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Susan Bakker, Commissioner Advisor

Cynthia Praul, Commissioner Advisor

Gary Fay, Hearing Officer

STAFF PRESENT

Caryn Holmes, Staff Counsel

Rick Buell, Siting Manager

APPLICANT

Chris Ellison
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I N D E X

	Page
Proceedings	6
Air Quality	
WITNESSES:	
Applicant:	
GARY S. RUBENSTEIN	
Direct Examination by Mr. Maxim	3
Rebuttal	
Direct Examination by Mr. Maxim	50
Monterey Bay Unified Air Pollution Control District:	
MICHAEL D. SEWELL	
Direct Examination by Ms. Holmes	28
Staff:	
MATTHEW LAYTON	
Direct Examination by Ms. Holmes	36
Cross Examination by Mr. Maxim	43
Land Use	
WITNESSES:	
Applicant:	
KIRK MARCKWALD	
Direct Examination by Mr. Ellison	63
Staff:	
ERIC KNIGHT	
Direct Examination by Ms. Holmes	74
Adjournment	84
Certificate of Reporter	85

I N D E X

	ID	In Evidence
Exhibits		
55 - FDOC	26	35
60 - Land Use Portion (Incl. by reference Exhibits 5, 11, 16, 48)		65
61 - Air Quality (Incl. by reference Exhibits 5, 1, 2, 4, 7, 8, 9, 72, 14, 15-A, 17, 20, 21, 24, 25, 26, 31, 33, 32, 34, 3, 36, 37, 38, 44, 45, 46, 49, 51, 53, 48)		8
66 - Air Quality portion		38
Land Use Portion		76
69 - Memo from M. Sewell, Monterey Bay Unified Air Pollution Control District, 6/14/00	5	8
70 - Memo from Nancy Matthews, Sierra Research, to Matthew Layton, 6/12/00	6	8
71 - Air Quality Errata	37	38
72 - Letter from Coastal Commission, 6/13/00	63	

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

2 HEARING OFFICER FAY: Good morning.

3 Today we continue with the Evidentiary Hearings in
4 the Moss Landing Power Plant Project, AFC,
5 Application for Certification. Pursuant to the
6 revised Notice of Evidentiary Hearings issued by
7 the Committee May 26th, this hearing is taking
8 place here at the Energy Commission. And we will
9 be continuing next Tuesday, down in Moss Landing,
10 at the power plant, with our -- possibly our final
11 Evidentiary Hearing.

12 At the request of Staff and pursuant to
13 the order issued in the -- in Attachment B of the
14 initial notice of Evidentiary Hearings, but to
15 begin with Air Quality and then follow with Land
16 Use. And before we get started, are there any
17 preliminary matters that any of the parties would
18 like to bring up?

19 I see no indication, so why don't we go
20 ahead. Mr. Ellison.

21 PRESIDING MEMBER KEESE: I will mention,
22 for Mr. Ellison, that Commissioner Moore and I
23 declared yesterday a coatless, tieless day because
24 of the extraordinary heat, and that since it's
25 carrying over to today, I'm sure Commissioner

1 Moore will do the same. So, feel free.

2 MR. ELLISON: Appreciate that. Thank
3 you.

4 PRESIDING MEMBER KEESE: The room
5 started about 15 degrees cooler when we started
6 yesterday, too.

7 MR. ELLISON: I guess I do have one
8 preliminary matter. Allow me to introduce Mr.
9 Greg Maxim, who is sitting to my right. He's with
10 my office, Ellison and Schneider, also Counsel to
11 Duke in this proceeding. And Mr. Maxim is going
12 to conduct the Air Quality examination.

13 The Applicant's witness on Air Quality
14 is Mr. Gary Rubenstein.

15 HEARING OFFICER FAY: While they're
16 going for Mr. Rubenstein, I'll just mention that
17 Mr. Maxim helped us out by redoing the exhibit
18 list, and I understand it matches the exhibits as
19 introduced today. So if you have an extra copy of
20 that for Staff, it might be helpful. If -- if
21 not, I do have one extra copy, if the Staff needs
22 one to follow along.

23 MR. ELLISON: We have an extra copy, but
24 it has notations on it, so.

25 (Pause.)

1 HEARING OFFICER FAY: Let's go off the
2 record.

3 (Off the record.)

4 HEARING OFFICER FAY: Back on the
5 record.

6 MR. ELLISON: The witness needs to be
7 sworn.

8 (Thereupon, Gary S. Rubenstein was,
9 by the Reporter, sworn to tell the
10 truth, the whole truth, and nothing
11 but the truth.)

12 TESTIMONY OF

13 GARY S. RUBENSTEIN

14 called as a witness on behalf of Applicant, having
15 been duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. MAXIM:

19 Q Please state your name for the record.

20 A My name is Gary Rubenstein.

21 Q Could you spell your last name, please?

22 A R-u-b-e-n-s-t-e-i-n.

23 Q And which testimony are you sponsoring
24 at this time?

25 A I'm sponsoring the testimony on Air

1 Quality.

2 MR. MAXIM: At this time, I direct the
3 Commission and Staff's attention to what's been
4 previously marked and identified as Exhibit 61,
5 the Moss Landing Power Plant Modernization Air
6 Quality Testimony, which includes and incorporates
7 by reference the following documents, and I would
8 ask that the Committee bear with me for a moment,
9 because there's quite a few exhibits. So to
10 simplify the record, if there's no objections,
11 I'll just read by exhibit number.

12 The exhibits that are included and
13 incorporated by reference include Exhibit 5;
14 Exhibit 1; Exhibit 2; Exhibit 4; Exhibit 7;
15 Exhibit 8; Exhibit 9; Exhibit 12; Exhibit 14;
16 Exhibit 15-A; Exhibit 17; Exhibit 20; Exhibit 21;
17 Exhibit 24; Exhibit 25; Exhibit 26, Exhibit 31;
18 Exhibit 33; Exhibit 32; Exhibit 34; Exhibit 35;
19 Exhibit 36; Exhibit 37; Exhibit 38; Exhibit 44;
20 Exhibit 45; Exhibit 46; Exhibit 49; Exhibit 51;
21 Exhibit 53; and, finally, Exhibit 48.

22 BY MR. MAXIM:

23 Q Mr. Rubenstein, do you have a copy of
24 Exhibit 61 before you?

25 A Yes, I do.

1 Q Do you have any changes or corrections
2 to this exhibit?

3 A I have two more documents to add to the
4 list of documents that I'm sponsoring. The first
5 is a memorandum dated June 12th, 2000, from Mike
6 Sewell of the Monterey Bay Unified Air Pollution
7 Control District. This was docketed with the
8 Commission yesterday. The subject is a revised
9 assessment of diesel particulate health risk from
10 construction activities at the Moss Landing Power
11 Plant.

12 What this memo does is confirm prior
13 e-mails that were sent to the Air District, and
14 the County Planning Department and the Commission
15 Staff, late in May. So this is not presenting any
16 new information; it's confirming information that
17 had previously been submitted.

18 HEARING OFFICER FAY: Would you like
19 that marked?

20 MR. MAXIM: Yes. Yes, please.

21 HEARING OFFICER FAY: That would be
22 Exhibit 69.

23 (Thereupon, Exhibit 60 was marked
24 for identification.)

25 MR. MAXIM: Thank you.

1 BY MR. MAXIM:

2 Q And the second document, Mr. Rubenstein?

3 A The second document is a memorandum
4 dated June 12th, 2000, from Nancy Matthews of
5 Sierra Research to Matt Layton. That also was
6 docketed yesterday. That encloses a number of Air
7 Quality isopleths, showing pollutant
8 concentrations associated with construction
9 impacts in the vicinity of the Moss Landing Power
10 Plant. And those -- those isopleths are derived
11 from modeling analyses that were reference in
12 earlier exhibits that are already included in the
13 record.

14 MR. MAXIM: At this time I would ask
15 that that be identified as docketed as Exhibit 70.

16 HEARING OFFICER FAY: So done.

17 (Thereupon, Exhibit 70 was marked
18 for identification.)

19 MR. MAXIM: Thank you.

20 BY MR. MAXIM:

21 Q Mr. Rubenstein, with the exception of
22 those changes and corrections, would that -- would
23 those be the only changes and corrections to your
24 documents?

25 A Yes.

1 Q Thank you. And was this exhibit
2 prepared by you and at your direction?

3 A Yes, it was.

4 Q And subject to those corrections that
5 you just identified, are the facts set forth in
6 the exhibit true and correct, to the best of your
7 knowledge?

8 A Yes, they are.

9 Q And are the opinions contained in this
10 exhibit your own?

11 A Yes, they are.

12 Q Do you adopt Exhibit 61 as your sworn
13 testimony in this proceeding?

14 A Yes, I do.

15 MR. MAXIM: At this time I ask the
16 Commission to accept into evidence Exhibit 61 and
17 all exhibits incorporated -- included and
18 incorporated by reference therein, including the
19 newly docketed and identified Exhibits 69 and 70.

20 HEARING OFFICER FAY: Is there any
21 objection?

22 Ms. Holmes, any objection?

23 MS. HOLMES: No objection.

24 HEARING OFFICER FAY: All right. So
25 ordered.

1 (Thereupon, Exhibits 61, 5, 1, 2, 4,
2 7, 8, 9, 72, 14, 15-A, 17, 20, 21, 24,
3 25, 26, 31, 33, 32, 34, 35, 36, 37, 38,
4 44, 45, 46, 49, 51, 53, 48, 69, and 70
5 were admitted into evidence.)

6 BY MR. MAXIM:

7 Q Mr. Rubenstein, would you briefly
8 summarize the issues you reviewed in this
9 testimony, state your conclusions as to those
10 issues?

11 A The -- my testimony covered the Air
12 Quality impacts of the Moss Landing modernization
13 project, and in particular we took a look at the
14 applicable laws, ordinances, regulations and
15 standards. We evaluated the existing air quality
16 in the vicinity of the Moss Landing Power Plant,
17 which is in general good, compared to most of the
18 urban areas of California. We evaluated the
19 environmental impacts of the project, looking both
20 at the emissions and the ambient pollutant
21 concentrations associated with both construction
22 and operation of the facility.

23 We evaluated the facility's requirements
24 -- compliance, rather, with applicable air quality
25 requirements, including those related to best

1 available control technology, emission offsets,
2 ambient air quality impacts, screening, health
3 risk assessment, as well as looking at cumulative
4 air quality impacts. And it was our conclusion
5 that the project does reflect the use of best
6 available control technology, will not result in
7 any significant air quality impacts that have not
8 been mitigated to a level of less than
9 significance, will provide emission offsets for
10 all of the appropriate pollutants at a ratio of at
11 least one to one and in accordance with the
12 requirements of the Monterey Bay Unified Air
13 Pollution Control District. And as a result,
14 that, as I said, the project will not result in
15 any significant air quality impacts.

16 Q Thank you. Do you have a copy before
17 you of the Air Quality Errata that the Staff
18 passed around this morning?

19 A Yes, I do.

20 Q And have you had a chance to review that
21 errata?

22 A Yes, I have.

23 Q And what are your conclusions after
24 reviewing that errata?

25 A With that errata, I believe that all of

1 the conditions of approval proposed for the
2 project are appropriate and acceptable, with the
3 potential exception of Condition AQ-54, which
4 relates to additional mitigation for construction
5 impacts.

6 Q And could you briefly explain your
7 concerns surrounding AQ-54 in dealing with the
8 Staff's Final Staff Assessment?

9 A Yes. AQ-54 is a relatively new
10 condition that the Commission has begun to add to
11 projects, and it reflects the development of some
12 new emission control technologies that are
13 applicable to heavy duty diesel construction
14 equipment. Historically, the Commission's review
15 of the impacts of construction emissions have
16 indicated that although those impacts are
17 substantially higher than the impacts during
18 project operation, that they are a short-term
19 nature, and -- excuse me -- and that a variety of
20 mitigation measures typically involving the use of
21 advanced dust control measures and the cleanest
22 combustion equipment available was sufficient to
23 address any remaining significant impacts.

24 In a couple of cases prior to this, most
25 notably Sunrise and Elk Hills, the Commission has

1 begun requiring project developers to consider the
2 use of a technology referred to as an oxidizing
3 soot filter. This proposal was based on the
4 experience, to my understanding, at one location,
5 which is at Avila Beach, at which four items of
6 equipment were equipped under a fairly structured
7 program with oxidizing soot filters.

8 On one of those pieces of equipment, the
9 soot filter was found to be problematic in that it
10 caused backpressure to increase too much. On the
11 other three, it appeared to operate
12 satisfactorily. And to my knowledge, that's the
13 only demonstration, field demonstration of this
14 technology so far.

15 The -- the fact that it's been required
16 for two other cases, Elk Hills -- or it's proposed
17 to be required for Elk Hills, has been required
18 for Sunrise -- I think can be distinguished from
19 the case here, because the air quality impacts
20 associated with construction activities at Moss
21 Landing are substantially lower than those found
22 certainly in the Elk Hills -- excuse me, certainly
23 in the -- yes, certainly the Elk Hills case, and I
24 believe in the Sunrise case, as well. Staff may
25 be in a better position to compare those impacts.

1 In addition, the isopleths that were
2 included in Exhibit 70, the document that was
3 faxed to the Commission Staff yesterday, indicates
4 that impacts that could even remotely possibly be
5 considered significant in the case of Moss Landing
6 are limited to a geographic area that is literally
7 tens of meters from the fence line, and do not
8 extend to locations where we have residences.

9 Consequently, we believe that given the
10 extensive mitigation measures that are already
11 proposed to be required for the project, that
12 condition AQ-54 is unnecessary.

13 Having said that -- well, let me also
14 add that the Monterey Bay Unified Air Pollution
15 Control District has its own CEQA guidelines, and
16 as part of a separate process for obtaining
17 permits for other projects at the Moss Landing
18 site, including the retrofit of selected catalytic
19 reduction systems to the existing boilers and
20 demolition of some storage tanks, the Planning
21 Department in Monterey County asked for a
22 cumulative construction impacts analysis of the
23 construction activities associated with both the
24 modernization project, the tank demolition
25 project, and the SCR retrofit project.

1 Our analysis of those cumulative impacts
2 was -- was performed. It was also provided to
3 Commission Staff, and it's included in the exhibit
4 list that was read to you earlier. And the
5 isopleths that I'm referring to reflect the
6 cumulative impacts of all of those construction
7 projects.

8 The Monterey District has its own CEQA
9 guidelines that it recommends for projects located
10 in -- within its jurisdiction. The guideline for
11 PM10 which is the only pollutant of issue here, is
12 that a project that has daily particular emissions
13 of less than 82 pounds per day is considered to be
14 not significant. And because of the extensive
15 mitigation measures that have been proposed for
16 all of these construction projects, our impacts
17 are below 82 pounds per day. Consequently,
18 neither the Monterey County Planning Department
19 nor the Air District believe that our construction
20 impacts are significant for that pollutant.

21 The Commission has consistently applied
22 a different standard for significance, and -- and
23 therein lies the quandary. We have one agency
24 who's concluded that our construction impacts are
25 not significant, another agency who believes that

1 our construction impacts might be significant, and
2 it's -- it's that latter conclusion that leads to
3 AQ-54 being required.

4 I do have to say that -- excuse me -- if
5 the -- with one caveat. If the -- the Committee
6 were to conclude, if it were to conclude that in
7 fact our construction impacts were significant
8 with respect to PM10, I think AQ-54 is
9 appropriately worded as a mitigation measure.

10 The one exception is that language in
11 there requires the use of an oxidizing catalyst as
12 an alternative control technology in the event an
13 oxidizing soot filter is determined to be
14 unsuitable. We think that that is inappropriate
15 in this case. The reason is that in the errata
16 you may have noticed that in AQ-53 the Commission
17 Staff has proposed to delete a requirement for an
18 ultra-low sulfur diesel fuel of 50 parts per
19 million or less. That was based on a review that
20 both we and the Commission Staff performed and
21 concluded that for this project in this location,
22 being built as soon as it is, it is not likely
23 that a fuel with that low a sulfur content will be
24 available. There's talk of at least one refiner
25 beginning to produce such a fuel, but it was

1 believed to be too speculative at this point to
2 require that.

3 That, in turn, we think will lead to --
4 the lack of that fuel will lead to premature
5 failures of an oxidizing catalyst, because the
6 oxidizing catalysts are very sensitive to sulfur.
7 Consequently, again, in this case, we don't
8 believe that an oxidizing catalyst should be
9 required. In any event, it's of limited benefit,
10 and -- and, again, it's easily poisoned by sulfur.

11 In conclusion, we believe that -- excuse
12 me -- the construction impacts associated with the
13 Moss Landing project, and even the cumulative
14 construction impacts, are not significant, due to
15 the extensive mitigation measures that have
16 already been required, and that we think in this
17 particular case that the additional mitigation
18 required by AQ-54 is unnecessary.

19 If the Commission concludes that
20 additional mitigation is necessary, we think that
21 AQ-54 is appropriately worded, provided that
22 references to an oxidizing catalyst be deleted.

23 And that concludes my comments on the
24 errata.

25 Q For clarification purposes, Mr.

1 Rubenstein, these soot filters are applied solely
2 to construction equipment, and not to the project
3 or plant itself; is that correct?

4 A That's correct. And more specifically,
5 it's my understanding that AQ-54 only applies to
6 the construction equipment associated with the
7 modernization project, and not with the other
8 construction projects that are going on at the
9 site, or will be going on at the site.

10 Q And these -- these construction impacts
11 would be temporary in nature?

12 A Yes, they would.

13 Q Okay. At this time I direct the
14 Committee and Staff's attention to previously
15 marked Exhibit 54, the Final Determination of
16 Compliance.

17 Mr. Rubenstein, have you had a chance to
18 review the proposed conditions set forth in the
19 Final Determination of Compliance?

20 A Oh, yes.

21 Q Are these conditions of certification
22 appropriate, in your opinion?

23 A Yes, they are.

24 MR. MAXIM: And with that, the witness
25 is available for cross examination.

1 HEARING OFFICER FAY: Any questions, Ms.
2 Holmes?

3 MS. HOLMES: I have no questions.

4 HEARING OFFICER FAY: Good morning, Mr.
5 Rubenstein.

6 THE WITNESS: Good morning.

7 HEARING OFFICER FAY: Am I correct in
8 understanding that the only violation of the
9 standards anticipated by the project will be for
10 PM10?

11 THE WITNESS: That is correct.

12 HEARING OFFICER FAY: Okay.

13 THE WITNESS: And that's a contribution
14 to an existing violation of the State Air Quality
15 Standard. That's not a new violation that's being
16 caused by the project.

17 HEARING OFFICER FAY: But it will
18 contribute to that --

19 THE WITNESS: Yes.

20 HEARING OFFICER FAY: -- ongoing
21 violation.

22 I also wanted to ask you, on the last
23 page of your summary of your testimony, in your
24 conclusion, you said that the mitigation will be
25 greater than the project's emissions increases,

1 thus ensuring a net benefit to regional air
2 quality. How did you calculate that?

3 THE WITNESS: That was based on the
4 actual emissions associated with operation of
5 existing Units 6 and 7, plus the fact that
6 emission offsets that are provided will be at
7 ratios in excess of one to one, as required by the
8 Monterey Bay Unified Air Pollution Control
9 District.

10 The emission reduction credits
11 associated with improved management and reduced
12 emissions from operation of Units 6 and 7 are --
13 are limited, under the District's rules. As -- as
14 I'm sure you're familiar with from other cases,
15 there's an adjustment to historical baseline
16 emissions that has to be made before actual
17 emission credits can be obtained.

18 That adjustment was made in this case.
19 The reality is that the emission reductions
20 associated with reduced operations of Units 6 and
21 7 will be much greater than what the credits
22 indicate. And I believe we documented those
23 calculations in the Air Quality section of the
24 AFC, initially.

25 HEARING OFFICER FAY: Okay. Thank you.

1 And regarding the soot filters, do you
2 have experience with the oxidizing catalyst having
3 problems with the existing grade of diesel fuel?

4 THE WITNESS: To the best of my
5 knowledge, oxidizing catalysts have not been used
6 on diesel equipment specifically because of the
7 problems associated with both catalysts plugging
8 and -- and their intolerance of sulfur. I'm not
9 familiar enough with UnoCal's experience at Avila
10 Beach, we're still trying to get more information
11 about that, to know how many pieces of equipment
12 they actually used an oxidizing catalyst on, and
13 what level of success they had.

14 My discussions with staff of the San
15 Luis Obispo County Air Pollution Control District,
16 who oversaw that project, indicated that the
17 oxidizing catalysts were mostly effective at
18 reducing hydrocarbon and carbon monoxide
19 emissions, which, from diesel construction
20 equipment are inherently low, anyway. And so,
21 frankly, I don't see much of a benefit for that.

22 And then there was a mild secondary
23 benefit associated with about a 20 percent
24 reduction in particulate emissions, which I would
25 characterize as an incidental benefit.

1 So the short answer to your question is
2 no, I don't have any personal knowledge of -- of
3 the problems, and I also don't have a lot of
4 information to suggest any substantial benefit,
5 either.

6 HEARING OFFICER FAY: And this is
7 regarding oxidizing catalysts?

8 THE WITNESS: Oxidizing catalysts, as
9 distinguished from the oxidizing soot filters,
10 which are specifically designed to control
11 particulate emissions and to operate in a -- in an
12 environment that has more sulfur.

13 HEARING OFFICER FAY: And that's why you
14 don't think this would be a -- a constructive
15 fallback.

16 THE WITNESS: That's correct.

17 HEARING OFFICER FAY: Okay. I
18 understand.

19 PRESIDING MEMBER KEESE: The -- both
20 construction projects are going at the same time,
21 the one that you're permitted for locally, and
22 this one?

23 THE WITNESS: Actually, I think there's
24 a total of four construction projects, one
25 associated with the -- the new power plant, and

1 then three others associated with other activities
2 at the site. There's going to be some overlap
3 between them, and that's why we were asked to do a
4 cumulative impacts analysis.

5 PRESIDING MEMBER KEESE: Well, my
6 question is, during the -- what we're looking at
7 here, that -- let's call it the emissions period,
8 will the bulk of the other construction projects
9 take place then, will they take place before, will
10 they take place afterwards? Rough -- roughly.

11 THE WITNESS: The -- the new generation
12 project has a construction period that's expected
13 to last between October of this year and December
14 of 2001. The other projects have construction
15 periods that are expected to start in July or
16 August of this year, and extend out through June
17 of 2002.

18 One of the exhibits -- I'm not sure what
19 the exhibit number is, it's a March 17th -- I'd
20 have to check to get the reference -- the
21 cumulative analysis we did anyhow has a -- has a
22 schedule in it, and so there's no easy answer to
23 your question. There's -- there are a lot of
24 things going on at the site over different
25 periods, but a substantial amount of overlap.

1 PRESIDING MEMBER KEESE: And -- and the
2 -- and your local application suggests that you
3 would, even though they were overlapping, it would
4 be under their cumulative --

5 THE WITNESS: Under their significance
6 level.

7 PRESIDING MEMBER KEESE: -- limit of 82
8 pounds a day, was it?

9 THE WITNESS: That's correct.

10 PRESIDING MEMBER KEESE: Thank you.

11 HEARING OFFICER FAY: Just another
12 question. You referred to the distance from the
13 project, or the construction area to residences.
14 Do you know what that distance is?

15 THE WITNESS: The -- what I'm looking at
16 is the June 12th fax, I think this was Exhibit 70,
17 and each of the isopleths has little cross signs
18 which are indicative of residences, relative to
19 the plant site. I don't have the exact dimensions
20 here. It looks like the closest residences are
21 within maybe 100 to 150 meters of the plant site.
22 But they are -- they are sparsely spaces, and are
23 not in locations where the -- where the highest
24 construction impacts are located.

25 HEARING OFFICER FAY: And you were

1 comparing the Moss project in relation to using or
2 requiring soot filters to the -- the Elk Hills and
3 the Sunrise project. Do you know what the
4 distance from those projects to the nearest
5 residences are?

6 THE WITNESS: No. The -- the reference
7 that I'm remembering is that in the transcript of
8 the remarkable Air Quality hearing at Elk Hills,
9 was that the construction impacts were I think 360
10 percent of the most stringent air quality
11 standard, and in the Final Staff Assessment, Air
12 Quality Table 10, the 24 hour average PM-10
13 impacts from construction for this project -- and
14 this is the cumulative impacts for all of the
15 construction projects -- are 210 percent of the
16 standard. And for the annual air quality
17 standard, it was 106 percent.

18 And with respect to those two numbers,
19 the most significant dust impacts that are offsite
20 for our project are actually located on fenced in
21 PG&E property immediately to the north of the
22 project site, basically the substation and
23 associated equipment. And if you exclude that
24 area, because it's not generally accessible to the
25 public, our worst case impacts would be for the 24

1 hour PM10 standard, 177 percent of the standard,
2 remembering, again, there's a pre-existing
3 violation. And we would not cause a violation of
4 the annual PM10 standard.

5 And so that was my basis for
6 distinguishing between this case and the Elk Hills
7 case. And that's -- that's even before you get to
8 the issue of how far each of the different
9 projects are from the nearest residence.

10 HEARING OFFICER FAY: Okay. And just in
11 -- in sort of a qualitative sense, what explains
12 that difference? Is it the soil, the fact that
13 you're dealing with an already prepared site?
14 What -- it's such a big difference in PM10. Can
15 you help us there?

16 THE WITNESS: It -- it's difficult --
17 it's difficult to say. The -- the extent of the
18 mitigation measures that are proposed, in terms of
19 dust control, may be one factor. We had to pretty
20 substantially refine our analysis earlier this
21 year because we're dealing with four or five
22 different construction projects with overlapping
23 activities, and -- and had to deal with the -- the
24 county's concern about cumulative impacts. That
25 perhaps forced us to do a more refined analysis

1 and look at more mitigation measures than someone
2 who was looking at simply constructing one power
3 projects might've had to look at.

4 But I -- I can't give you a better
5 answer without actually knowing what they did and
6 -- and how they did their analysis.

7 HEARING OFFICER FAY: So these practices
8 would all feed into the calculation of PM10
9 emissions. For instance, watering within so many
10 hours of soil disturbance, et cetera. That's
11 something that the -- that the model takes into
12 account?

13 THE WITNESS: Yes. We have -- yeah. We
14 have -- our firm has a fairly standard package of
15 dust mitigation measures that we recommend to our
16 clients. They're substantially the same as what
17 the Commission Staff routinely includes as
18 requirements, and those assumptions were built in
19 to our analysis.

20 HEARING OFFICER FAY: Thank you.

21 All right. Is the Staff prepared to go
22 ahead, then?

23 MS. HOLMES: If we could have two
24 minutes first, then we'd be ready.

25 HEARING OFFICER FAY: Certainly.

1 MR. MAXIM: With the conclusion of Mr.
2 Rubenstein's testimony, I would ask that Exhibit
3 55, the Final Determination of Compliance, be
4 entered into the record.

5 HEARING OFFICER FAY: Let me ask if
6 there's a representative from the Air District
7 here. Good. And will you be sponsoring that
8 today? In fact, we may be taking it before the
9 Staff, and I'll be asking that. You're here to --
10 essentially to support the Final Determination of
11 Compliance? All right.

12 Let's mark that for exhibit at this
13 time.

14 (Thereupon, Exhibit 55 was marked
15 for identification.)

16 HEARING OFFICER FAY: And would you like
17 to move your other exhibits into evidence?

18 MR. MAXIM: Yes, Mr. Fay. I believe the
19 exhibit specifically referred to was Mr.
20 Rubenstein's testimony, marked and identified as
21 61, and all exhibits incorporated and referenced
22 included therein.

23 HEARING OFFICER FAY: Is there any
24 objection to those being entered into the record
25 at this point?

1 I hear none. So ordered.

2 Ms. Holmes, if I can interrupt you just
3 a second. Would you prefer if we went ahead with
4 the District at this time?

5 MS. HOLMES: That's fine.

6 HEARING OFFICER FAY: All right. Why
7 don't we ask the District to present its Final
8 Determination of Compliance, and I just -- I have
9 one or two questions.

10 Please swear the witness.

11 (Thereupon, Michael Sewell was, by the
12 Reporter, sworn to tell the truth, the
13 whole truth, and nothing but the truth.)

14 MS. HOLMES: Do you want me to -- all
15 right.

16 Good morning. My name is Caryn Holmes.
17 I'm with the Legal Office of the Energy
18 Commission, and I'm sitting in for Jeff Ogata, who
19 couldn't be here today. Nice to meet you.

20 TESTIMONY OF

21 MICHAEL SEWELL

22 called as a witness herein, having been first duly
23 sworn, was examined and testified as follows:

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MS. HOLMES:

3 Q Could you please state your name for the
4 record?

5 A My name is Mike Sewell.

6 Q Can you spell your last name, please?

7 A S-e-w-e-l-l.

8 Q And can you tell us who you work for?

9 A I'm an Air Quality Engineer with the
10 Monterey Bay Unified Air Pollution Control
11 District.

12 Q And are you familiar with the Moss
13 Landing project that's the subject of this hearing
14 today?

15 A Yes, I am.

16 Q And did you prepare the Final
17 Determination of Compliance that I believe has
18 been marked as Exhibit --

19 MS. HOLMES: I have it as 55, I think
20 earlier you said it was 54. Perhaps we should
21 clarify that now.

22 MR. MAXIM: We have it as 55.

23 BY MS. HOLMES:

24 Q Okay. Did you prepare the Final
25 Determination of Compliance that's been identified

1 as Exhibit 55?

2 A Yes, I did.

3 Q Do you have any corrections to make to
4 that document?

5 A No, I do not.

6 Q Are the facts in that document true and
7 correct to the best of your knowledge?

8 A Yes, they are.

9 Q And do the judgments contained in that
10 document represent your best professional
11 judgment?

12 A Yes, they do.

13 Q Would you like to summarize what the
14 FDOC process was, and what the conditions are?

15 A Sure.

16 Q Thank you.

17 A The District reviewed the -- the AFC
18 based upon the requirements of our District rules
19 and regulations. On January 7th of 2000, the
20 District released the Preliminary Determination of
21 Compliance for public comment. That public
22 comment period ended on February 7th.

23 The District received comments from the
24 Applicant, the Energy Commission, the California
25 Air Resources Board, and EPA regarding that

1 evaluation.

2 On review of the comments, the District
3 determined that the lack of an Air Quality
4 analysis, the establishment of the back level for
5 CO, and a differing offset allocation scheme as
6 proposed by the Applicant, were substantive, and
7 would require an additional public comment period.

8 Therefore, on March 24th, the District
9 released for public comment an amendment to the
10 PDOC, which addressed the Air Quality impact
11 analysis, CO back level, and the quarterly offset
12 allocation. This comment period ended on the 24th
13 of April. That comment period, the District only
14 received comments from the Environmental
15 Protection Agency. Thereafter, the District
16 issued the Final Determination of Compliance on
17 May 12th, 2000.

18 In issuing the Final Determination of
19 Compliance, the District verified compliance with
20 all District requirements, considered and
21 responded to all comments received. It is the
22 District's assertion that compliance with the
23 conditions contained in the Final Determination of
24 Compliance will ensure compliance with all
25 District requirements.

1 And I would be happy to answer any
2 questions or discuss areas of interest the
3 Commission may have regarding the District's
4 evaluation or the Final Determination of
5 Compliance.

6 HEARING OFFICER FAY: Does the Applicant
7 have any questions?

8 MR. MAXIM: No, we don't.

9 HEARING OFFICER FAY: Staff?

10 MS. HOLMES: Staff has no questions.

11 HEARING OFFICER FAY: Thanks for coming,
12 Mr. Sewell.

13 Just really essentially one question.
14 Public Resources Code 255.3D2 requires the
15 Commission to include in its written decision a
16 determination that the Air District has certified
17 the complete emission offsets for the proposed
18 facility have been identified, and will be
19 obtained by the Applicant prior to the
20 Commission's licensing of the project.

21 Can you certify that today?

22 MR. SEWELL: I cannot certify that. The
23 Applicant has identified the offsets. It's my
24 understanding that they have control over the
25 offsets, but I do not have any documentation that

1 formalizes the agreements for a portion of the
2 offset package identified.

3 HEARING OFFICER FAY: So they have been
4 identified?

5 MR. SEWELL: They have been identified
6 in the evaluation, yes.

7 HEARING OFFICER FAY: You can certify
8 that fact?

9 MR. SEWELL: That is correct.

10 HEARING OFFICER FAY: As to whether they
11 will be obtained by the time the project is
12 licensed, you say you do not know?

13 MR. SEWELL: I'm assuming they would be.
14 I don't have any documentation to that fact,
15 though.

16 HEARING OFFICER FAY: All right.

17 I'll turn back to the Applicant, then,
18 and ask how they are addressing this.

19 MR. RUBENSTEIN: Gary Rubenstein, for
20 the Applicant.

21 We have acquired completely all of the
22 offsets that are necessary, and we're prepared to
23 submit whatever documentation is necessary to
24 verify that.

25 HEARING OFFICER FAY: Okay. And in what

1 form would you propose documenting that? Copies
2 of the contracts?

3 MR. RUBENSTEIN: We -- we can do that.
4 Most of the certificates are certificates that are
5 actually already in the bank for the -- actually,
6 all of them are certificates already in the bank
7 of the District, so I guess we can -- I thought we
8 had already done this, and I will simply commit to
9 the Committee that we will provide copies of all
10 of the contracts for all of the emission reduction
11 credits. And we will do that before the
12 Commission makes its decision on licensing.

13 HEARING OFFICER FAY: Okay. Let's --
14 let's -- would it be reasonable to have that
15 completed by the close of the comment period on
16 the proposed decision? That way we -- we know
17 we're well in advance of the Commission action.

18 MR. RUBENSTEIN: Yes, we can do that.
19 What date is that?

20 HEARING OFFICER FAY: Well, I don't have
21 a date right now, but it will be noticed.

22 MR. RUBENSTEIN: Okay.

23 HEARING OFFICER FAY: And when the
24 proposed decision comes out it'll be 30 days from
25 that date.

1 MR. RUBENSTEIN: Yes. It'll certainly
2 be done by then. We'll try to get it done within
3 the next two weeks.

4 HEARING OFFICER FAY: Okay. Great. All
5 right.

6 Ms. Bakker reminded me that we also need
7 the District's concurrence that -- that that meets
8 the requirements of the statute. So if you could
9 bring the District into that loop so that we not
10 only have the documents -- or some documentation
11 that those will be available in the record, but
12 also concurrence by the District that that
13 fulfills the requirements of Public Resources Code
14 255.3D2.

15 MR. RUBENSTEIN: We'll work with the
16 District to obtain that concurrence.

17 HEARING OFFICER FAY: Okay. And I think
18 just a declaration would be fine. We don't need
19 to hold the record open for any other purpose than
20 receiving those documents.

21 Does that sound reasonable, Mr. Sewell?

22 MR. SEWELL: That would be reasonable.

23 HEARING OFFICER FAY: That -- this is
24 the type of thing you'd be able to look at and
25 tell if it was -- if it did, in fact, represent

1 the ERC certificates, and -- and that -- sign some
2 document to that effect.

3 MR. SEWELL: That is correct. You're
4 expecting -- I'm assuming the Commission would be
5 expecting a letter from the District, then?

6 HEARING OFFICER FAY: Yes. A letter, a
7 declaration from the District indicating that
8 you've reviewed -- referencing the documents,
9 you've reviewed them, and that they fulfill the --
10 the requirements indicated in Public Resources
11 Code 255.3D2.

12 Great. All right, thank you.

13 MS. HOLMES: At this point Staff would
14 like to ask that Exhibit 55 be entered into the
15 record.

16 HEARING OFFICER FAY: Any objection?

17 MR. MAXIM: None.

18 HEARING OFFICER FAY: So ordered.

19 (Thereupon, Exhibit 55 was received
20 into evidence.)

21 HEARING OFFICER FAY: Thank you very
22 much, Mr. Sewell.

23 MR. SEWELL: Thank you.

24 HEARING OFFICER FAY: You're excused.

25 Is the Staff ready to go ahead, or --

1 MS. HOLMES: We are. Staff's Air
2 Quality witness is Matt Layton. I believe he
3 needs to be sworn.

4 HEARING OFFICER FAY: Please swear the
5 witness.

6 (Thereupon, Matthew Layton was, by the
7 Reporter, sworn to tell the truth,
8 the truth, and nothing but the truth.)

9 TESTIMONY OF
10 MATTHEW LAYTON

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

14 DIRECT EXAMINATION

15 BY MS. HOLMES:

16 Q Good morning, Mr. Layton.

17 A Good morning.

18 Q Do you have in front of you a copy of
19 the Air Quality portion of Exhibit 66?

20 A I do.

21 Q Was this Air Quality testimony prepared
22 by you?

23 A It was.

24 Q Do you have any changes or corrections
25 to this testimony?

1 A I do.

2 MS. HOLMES: Shall we distribute those.

3 MR. BUELL: I have distributed, or left
4 a copy of the Errata with the various parties. If
5 anyone wants an additional copy, or doesn't have a
6 copy, please let me know.

7 MS. HOLMES: Perhaps we should just have
8 that marked as an exhibit, then.

9 HEARING OFFICER FAY: That will be
10 marked as Exhibit 71.

11 (Thereupon, Exhibit 71 was marked
12 for identification.)

13 MS. HOLMES: Thank you.

14 BY MS. HOLMES:

15 Q And with the changes identified in
16 Exhibit 71, are the facts contained in your
17 testimony true and correct?

18 A Yes, they are.

19 Q And do the opinions contained in your
20 testimony represent your best professional
21 judgment?

22 A Yes, they do.

23 MS. HOLMES: At this point I'd like to
24 move that Exhibit 66, or the Air Quality portion
25 of Exhibit 66, and Exhibit 71 be entered into

1 evidence.

2 HEARING OFFICER FAY: Any objection?

3 MR. MAXIM: No objection.

4 HEARING OFFICER FAY: So ordered.

5 (Thereupon, the Air Quality portion of
6 Exhibit 66, and Exhibit 71 were
7 received into evidence.)

8 BY MS. HOLMES:

9 Q Mr. Layton, would you please summarize
10 your testimony?

11 A I -- I reviewed the various submittals
12 and analyses that the Applicant prepared. I
13 reviewed the Preliminary Determination of
14 Compliance and the Final Determination of
15 Compliance in preparing my Final Staff Assessment.

16 The project, as defined, will build four
17 new combustion turbines at the Moss Landing Power
18 Plant site. Concurrently, the Applicant is also
19 installing selective catalytic reduction on
20 Boilers 6 and 7, which will reduce those emissions
21 for NOx, as well, and they also are prohibited
22 from firing fuel oil in the future. They are also
23 carrying out some demolition activities, removing
24 the fuel oil tanks, and installing a few other
25 components to the modernized facility.

1 The Applicant used some of the emission
2 reductions from the retrofit of 6 and 7 with SCR
3 to offset some of the emission increases occurring
4 at the combustion turbines. They also went out
5 and procured in the area other banked ERCs,
6 Emission Reduction Credits, to offset the
7 emissions from the combustion turbines.

8 They also are proposing to increase the
9 operation of 6 and 7 above historical standards,
10 and they are using the offsets that they procure
11 to offset those increases in emissions, as well.
12 They're offsetting the emission increases of NOx,
13 SOx, VOC, and PM10. They are not buying any
14 offsets for any increases in carbon monoxide, CO,
15 but they have modeled any impacts from CO
16 emissions from the combustion turbines and 6 and
17 7, and found that there are no impacts and no need
18 for offsets for those particular -- for that
19 pollutant.

20 In conjunction with buying offsets, they
21 have also modeled the emissions from the
22 combustion turbine, and the retrofit 6 and 7
23 boilers, and there are no impacts from those
24 emissions either before the retrofit of 6 and 7 or
25 -- and after the retrofit of 6 and 7, with the

1 addition of the new combustion turbines. There
2 is, however, a contribution from the facility to
3 an existing PM10 violation of the State PM10 -- 24
4 hour PM10 standard. Given the regional nature of
5 PM10, we believe that the offsets provided for
6 particulate matter will mitigate that particular
7 contribution of the project to this existing
8 violation.

9 That summarizes the combustion turbine
10 aspect of the project.

11 Regarding AQ-54, the construction
12 emissions and construction impacts, I agree with
13 Mr. Rubenstein that the -- the maximums that occur
14 from the construction activities do occur onsite
15 or close to the fence line. However, there are
16 other impacts further away from the project.
17 They're not the maximums, but the construction
18 activities do contribute to PM10 levels in the
19 area.

20 Our analysis of the ambient air quality
21 also I -- I agree that Mr. -- I agree with Mr.
22 Rubenstein that the ambient air quality is
23 relatively clean in the area. It's a coastal
24 site, there's not much industry in the area. But
25 the levels are close to the -- at or right above

1 the state standard for PM10. So any contribution,
2 even if it's a small contribution, still does
3 contribute to this existing violation.

4 So we are recommending that the
5 oxidizing soot filters be used as a feasible
6 mitigation measure to reduce that down to a level
7 of insignificance, because we believe it's
8 feasible and reasonable, and we would like to see
9 it implemented.

10 We had also looked at using this reduced
11 sulfur fuel. I think, as Gary alluded, the
12 oxidizing catalysts are more compatible with low
13 sulfur fuel. Low sulfur fuel also offers some
14 PM10 reductions. However, the -- this low sulfur
15 fuel, as we call them, 50 ppm or less sulfur
16 diesel fuel, is going to be available sometime
17 this summer. But I understand the hesitancy of
18 the Applicant to depend on something that may or
19 may not occur. So we have agreed to delete that.

20 I would agree to delete the use of the
21 oxidizing catalyst because of the sulfur issue.
22 My understanding of sulfur and diesel in
23 California, the standard is 500 parts per million
24 or less. Most -- the average sulfur content of
25 diesel burned throughout the state is about 130.

1 There could be occurrences where you could get
2 dirtier sulfur or dirtier diesel, diesel that
3 might approach 500 parts per million. I think
4 that could cause some problems with an oxidizing
5 catalyst.

6 The average of 130 might be appropriate
7 with an oxidizing catalyst, but you're not always
8 guaranteed of getting that average. The state is
9 working to introduce lower sulfur diesel, hence
10 this potential availability of this 50 ppm or less
11 sulfur. But it's not there yet, and so we're
12 willing to delete that particular requirement, the
13 50 ppm or less sulfur, and also we are willing to
14 delete the requirement of the oxidizing catalyst.

15 But we think that the oxidizing soot
16 filters do provide significant PM10 reduction, and
17 that's what we're looking at here. We do not have
18 any other violations of the criteria pollutant
19 levels from construction, so we would like to see
20 the oxidizing soot filters left in AQ-54 as it's
21 written, with the deletion of oxidizing catalysts.

22 One more comment about the maximums.
23 Modeling is very conservative. I think the
24 Applicant has done a really good job in trying to
25 model construction activities. However,

1 construction activities are very dynamic. When
2 you do a model, you assume that basically the
3 sources are coming from somewhere onsite, but, in
4 fact, there are concentrated -- or concentrations
5 of activity, say at one portion of the site's
6 being focused on, and there was a lot of equipment
7 and dust and emissions coming from that particular
8 portion of the site. There can be concentrated
9 pollutant coming from that particular area. The
10 model may have not captured that in trying to kind
11 of average all the emissions across the site.

12 So I think the -- the oxidizing soot
13 filters will provide some mitigation for this PM10
14 emissions, and the PM10 impacts from construction.

15 Q Does that conclude your summary?

16 A It does.

17 MS. HOLMES: Mr. Layton is available for
18 cross examination.

19 HEARING OFFICER FAY: Does the Applicant
20 have any questions?

21 MR. MAXIM: Just one question.

22 CROSS EXAMINATION

23 BY MR. MAXIM:

24 Q Mr. Layton, the soot filters that you
25 spoke of, those were field tested, as Mr.

1 Rubenstein indicated, at Avila Beach?

2 A They have been used at Avila Beach, yes.

3 Q And that's the only field test that
4 you're aware of?

5 A That's the only field test that I'm
6 aware of.

7 MR. MAXIM: Thank you. Nothing further.

8 PRESIDING MEMBER KEESE: Mr. Layton, I'm
9 -- I'm glad that we don't have to discuss very
10 much these oxidizing catalyysts. You know, I am
11 aware that a significant amount of the diesel
12 being sold in California -- that's manufactured in
13 California now is -- probably does meet the 50
14 standard. But your point that you can't rely on
15 it being that is also true.

16 As I -- as I recall the federal
17 standards that are being proposed for sulfur, and
18 then for engines to operate on the sulfur, we're
19 talking about giving parties a significant number
20 of years for compliance. And -- and that, I
21 think, is probably where I would tend to come
22 from, that -- that as we make these improvements,
23 perhaps if the -- the economic costs of advancing
24 the timeline well beyond what -- a normal expected
25 timeline makes it not that important to do.

1 So I'll -- with that -- with that said,
2 would you -- and assuming that frame of reference,
3 tell me about the oxidizing soot filter. Are we
4 ahead of our time, or do you think that if it's a
5 standard, that -- that it will be on every piece
6 of equipment shortly?

7 MR. LAYTON: I don't think it'll be on
8 every piece of equipment shortly. I think it has
9 appropriate applications, but there's a huge fleet
10 out there of equipment that will probably not be
11 retrofit with oxidizing soot filters. The cost
12 could be prohibitive.

13 But for a concentrated activity like a
14 construction site, I think there are appropriate
15 applications. You have a captive fleet, so to
16 speak, and you can use a limited number of
17 maintenance personnel trained to install these
18 things and maintain them properly. Trying to get
19 them broadly distributed into the whole -- the
20 general population, I think would be a much more
21 difficult undertaking.

22 PRESIDING MEMBER KEESE: But -- so
23 you're suggesting it's appropriate to a
24 construction fleet.

25 MR. LAYTON: I think -- yes, I think

1 there are some advantages to using it at a captive
2 site, so to speak, because you can concentrate on
3 determining, number one, if they work correctly,
4 fixing them if they don't, or not using them if
5 they don't work correctly. I think there are some
6 concerns that these things are not appropriate for
7 all -- for all applications, but, again, the
8 construction site provides an opportunity to
9 figure that out, where if you just require -- if
10 you were trying to, say, retrofit all diesel
11 equipment, general population had a blanket
12 requirement, I think you would cause a lot of
13 problems.

14 PRESIDING MEMBER KEESE: Do you have an
15 estimate of the cost per piece of equipment for
16 doing this?

17 MR. LAYTON: These -- these catalysts
18 can be expensive, up to \$10,000 apiece -- these
19 oxidizing soot filters, excuse me. They are --
20 can be temporary in nature. They can be installed
21 and then be taken off later, and used on a
22 different piece of equipment. I think there will
23 be some owners of equipment that do not want the
24 oxidizing soot filter permanently installed on
25 their equipment. They will take it off after the

1 construction. So they -- they are not -- they're
2 not disposable items. You would use it, and
3 either keep it and realize the benefit of the
4 oxidizing soot filter, or get to use it on the
5 next piece of equipment at the next project site,
6 construction site.

7 PRESIDING MEMBER KEESE: Thank you.

8 HEARING OFFICER FAY: Mr. Layton, is the
9 -- is really the sole reason for your agreeing
10 with the Applicant's criticism of the oxidizing
11 catalyst that -- that you think the low sulfur
12 fuel will not be available in the timeframe for
13 construction of this project?

14 MR. LAYTON: Yes.

15 HEARING OFFICER FAY: So if the fuel was
16 available, do you think that is a reasonable
17 fallback, the use of -- or the requirement to use
18 an oxidizing catalyst? Fallback from a situation
19 where the soot filter could not be applied.

20 MR. LAYTON: I -- I am concerned about
21 PM10 from construction activities. The oxidizing
22 catalyst does produce PM10. The use of low sulfur
23 diesel, the 50 ppm sulfur diesel, also will reduce
24 particulate matter.

25 So if low sulfur diesel was available, I

1 would still require then the oxidizing catalyst.
2 Because I think any reductions of PM10 emissions
3 would be appropriate and useful to mitigating the
4 impacts.

5 HEARING OFFICER FAY: And how would you
6 determine, as the Chairman indicated, there's -- I
7 guess there's a sort of a long timeline on phasing
8 this low sulfur fuel in. How will you determine
9 when it is available, commercially available?

10 MR. LAYTON: Well, from what we
11 understand it's not necessarily available in the
12 Bay Area. We believe Equilon, which I guess is
13 the Shell/Mobil merged company, will have it this
14 summer at their Martinez facility. I don't think
15 the transportation costs from Martinez are
16 unreasonable. But since it's not available yet,
17 as far as I know it is not available in the Bay
18 Area, I don't think transporting low sulfur diesel
19 from southern California is appropriate or cost
20 effective.

21 HEARING OFFICER FAY: So at some point,
22 perhaps as you're reviewing some future project,
23 you will determine how many retail outlets carry
24 this, and how close it is to a project, and that
25 would influence your analysis of the

1 appropriateness of the oxidizing catalyst?

2 MR. LAYTON: Yes.

3 HEARING OFFICER FAY: All right. Thank
4 you.

5 Any redirect?

6 MS. HOLMES: None.

7 HEARING OFFICER FAY: All right. Thank
8 you very much, Mr. Layton. We appreciate your
9 testimony.

10 MR. LAYTON: Thank you.

11 MR. MAXIM: With the Staff's permission,
12 and the Committee's permission, We would like an
13 opportunity to recall our Air Quality witness to
14 address some of the concerns brought about by
15 Staff's testimony.

16 HEARING OFFICER FAY: Any objection to
17 that?

18 MS. HOLMES: None.

19 HEARING OFFICER FAY: Why don't you go
20 ahead.

21 MR. MAXIM: I will note that Mr.
22 Rubenstein was previously sworn, and the witness
23 is still under oath.

24 ///

25 ///

1 TESTIMONY OF
2 GARY RUBENSTEIN
3 recalled as a witness on behalf of the Applicant,
4 having previously been duly sworn, was examined
5 and testified further, as follows:

6 DIRECT EXAMINATION

7 BY MR. MAXIM:

8 Q Mr. Rubenstein, were you present during
9 the -- Mr. Layton's examination?

10 A Yes, I was.

11 Q And did you have a time to reflect upon
12 that examination?

13 A Yes, I did.

14 Q And do you have any comments or concerns
15 concerning the -- his testimony?

16 A Yes, just very briefly.

17 Commissioner Keese, you had asked Matt
18 about the relationship between this mitigation
19 measure and the fuels and control technologies
20 that are being proposed by the U.S. EPA for all
21 heavy-duty diesel equipment by, I believe, 2007.
22 In fact, this -- this combination of oxidizing
23 catalysts and oxidizing soot filters, and the
24 ultra-low sulfur diesel fuel are the key elements
25 of the EPA proposal. And -- and I view this

1 measure, in particular, as being on the leading
2 edge of that.

3 Frankly, my first choice of all of these
4 for field use would be the ultra-low sulfur diesel
5 fuel. That doesn't require any modifications to
6 the engine and provides for real intermediate
7 benefits. As we had indicated at the Air Quality
8 workshop for this project, if that fuel was
9 available we were prepared to accept a requirement
10 that it be used. And both we and the Staff worked
11 diligently to see whether it was available, and
12 regrettably it is not.

13 The oxidizing soot filter is beyond the
14 stage of being a laboratory experiment, but I
15 would still categorize it as field experimental,
16 which is to say there are indications that it's
17 worked. It involves some difficult commercial
18 aspects because it requires an entity that is
19 managing a construction project, such as Duke, to
20 install equipment, emission control equipment on
21 -- on a piece of operating equipment that they
22 don't own. And so there are some fairly
23 substantial commercial issues that would have to
24 be addressed in this kind of a field experiment.

25 My -- my concerns about the feasibility

1 of the technology once it's properly designed and
2 installed are probably not as great, but it's
3 getting to that point of making sure that you've
4 got a good match between the oxidizing soot filter
5 and the equipment, that you have knowledgeable
6 people in the field who know how to operate and
7 maintain it is probably the bigger key.

8 Lastly, the oxidizing soot filters, and
9 I think the Commission Staff will agree, really
10 only operate effectively on equipment that's used
11 and maintained at a sustained load for a regular
12 period of time. That's -- that's one of the key
13 problems with introducing this technology in a
14 heavy-duty truck fleet, is that the oxidizing soot
15 filters can only adsorb particulates for a certain
16 length of time, and they need to be regenerated.
17 And the regeneration occurs by obtaining heat from
18 the engine exhaust. If that heat isn't available
19 because the engine isn't operated at load, the
20 soot filters will not regenerate.

21 That's, as you can imagine, a very
22 complicated process for a truck to make sure that
23 everything works right, and that's why EPA is
24 providing such a long lead time for truck
25 manufacturers to do that. Clearly, the -- the

1 evidence I've -- I've heard tell of at Avila Beach
2 indicates that, at least on three pieces of
3 equipment that they identified, it worked well.
4 And I think that holds a lot of promise for the
5 technology. One questions whether the specific
6 requirement in AQ-54 is sort of too big a next
7 step, if you will, this early in the stage.

8 So I just wanted to add that perspective
9 about the technology. It is clearly the kind of
10 technology that people are looking at using for
11 controlling particulate emissions from trucks. It
12 has a -- certainly a lot of potential. I think
13 there are just a lot of issues associated with
14 field implementation this early on. And, again,
15 given the specific facts of what the impacts are
16 from this project, we're questioning the
17 appropriateness of imposing that mitigation
18 measure at this point.

19 Q And does that conclude your comments on
20 Staff's testimony?

21 A Yes, it does.

22 MR. RUBENSTEIN: With that, the witness
23 is open for questions by Staff and Committee.

24 HEARING OFFICER FAY: Any cross?

25 MS. HOLMES: I have no questions.

1 PRESIDING MEMBER KEESE: Mr. Layton,
2 could I ask you a question.

3 MR. LAYTON: Yes.

4 PRESIDING MEMBER KEESE: Are you aware
5 of this -- this equipment being required in any
6 other construction, other than power plants, by
7 the Energy Commission?

8 MR. LAYTON: I'm -- no.

9 PRESIDING MEMBER KEESE: I'm -- I'm
10 thinking of an example. I happen to live down the
11 street in an apartment building that is surrounded
12 by two million square feet of state construction.

13 (Laughter.)

14 PRESIDING MEMBER KEESE: Would you
15 suspect that they were using this technology on
16 those pieces of equipment?

17 MR. LAYTON: I would suspect they are
18 not using this technology.

19 PRESIDING MEMBER KEESE: So -- so we're
20 -- we are ahead of the curve, a little bit. I
21 mean, we're -- the curve has started.

22 MR. LAYTON: Staff is aware that we are
23 planning to require something that is new. We
24 have worded the condition to allow some latitude.
25 We would like to see what is called a suitability

1 report. We would like to work with the Applicant
2 and equipment owners to determine which equipment
3 can use this -- this control technology, and where
4 not appropriate, not use it.

5 We do not want to damage equipment. We
6 do not want to limit the ability of the equipment
7 to operate properly. I think that would be
8 unsafe. But where appropriate, we would like to
9 see the oxidizing soot filters used. And so the
10 suitability report, and then subsequent reports.
11 If the equipment is installed and doesn't work,
12 then there are -- there is recourse to have it
13 removed. Without -- without having to come to the
14 Commission. They can discuss this after the fact.
15 So we're not trying to delay construction, either.

16 PRESIDING MEMBER KEESE: Okay. Is --
17 and you're -- you're aware, or -- or we're aware
18 that this condition has been placed on at least
19 one other siting project, and is being considered
20 for another. Is that what I understood?

21 MR. LAYTON: It was adopted in the
22 Sunrise decision, and I believe the same condition
23 is up for adoption, was proposed for the Elk
24 Hills. I'm not sure what the status of Elk Hills
25 is. And we also did actually require oxidizing

1 catalysts for the High Desert Project, as well.

2 PRESIDING MEMBER KEESE: Thank you.

3 That's --

4 HEARING OFFICER FAY: Mr. Rubenstein, I
5 have some questions.

6 You mentioned that the three main points
7 of the EPA diesel mitigation approach is the low
8 sulfur fuel, the oxidizing soot filter, and the
9 oxidation catalyst. And you didn't get to the
10 oxidation catalyst. Does it have some unusual
11 features or wrinkles that need to be worked out,
12 or is that strictly limited to the unavailability
13 of this ultra-low sulfur fuel?

14 MR. RUBENSTEIN: It is -- in terms of
15 technical feasibility, it is, I think, strictly
16 limited to the availability of the ultra-low
17 sulfur diesel fuel. The other side of the coin,
18 and I don't expect to see oxidizing catalysts used
19 in the truck fleet to a great extent, is because
20 they're designed to control the wrong problem.
21 They're designed to control hydrocarbon and CO
22 emissions, and diesel engines are inherently low
23 in emissions of those pollutants. They provide an
24 incidental benefit in terms of particulate
25 control.

1 And so I would expect to see those used
2 only in cases where a truck manufacturer is able
3 to get very close to the particulate standard, and
4 needs a little help getting below the standard.
5 In cases where a substantial amount of control is
6 required, I would expect that the soot filters, or
7 some technology like that, is what would be used.

8 So in the long term, I see the -- the
9 oxidizing catalyst for diesel engines of being
10 fairly limited, in terms of its utility.

11 HEARING OFFICER FAY: So is this not
12 really parallel to the gasoline engine catalysts?

13 MR. RUBENSTEIN: It's -- it's an attempt
14 to apply the same type of technology. Gasoline
15 engines historically and inherently have higher
16 levels of hydrocarbon and carbon monoxide
17 emissions because of the -- the differences in the
18 -- the nature of the combustion of the fuel, the
19 fact that you can't burn the fuel at a very high
20 compression ratio. Diesel engines have much
21 higher compression ratios, they have inherently
22 extremely low uncontrolled hydrocarbon emissions,
23 and extremely low carbon monoxide emissions.

24 An example of that is -- is when the
25 automotive emissions standards in the late 1970s

1 first required the use of catalytic converters on
2 cars to meet those very low standards. Diesel
3 engines were able to meet exactly the same
4 standards without any catalytic converters.

5 HEARING OFFICER FAY: Thank you. Can
6 you give us some recommendation on how you think
7 the Commission should determine if the ultra-low
8 sulfur fuel is available? And how would you
9 define availability?

10 MR. RUBENSTEIN: I guess I would -- I
11 would define availability as indicating that there
12 is at least one refiner within the region that
13 supplies fuel to the particular site -- and that's
14 to get at the Northern California/Southern
15 California issue that Matt referred to -- that
16 offered this fuel for sale through its regular
17 wholesale network, at a price that was within a
18 certain percentage of the price of competitive
19 diesel fuel. Or, alternatively, that this fuel
20 was available from at least two refiners, at which
21 point I don't think a price criteria would be
22 relevant, because then you would have competition
23 that should take care of any price inequities.

24 So the key elements are that it has to
25 be readily available through the refiners, just a

1 wholesale distribution network. I don't expect to
2 see this fuel in a retail basis for some time.
3 And these construction projects would normally buy
4 from jobbers rather than from the local gas
5 station.

6 Second, there either has to be at least
7 one refiner available with some caveat on the
8 price difference, or that it would have to be
9 available from at least two refiners, so that
10 there's some assurance of competition.

11 HEARING OFFICER FAY: Thank you. That's
12 very helpful.

13 All right. Anything further, then?

14 MS. BAKKER: I just wanted to clarify
15 what the ultra-low diesel criterion was, because I
16 didn't recall that it was 50 parts per million
17 that EPA was talking about.

18 MR. RUBENSTEIN: I believe it's -- it's
19 either 50 parts per million, or perhaps -- or
20 perhaps lower. But it's on that order of
21 magnitude. The --

22 MS. BAKKER: I -- I thought it was lower
23 than that. But --

24 PRESIDING MEMBER KEESE: EPA is talking
25 --

1 MS. BAKKER: -- just for clarification,
2 then, that the response that you gave to Mr. Fay
3 was related to 50 parts per million. That -- that
4 the availability of a fuel at 50 parts per million
5 was the response you were giving, rather than
6 ultra-low emission.

7 MR. RUBENSTEIN: Actually, my --

8 MS. BAKKER: Ultra-low sulfur.

9 MR. RUBENSTEIN: -- my response to Mr.
10 Fay about how to define availability would apply
11 to -- to any level that you were going to set,
12 whether it was 50 or --

13 MS. BAKKER: Well, his -- the reason I
14 brought that up is he used the term ultra-low.
15 You have used the term relative to EPA's standard,
16 and I just wanted to clarify that the -- or that
17 Staff's figure was 50 parts per million. And that
18 -- that's the potential condition we've got here,
19 and that's -- I just wanted to clarify that we
20 were talking about 50 parts per million.

21 HEARING OFFICER FAY: Is -- is this a
22 difference, or is the ultra-low sulfur a generic
23 term that includes --

24 PRESIDING MEMBER KEESE: Mr. Fay, I -- I
25 believe that the federal proposal, the EPA

1 proposal is 15 parts per million, where --

2 MS. BAKKER: That's what I thought, too.

3 PRESIDING MEMBER KEESE: -- where other
4 entities, including, I believe, California, to
5 date, have -- have been thinking in terms of 50.

6 MS. BAKKER: Right.

7 PRESIDING MEMBER KEESE: So there's a --
8 it's a --

9 MS. BAKKER: Huge --

10 PRESIDING MEMBER KEESE: -- it's a good
11 clarifying point that --

12 MR. RUBENSTEIN: Yes. I apologize for
13 the confusion.

14 HEARING OFFICER FAY: So this -- in all
15 likelihood, this will be a continuing process to
16 -- to reach first the 50, and then lower levels.

17 MR. RUBENSTEIN: That's right.

18 HEARING OFFICER FAY: All right. Thank
19 you.

20 Anything further, any more questions for
21 Mr. Rubenstein? Thank you very much for that
22 clarification.

23 All right. Mr. Layton, Mr. Rubenstein,
24 thank you for your testimony. You're both
25 excused.

1 And I ask the Applicant if they're ready
2 to move on to offering your testimony on Land Use.

3 MR. ELLISON: Applicant's witness on
4 Land Use issues is Mr. Kirk Marckwald.

5 Mr. Buell has suggested that we take a
6 brief recess before we take up the Land Use
7 issues, with the Committee's permission. That's
8 okay with us.

9 HEARING OFFICER FAY: Certainly. How
10 much time do you need? Give us an idea. Fifteen
11 minutes?

12 MR. ELLISON: That's fine.

13 HEARING OFFICER FAY: All right. Let's
14 take a 15 minute break.

15 (Off the record.)

16 HEARING OFFICER FAY: All right. We'll
17 ask the Applicant if they're ready to proceed with
18 testimony on Land Use.

19 MR. ELLISON: We are, Mr. Fay. And in
20 the Land Use area, the Energy Commission received
21 a letter from the Coastal Commission this morning,
22 which will be the subject of testimony by both
23 Applicant and Staff. That letter is being
24 distributed to the Committee by Mr. Buell. I
25 would like that identified as the next exhibit in

1 order, which I believe is 72.

2 HEARING OFFICER FAY: I'm sorry, you
3 wanted that identified?

4 MR. ELLISON: Please.

5 HEARING OFFICER FAY: Exhibit 72 would
6 be the June 13th, 2000, letter from the Coastal
7 Commission to Chairman Keese.

8 (Thereupon, Exhibit 72 was marked
9 for identification.)

10 MR. ELLISON: The Applicant's witness on
11 Land Use is Mr. Kirk Marckwald. Mr. Marckwald
12 needs to be sworn.

13 HEARING OFFICER FAY: Please swear the
14 witness.

15 (Thereupon, Kirk Marckwald was, by the
16 Reporter, sworn to tell the truth, the
17 whole truth, and nothing but the truth.)

18 TESTIMONY OF

19 KIRK MARCKWALD

20 called as a witness on behalf of the Applicant,
21 being first duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. ELLISON:

25 Q Mr. Marckwald, could you state and spell

1 your name for the record?

2 A Yes. My name is Kirk Marckwald, M-a-r-
3 c-k-w-a-l-d.

4 Q Where are you employed, and in what
5 capacity?

6 A I'm employed at California Environmental
7 Associates, a Consulting Firm in California, and I
8 am the Principal and founder of the firm.

9 Q And what is your relationship to the
10 Moss Landing Power Plant modernization project?

11 A I am sponsoring the Land Use chapter of
12 the AFC.

13 MR. ELLISON: Okay. Mr. Marckwald's
14 Land Use testimony is identified in this record as
15 the Land Use portion of Exhibit 60. It
16 incorporates prior filings, including the Land Use
17 portion of the AFC, Exhibit 5, as well as Exhibits
18 11, 16, 48.

19 BY MR. ELLISON:

20 Q Mr. Marckwald, do you have a copy of
21 Exhibit 60 before you?

22 A I do.

23 Q Do you have any changes or corrections
24 to your testimony?

25 A I do not, but my testimony does refer to

1 some land conditions which I believe that we'll
2 talk about later on, but no -- no changes to the
3 testimony.

4 Q And was Exhibit 60 prepared by you or at
5 your direction?

6 A Yes, it was.

7 Q Are the facts set forth in this exhibit
8 true and correct, to the best of your knowledge?

9 A They are.

10 Q And are the opinions contained in this
11 exhibit your own?

12 A They are.

13 Q Do you adopt Exhibit 60, the Land Use
14 portion of Exhibit 60 as your sworn testimony in
15 this proceeding?

16 A I do.

17 MR. ELLISON: I'd like to move admission
18 of Exhibit 60 and all of the exhibits incorporated
19 by reference therein.

20 HEARING OFFICER FAY: Any objection?

21 MS. HOLMES: None.

22 HEARING OFFICER FAY: So ordered.

23 (Thereupon, Exhibit 60, and the Land Use
24 portions of Exhibits 5, 11, 16, and 48
25 were admitted into evidence.)

1 BY MR. ELLISON:

2 Q Mr. Marckwald, could you briefly
3 summarize the Land Use issues that you reviewed in
4 your testimony, and state your conclusions as to
5 those issues?

6 A Yes. We had reviewed all the applicable
7 federal, state and local laws, ordinances,
8 regulations and standards. These are further
9 identified in my testimony as Table 1. And it is
10 my conclusion that the project would be compatible
11 with all existing and planned land uses, for the
12 following reasons.

13 The site is an existing coastal
14 dependent industrial site. Both the local Coastal
15 Plan that has been certified by the California
16 Coastal Commission, as well as the California
17 Coastal Act, encourage facility expansion within
18 existing sites; that the project would not disrupt
19 or divide the nature of the community, nor
20 restrict existing or planned land uses. With
21 mitigations, the project would not cause any
22 significant impacts to nearby land uses. And,
23 finally, the project would not cause any
24 cumulative land use impacts.

25 Q Mr. Marckwald, have you reviewed the

1 proposed conditions of certification set forth in
2 the Final Staff Assessment with regard to Land
3 Use?

4 A I have.

5 Q And leaving aside for the moment the
6 Coastal Commission letter, Exhibit 72, are those
7 conditions of certification in the Final Staff
8 Assessment acceptable?

9 A They are.

10 Q Okay. Now, with respect to Exhibit 72,
11 the Coastal Commission letter, have you had an
12 opportunity to review that?

13 A I have.

14 Q The Coastal Commission letter suggests
15 some changes to the Staff's proposed conditions of
16 certification, does it not?

17 A It does.

18 Q And can you comment on the acceptability
19 of the changes proposed by the Coastal Commission?

20 A With some minor modifications, the
21 proposed changes would be acceptable.

22 Q Okay. In a moment I'm going to ask you
23 to describe specifically the minor modifications.
24 But may I first direct your attention to the last
25 sentence on the first page of the letter, which

1 states, "With these changes, the Coastal
2 Commission believes the proposed project will be
3 carried out consistent with the public access
4 policies of the Coastal Act." Do you see that?

5 A I do see that.

6 Q And do you concur with that conclusion?

7 A I do concur with that conclusion.

8 Q Okay. Now, could you describe -- let me
9 back up. Have you discussed the proposed changes
10 that the Coastal Commission recommends with the
11 Staff, the Energy Commission Staff?

12 A I have discussed it with the Energy
13 Commission Staff, and I've also discussed it with
14 the Coastal Commission Staff.

15 Q Okay. And I take it that you have some
16 slight amendments to the Coastal Commission's
17 proposed changes?

18 A I do.

19 Q Could you describe specifically what
20 those changes are for the record, please?

21 A Yes, I will. The first change to the
22 Coastal Commission's proposed changes in their
23 June 13th letter, would be on Land 2, the second
24 underlying sentence starting at the beginning of
25 it, "In the event that the parties cannot mutually

1 agree on the" -- insert --

2 HEARING OFFICER FAY: Excuse me, Mr.
3 Marckwald. Is that page 4 of the letter?

4 THE WITNESS: Yes. Thank you.

5 HEARING OFFICER FAY: All right.

6 THE WITNESS: It's page 4, Condition
7 Land 2, subparagraph 1, the second to the last
8 sentence in the Coastal Commission's proposed
9 changes.

10 So the first introduction to that
11 sentence would remain the same, and I will read
12 it. "In the event that the parties cannot
13 mutually agree on the" -- insert, "scope of work,
14 or its principal investigator", delete "report
15 recommendations". So that would read, "In the
16 event that the parties cannot mutually agree on
17 the scope of work, or its principal investigator,
18 the CPM", and then continuing as they have
19 proposed it.

20 The second change is also in Land 2,
21 subparagraph 2, and it's an insertion. After the
22 Coastal Commission's proposed language, and I'll
23 pick up with their language. "The equivalent of
24 one seasonal aide position" -- insert
25 "parentheses, 12 hours per week on an average

1 annual basis, close parens, for" -- and then
2 continuing to the end.

3 And the final proposal at the bottom of
4 subparagraph 2 is acceptable.

5 Now, turning to the verification for
6 Land 2, which is on page 5. Their first proposed
7 change, it would be acceptable if it read, "within
8 60 days". And the final change --

9 HEARING OFFICER FAY: Excuse me. So the
10 -- how would the --

11 THE WITNESS: Excuse me -- within -- the
12 verification, the first bullet point under
13 verification would read, "Within 60 days after the
14 start of construction, continuing to the end."

15 HEARING OFFICER FAY: Thank you.

16 THE WITNESS: And the final change would
17 be to insert into the third bullet, under
18 verification of Land 2, you know, on the third
19 line, picking up on the second word, "the project
20 owner shall deliver the \$250,000 endowment," --
21 insert "as well as interest at the rate of eight
22 percent accrued on the endowment, since the start
23 of project construction, to the Energy
24 Commission."

25 And follows on in the next sentence,

1 "The Energy Commission will transfer the \$250,000"
2 -- insert, "endowment, along with any interest
3 accrued." And then continuing along to the
4 appropriate identity -- appropriate entity.

5 And with those changes, we will have
6 picked up the thought in Bullet 4, under
7 verification, and I would move to strike the
8 fourth bullet.

9 I've had a chance to discuss these
10 changes with the Energy Commission Staff, and I
11 believe we are in agreement that these
12 modifications essentially are consistent with the
13 original -- the land condition, and clarifies some
14 minor points, and would be acceptable to the
15 Applicant.

16 BY MR. ELLISON:

17 Q Mr. Marckwald, have you also discussed
18 these changes with Coastal Commission Staff?

19 A I have, and I pointed out what our level
20 of concerns were and why we thought it was
21 important to be more specific around the hours of
22 service and the duties and -- and interest rates,
23 and my impression was that the Coastal Commission
24 Staff person was generally comfortable with those
25 changes.

1 MR. ELLISON: Okay. That completes Mr.
2 Marckwald's testimony.

3 HEARING OFFICER FAY: Any questions from
4 Staff?

5 MS. HOLMES: No questions.

6 HEARING OFFICER FAY: Mr. Marckwald, on
7 page 3 of your testimony, the nearest cluster of
8 residences located more than one-half mile
9 southwest of the plant. How -- how do you
10 characterize that, is that just a group of houses,
11 or is it a subdivision, or what is that?

12 MR. MARCKWALD: Mr. Fay, could you --

13 HEARING OFFICER FAY: I believe it's --

14 MR. MARCKWALD: My numbering is not on
15 my page.

16 HEARING OFFICER FAY: Oh, I have page 3,
17 under the heading Land Uses in the Surrounding
18 Area, in the summary of your testimony.

19 MR. MARCKWALD: Yes. And -- and your
20 question?

21 HEARING OFFICER FAY: Just that cluster
22 of residences. How would you characterize that,
23 is that a subdivision, or just a few houses?

24 MR. MARCKWALD: There are -- I wouldn't
25 describe it as a subdivision. It's sort of more

1 of a -- almost like a strip development of -- just
2 along the road there, of -- I think there are -- I
3 would not -- I could look precisely at a map, but
4 I think it's somewhere in the neighborhood of 10
5 to 12, 15 houses.

6 HEARING OFFICER FAY: Okay. Thank you.

7 And then I had a question on the first
8 page of Attachment A, your testimony. Your note
9 regarding Trans 11, condition Trans 11 in the FSA.

10 As far as you know, has that -- has that
11 been picked up, your recommendation? Has the
12 Staff submitted a -- a revision that reflects
13 that?

14 MR. MARCKWALD: I'd like to confer with
15 my Counsel on this, because I think that it's
16 beyond my individual testimony.

17 HEARING OFFICER FAY: I just -- I'm
18 looking for some precise language that the parties
19 have agreed to, and if any exists.

20 MR. ELLISON: I believe we have
21 reconciled the concern about the relationship with
22 the Land Use conditions to the Transportation
23 conditions, yes.

24 HEARING OFFICER FAY: Okay. Good.
25 Thank you.

1 That's all I have, then. Thank you, Mr.
2 Marckwald.

3 MR. MARCKWALD: You're welcome.

4 HEARING OFFICER FAY: Staff?

5 MS. HOLMES: Staff's witness on Land Use
6 is Eric Knight. I believe he needs to be sworn.

7 HEARING OFFICER FAY: Please swear the
8 witness.

9 (Thereupon, Eric Knight was, by the
10 Reporter, sworn to tell the truth, the
11 whole truth, and nothing but the truth.)

12 TESTIMONY OF

13 ERIC KNIGHT

14 called as a witness on behalf of the Commission
15 Staff, having first been duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. HOLMES:

19 Q Mr. Knight, do you have a copy of the
20 Land Use portion of what has been identified as
21 Exhibit 66, in front of you?

22 A Is that my testimony?

23 Q Yes, that's your testimony.

24 A Yes. Yes, I do.

25 Q Was this testimony prepared by you?

1 A Yes, it was.

2 Q Do you have any changes or corrections
3 to your testimony?

4 A Yes, I do. Conditions of certification,
5 Land 4 and 5, I've got some minor changes. Those
6 are --

7 Q Why don't you read those into the
8 record.

9 A -- page 111, page 111.

10 A Land 4, the verification, I'd like that
11 to read, "at least 30 days prior to the start of
12 construction", and strike "the project", and
13 insert, "any permanent parking".

14 Q So it would read, "at least 30 days
15 prior to the start of construction of any
16 permanent parking"?

17 A Uh-huh. Yes. And then the second
18 change, under the verification of Land 5, should
19 read, "at least 30 days prior to the" -- strike
20 "the start of construction of the project", and
21 insert, "the installation of any temporary
22 signage."

23 A That's -- that's all.

24 Q Those are you -- all the changes that
25 you have?

1 Given those changes, are the facts
2 contained in your testimony true and correct to
3 the best of your knowledge?

4 A Yes, they are.

5 Q And do the opinions contained in your
6 testimony represent your best professional
7 judgment?

8 A Yes, they do.

9 MS. HOLMES: At this point I'd like to
10 move that the Land Use portion of Exhibit 66 be
11 entered into the record.

12 HEARING OFFICER FAY: Any objection?

13 MR. ELLISON: No objection.

14 HEARING OFFICER FAY: So ordered.

15 (Thereupon, the Land Use portion of
16 Exhibit 66 was received into evidence.)

17 BY MS. HOLMES:

18 Q Mr. Knight, would you please give a
19 brief summary of your testimony.

20 A Sure. The purpose of Staff's Land Use
21 analysis is to determine if a project would comply
22 with all applicable local land use laws,
23 ordinances, and regulations, and determine if the
24 project will be compatible with existing and
25 planned land uses in the area.

1 I concluded that the project would
2 comply with all applicable land use laws,
3 ordinances, and regulations. The project is
4 consistent with the current North County -- North
5 County General Plan and zoning definition of the
6 site, which are both general industrial -- or,
7 heavy industrial, excuse me.

8 With mitigation, the project would be
9 consistent with the goals and policies of Monterey
10 County local coastal program -- or would -- would
11 be consistent with the goals and policies of the
12 Monterey County General Plan and local coastal
13 program. Excuse me.

14 In general, the Monterey County local
15 coastal program encourages onsite expansion of
16 existing coastal dependent industrial facilities,
17 such as the existing Moss Landing Power Plant,
18 consistent with maintaining the environmental
19 quality and character of the Moss Landing
20 community, and its natural resources. The project
21 would be consistent with this planning objective.

22 The project would be compatible with
23 existing and planned land uses because, one, the
24 project is compatible with the heavy industrial
25 character of the site. The project is compatible

1 with the industrial character of the immediate
2 surrounding land uses, and the project would not
3 disrupt or divide the physical arrangement of
4 established communities, since it would occur
5 entirely on the site of the existing Moss Landing
6 Power Plant.

7 The project -- for the same reason, the
8 project would not preclude or unduly restrict
9 existing or planned land uses. And with
10 mitigation, operation of the project would not
11 cause any significant adverse noise, dust, public
12 health hazard or nuisance, traffic or visual
13 impacts on nearby land uses. Nor would the
14 project contribute to -- contribute substantially
15 to any cumulative land use impacts.

16 At the -- at the time of the PSA, when
17 it was published, there were two outstanding land
18 use issues, which have been resolved at this
19 point. The first one was the Monterey County
20 zoning ordinance restricts height of structures to
21 35 feet, but there is an exception to that height
22 restriction, and I had asked the Applicant to
23 provide information to the Energy Commission and
24 Monterey County demonstrating that the project
25 would comply with that exception -- or that

1 exception would be applicable to this project.

2 And they've done that.

3 On April 17th of this year, the
4 Applicant docketed information that showed that
5 the project wouldn't exceed the allowable cubic
6 contents of the site, and so the -- the structures
7 up to 145 feet will be allowed. I had spoken with
8 the zoning administrator of the county, who
9 indicated that that would be the exception they
10 would apply, if that project were under their
11 jurisdiction.

12 Then the other, I think more important
13 issue that was unresolved at the time was as a
14 part of the AFC, Duke Energy didn't include a
15 provision for public access to coastal resources.
16 There is a provision in the Warren-Alquist Act --
17 I should know this by heart by now -- Section
18 25529, which requires projects within the coastal
19 zone to dedicate an area for public access and
20 use.

21 There's also a provision in the local
22 coastal program for providing easements to
23 proposed trails that are within the vicinity of a
24 proposed project in the coastal zone. So on March
25 24th, 2000, Staff held a workshop with Duke

1 Energy, Monterey County, and representatives of
2 the Coastal Commission, to create a plan for
3 developing public access to coastal resources in
4 -- in the vicinity of the Moss Landing Power Plant
5 project. And at that workshop, the Applicant
6 agreed to provide the following for public access
7 in the vicinity of the project.

8 One, they would dedicate an easement and
9 funding for the planning, design, and construction
10 of a boardwalk to and along Moss Landing Beach.
11 The second item was they would provide funding for
12 an environmental assessment of the coastal --
13 coastal access in the context of an Elkhorn Slough
14 circle trail, and would provide funding for the
15 ongoing maintenance of that trail.

16 The third item was dedication of an
17 easement within Duke's ownership westerly of
18 Highway One for this -- for the proposed trail on
19 the Monterey County local coastal program trails
20 map.

21 And those -- those public access
22 programs are captured in Staff's conditions of
23 certification, Land 1, 2, and 3.

24 Q Mr. Knight, have you had a change to
25 review Exhibit 72, which is the letter to Chairman

1 Keese from the Coastal Commission?

2 A Yes, I have.

3 Q And have you had a chance to discuss the
4 changes that were proposed by the Applicant's
5 witness to the conditions in the letter?

6 A Yes, I have.

7 Q And do you agree that those changes are
8 appropriate?

9 A I do.

10 Q And have you had a chance to discuss
11 those changes with Coastal Commission Staff?

12 A I have.

13 Q And what did they tell you?

14 A They said that they would not object to
15 the changes.

16 MS. HOLMES: Thank you. I think those
17 the questions that I had, so Mr. Knight is
18 available for cross examination.

19 HEARING OFFICER FAY: Does the Applicant
20 have any questions of the witness?

21 MR. ELLISON: No, we don't.

22 HEARING OFFICER FAY: Mr. Knight, does
23 your final evaluation or recommendation, is it
24 affected by the outcome of the -- the mitigation
25 for Biological Resources and Soil and Water

1 Resources that have been worked on, and I
2 understand it's been achieved recently?

3 MR. KNIGHT: Yes, that's correct.

4 HEARING OFFICER FAY: So you're familiar
5 with that?

6 MR. KNIGHT: I've -- I've spoken with
7 Staff's experts on both biology and --

8 HEARING OFFICER FAY: Does it --

9 MR. KNIGHT: -- and Water.

10 HEARING OFFICER FAY: Does it affect
11 your final bottom line recommendation?

12 MR. KNIGHT: Yeah, at the -- at the time
13 of the PSA I believe my conclusion was that the
14 project was consistent with the planning objective
15 of encouraging onsite expansion, but that it be
16 done in a manner that maintains the environmental
17 quality and character of the Moss Landing
18 community, and that was the outstanding issue of
19 Biological and Water impacts. So at that time I
20 couldn't come to a final conclusion that the
21 project was -- would comply with all applicable
22 LORS.

23 But at this time, based on the
24 discussions with Staff, I believe I can make that
25 recommendation. As they pertain to the -- the

1 LORS that I have laid out in the Land Use section.
2 The policies and goals of both the general plan,
3 the -- the local coastal program.

4 HEARING OFFICER FAY: I think that's all
5 I have, then.

6 Thank you very much.

7 That, I believe, concludes our testimony
8 on Land Use and Air Quality. Anything further,
9 Mr. Ellison?

10 MR. ELLISON: Yes, we do have one minor
11 thing. Mr. Marckwald has had the opportunity to
12 count the cluster of houses and has a more precise
13 answer, if you'll indulge us for one moment.

14 HEARING OFFICER FAY: Thanks.

15 MR. MARCKWALD: I'm not -- I believe
16 that it's closer to 30, by my eyeball of the
17 aerial photograph. We can provide you a more
18 precise number, if you would like to --

19 HEARING OFFICER FAY: I think that's
20 fine.

21 MR. MARCKWALD: Okay.

22 HEARING OFFICER FAY: This is -- if you
23 feel it's an adequate photograph that you've
24 relied on for your evaluation.

25 MR. MARCKWALD: I do.

1 HEARING OFFICER FAY: Thank you very
2 much for that clarification.

3 Anything further, then, before we
4 adjourn?

5 I hear no indication, so we will see
6 everybody on Tuesday, at 9:00 a.m., down at the
7 power plant in Moss Landing. And we're adjourned.

8 (Thereupon, the Evidentiary Hearing was
9 concluded at 11:10 a.m.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, 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 Evidentiary Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of June, 2000.

DEBI BAKER

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