you -- you
18 determined that would be lost, and how did you
19 determine that. Our Staff apparently was unable
20 to -- to get that answer from your staff before
21 they did the Staff Assessment.

22 Q Yes. I didn't actually hear Ms. Dent
23 mention a number tonight. But the -- the
24 distinction between the number given in the PSA
25 that was -- that was -- we had -- staff had

1 provided, and was used in the PSA, and the more
2 current number, we were in error on the -- on the
3 original number. We -- that was predicated on
4 only the Tulare Hill Associates portion of the
5 property. I think it was not inclusive of -- of
6 Passantino.

7 The -- the derivation of the number of
8 jobs for the -- for the site is based on the table
9 that is provided in the council adopted master
10 development plan, and that specifies for every
11 ownership, as it existed at that time, the formula
12 and how that translates into the -- to the number
13 of jobs. There's a formula that predicated on
14 amount of acreage, and et cetera.

15 Q And just to confirm that, 650 jobs is
16 the number?

17 A That -- that is the -- the correct
18 number.

19 Q On page 15 of your testimony, and you've
20 reiterated that tonight, that MEC is inherently
21 incompatible with planned campus industrial uses,
22 there's a couple of questions along that line.

23 I guess the first question is, you
24 identified a long process that -- that you went
25 through in -- in considering the change in the

1 general plan amendment and zoning. At what point
2 in time did your staff determine that the MEC
3 would be inherently incompatible with the campus
4 industrial uses? If -- if you recall.

5 A You mean in -- in this -- in this
6 current process, at what point in time --

7 Q At what point in time.

8 A -- did we come to that conclusion? I --
9 I really could not say. We started out the
10 process open minded, not knowing anything about
11 power plants or the process, and over time, as we
12 -- we learned more and did more analysis, but I --
13 I couldn't pinpoint a point in time when we -- we
14 concluded that the project would, in fact, be
15 detrimental.

16 Q Could you tell us what the criteria you
17 used to determine inherently incompatible?

18 A Well, I think we've -- we've abundantly
19 articulated our concerns in terms of consistency
20 and -- and compatibility in the material in the
21 written record, and as well as -- as this evening,
22 in terms of fundamentally it being a heavy
23 industrial use and -- and not -- and not
24 compatible with the -- with the planned land uses
25 for that area.

1 Q So your testimony is that -- I guess I'm
2 trying to determine that at the beginning, when
3 the -- when the application for a general plan
4 amendment was first made, your staff did not
5 consider the MEC plant to be inherently
6 incompatible. Is that correct?

7 A Well, we didn't -- we did not make a
8 judgment about it initially. We worked in good
9 faith with the -- with the Applicant, and, you
10 know, to -- to learn about the project, and we
11 deliberately avoided coming to any hasty
12 conclusion, as we felt we owed the Applicant to
13 process it, analyze it, and consider its
14 relationship to whatever applicable policies that
15 -- that there were.

16 Q In your opinion, can heavy industrial
17 coexist or be compatible with light industrial
18 uses?

19 A Well, that really depends. It's -- it's
20 -- compatibility is not really determined by a
21 land use designation but by actual land uses.

22 MS. WILLIS: Thank you.

23 HEARING OFFICER VALKOSKY: Ms. Cord?

24 MS. CORD: No questions.

25 HEARING OFFICER VALKOSKY: Mr. Ajlouny.

1 MR. AJLOUNY: I just have -- I just have
2 one question.

3 CROSS EXAMINATION

4 BY MR. AJLOUNY:

5 Q Mr. Edens, in regards to this summit
6 that was just mentioned previous by the Applicant,
7 is it fair to say that maybe this summit, and when
8 the mayor talked in the city council hearing, that
9 it was maybe an opportunity to get the Applicant,
10 local, other cities in the area, to sit down, get
11 together and -- and I'm just trying to -- in a
12 nutshell -- basically, find an appropriate spot,
13 maybe even appropriate technology, and get on the
14 road to building the power plant as quickly as we
15 can because of the need of power?

16 A I -- I think a part of that -- a part of
17 that conclusion was that we should look for
18 appropriate locations within the South Bay.

19 Q But -- but it was to include the
20 Applicant?

21 A I -- I really don't recall. That may
22 very well have been stated. I just simply don't
23 recall.

24 MR. AJLOUNY: All right, that's fair.
25 Thank you. That's all. Thank you.

1 HEARING OFFICER VALKOSKY: Mr. Scholz.

2 MR. SCHOLZ: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Wade.

4 MR. WADE: No questions.

5 HEARING OFFICER VALKOSKY: Mr. Williams.

6 MR. WILLIAMS: Would you believe, no
7 questions.

8 (Laughter.)

9 HEARING OFFICER VALKOSKY: Redirect, Ms.
10 Dent.

11 MS. DENT: Let me confer with my client
12 for a minute.

13 No questions.

14 HEARING OFFICER VALKOSKY: Is there
15 anything else for Mr. Edens?

16 Thank you, sir. The Committee thanks
17 and excuses you.

18 Are there any public comments on the
19 area of Land Use? Seeing none, we'll close the
20 record on this topic.

21 Is there anything else anyone wants to
22 bring to the Committee's attention before we
23 adjourn?

24 MR. WILLIAMS: Let me just clarify.
25 There is no meeting tomorrow?

1 HEARING OFFICER VALKOSKY: No, you can
2 come, Bob.

3 (Laughter.)

4 HEARING OFFICER VALKOSKY: I would like
5 to clarify that we will not be conducting a
6 hearing tomorrow. Our parking passes, however,
7 remain valid. Okay.

8 With that, thank you very much for your
9 attendance and participation. See you in a couple
10 of weeks. We're adjourned.

11 MS. DENT: I have one question.

12 HEARING OFFICER VALKOSKY: Oh, I'm --

13 MS. DENT: If there is any --

14 HEARING OFFICER VALKOSKY: Back on the
15 record.

16 MS. DENT: -- if there is any further
17 information on the override hearing date at the
18 end of the evidentiary proceedings, if there is
19 any -- if you have any further information on
20 that.

21 HEARING OFFICER: Okay. As -- as I
22 indicated earlier, that has not yet been
23 scheduled. The likely -- it will be scheduled, I
24 hope, no later than the end of next week. The
25 tentative date that we're looking at is March

1 22nd. And that's --

2 MS. DENT: And you plan to have an order
3 out on the date by sometime next week?

4 HEARING OFFICER VALKOSKY: That is my
5 intention. Okay.

6 MS. DENT: Thank you.

7 HEARING OFFICER VALKOSKY: You bet.
8 We're adjourned.

9 (Thereupon the hearing was
10 adjourned at 9:23 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of February, 2001.

JAMES RAMOS

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