

COMMITTEE MEMBERS PRESENT

Ellie Townsend-Smith, Commissioner Advisor

Melissa Jones, Commissioner Advisor

Garret Shean, Hearing Officer

STAFF PRESENT

David Abelson, Staff Counsel

James W. Reede, Jr., Project Manager

Steve Baker

Bob Anderson

Rick Tyler

Jon Davidson, Aspen, Staff Consultant

Thomas Murphy, Aspen, Staff Consultant

APPLICANT

John McKinsey
Livingston & Mattesich

Gary Chandler, Mountainview Power Co.

George Hall, Mountainview Power Co.

Fred Anoush, Duke/Fluor Daniel

ALSO PRESENT

Sara Head, ENSR

Christine M. Mount, ENSR

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

2 HEARING OFFICER SHEAN: First of all, this
3 is intended to be informal. My name is Garret
4 Shean. This is a Committee Workshop. We have a
5 previously issued notice, Notice of Committee
6 Workshop and Prehearing Conference. This is the
7 first of three events. Another workshop tomorrow
8 morning and afternoon, if necessary, but it
9 doesn't appear it'll be necessary, and on November
10 6th, in San Bernardino.

11 Our purpose here today and in those
12 future meetings is going to be to go through the
13 topic areas which were noticed in the -- in the
14 hearing notice, or the workshop notice, which are
15 the typical CEQA topics plus some Engineering,
16 Public Health and Safety matters that are
17 generally considered in the Commission's
18 proceedings and in the Proposed Decision of the
19 Committee.

20 What we propose to do, then, is go
21 through the order of topics that's attached as
22 Appendix A to that document. And I had sent out,
23 over the proof of service, a list of conditions
24 that the parties had included either in their
25 matrix, or the Applicant's stipulation, or the

1 Staff's assessment, and we're going to need to
2 reconcile a few of those. But on the whole, it
3 appears that there are no major substantive
4 differences between the Applicant and the Staff.

5 We will also attempt to assure that our
6 process has identified all potential impacts so
7 the project has all the necessary mitigation, and
8 then we may go over some of the more ministerial
9 matters such as verification, just so we can see
10 if we can expedite and streamline that aspect of
11 our proposed decision writing.

12 With that, why don't we have the folks
13 who are here introduce themselves, and we'll start
14 with Mr. Reede, from the Staff.

15 MR. REEDE: Good morning, ladies and
16 gentlemen. My name is James Reede, and I'm the
17 Energy Facility Siting Project Manager for the
18 Mountainview Power Plant application.

19 HEARING OFFICER SHEAN: It's for the
20 reporter.

21 MR. McKINSEY: My name is John
22 McKinsey, I'm the counsel for the Applicant,
23 Mountainview Power Company.

24 MR. CHANDLER: My name is Gary
25 Chandler, and I'm the Project Manager for the

1 development of Mountainview Power Project.

2 MR. HALL: My name is George Hall. I'm
3 the Plant Manager for Mountainview Power.

4 HEARING OFFICER SHEAN: Okay. Well,
5 with that, now we will dispense with the misters
6 and misses, and all the last names, other than
7 when you're called up topic area by topic area,
8 because it's not my intention to run this like a
9 hearing.

10 When we get to the evidentiary hearing
11 on the 16th, why, all the suits and all the
12 formalities will take over, and we'll do it like
13 that. But we're here to conduct this in an
14 informal manner.

15 Our first topic is going to be Noise,
16 and we're just going to have to cut our teeth on
17 this for a little while and get -- see if we can
18 get a rhythm. And so with that, what I have --

19 MR. REEDE: Excuse me.

20 HEARING OFFICER SHEAN: Sure.

21 MR. REEDE: We had discussed earlier
22 this morning having the Power Plant Reliability
23 and Efficiency go first. Is that correct?

24 HEARING OFFICER SHEAN: Oh, okay. I
25 thought we were swapping personnel, and not

1 topics. But we can -- we can probably do that.

2 It's --

3 MR. REEDE: Well, why don't we just --
4 why don't we just go ahead with the Noise, since
5 they're sitting there and -- all right.

6 MR. MURPHY: Do you want me to come up
7 here?

8 HEARING OFFICER SHEAN: Sure. Wherever
9 you'd like. And we're not here to grill you,
10 we're just trying to figure out what we've got.
11 And I guess what we're going to do is go through
12 these conditions first, and then sort of backtrack
13 through the impacts, and then the verifications.

14 Now, it appeared to me, based upon my
15 reading, that the -- there were minor differences
16 in the Noise-1 condition that had to with how far
17 out the notification was to occur. And am I
18 correct that Staff had indicated half a mile, and
19 Applicant had a mile? What do we think is
20 necessary, or -- or appropriate? Are you
21 satisfied with half a mile?

22 MR. MURPHY: Yeah, half a mile is what
23 I thought would be appropriate, from the site.

24 By the way, I'm Tom Murphy, from Aspen
25 Environmental Group.

1 But I also added in there any
2 notification of adjacent land use along the
3 pipeline route.

4 HEARING OFFICER SHEAN: Okay. Now, how
5 far should adjacent go out, do we think? I mean,
6 is --

7 MR. MURPHY: I think just the -- right
8 -- right next to the right-of-way, or where the
9 pipeline will be laid within the street. I
10 believe the pipeline will be within the street the
11 entire route.

12 HEARING OFFICER SHEAN: Okay. Is that
13 satisfactory to you, the Applicant?

14 MR. MCKINSEY: Yeah. I -- that's not a
15 problem at all that I can think of.

16 MR. REEDE: Am I understanding that
17 we're talking about the 500 foot statutory
18 notification?

19 HEARING OFFICER SHEAN: Well, he's
20 saying adjacent. Maybe we better ask him what you
21 mean by adjacent.

22 MR. MURPHY: I -- I was thinking just
23 the -- if it's going down a double lane with a
24 median in between the adjacent land use, whether
25 it be commercial or whatever, just notifying that

1 there will be construction going on at a
2 particular time.

3 HEARING OFFICER SHEAN: Okay. So the
4 first adjacent owner of property.

5 MR. MURPHY: Right. Right.

6 MR. MCKINSEY: Is there a -- are you
7 referring to a statutory 500 foot requirement?

8 MR. REEDE: Well, we had to send out
9 notices of the application to all the residents
10 within 500 feet of the proposed linears of the
11 pipelines. And that's why I brought up 500 feet.
12 But if the consultant suggests immediately
13 adjacent, I don't have a problem with that.

14 MR. MCKINSEY: Okay.

15 HEARING OFFICER SHEAN: Okay. And we -
16 - do we think we -- immediately adjacent is
17 sufficiently clear?

18 MR. CHANDLER: That would be on both
19 sides of the street?

20 MR. MURPHY: Yes.

21 HEARING OFFICER SHEAN: Okay. Now, let
22 me ask -- okay. And 15 days is the period that
23 you want for that, in terms of when that is to
24 occur?

25 MR. MURPHY: That is correct.

1 MR. MCKINSEY: This --

2 HEARING OFFICER SHEAN: Sure. Go
3 ahead, chime in anytime.

4 MR. MCKINSEY: -- raises a good topic
5 with the gas pipeline, because it is so long, that
6 in a sense, what 15 days, if it's for the entire
7 pipeline, could mean a year or a half a year in
8 advance, which almost might kind of destroy the
9 idea of trying to make it adjacent.

10 But this is something that's come up
11 before, where the whole project is often, you
12 know, lumped together as one commencement date,
13 but often there are different things that start at
14 different times. And we had talked of trying to
15 -- of trying to set up conditions, not just in the
16 Noise area but in other ways, that kind of reflect
17 more the pattern of -- of construction and
18 development.

19 So one possibility might be to -- to
20 describe it as 15 days prior by city zone,
21 because, you know, the gas pipeline goes through
22 five, four cities. It could also be, you know, it
23 could be some kind of notice requirement for -- in
24 theory, I mean, you could even go as far as to say
25 15 days notice up to -- for the people that are

1 going to be impacted then, though that might be a
2 little too nondescript.

3 But this is a really good issue,
4 because, I mean, we can send out, you know,
5 notices for that entire 17 mile pipeline, but some
6 of that construction may not show up there for an
7 entire year, and --

8 HEARING OFFICER SHEAN: Okay. So
9 you're talking about some sort of rolling
10 notification concept --

11 MR. MCKINSEY: Right.

12 HEARING OFFICER SHEAN: -- for these
13 linear facilities.

14 MR. MCKINSEY: Yeah. And, see, that's
15 kind of, you know, the -- the Noise condition is
16 oriented towards the whole project as a whole, so
17 you -- you've got the groundbreaking that goes on
18 for the -- the site, and you've got groundbreaking
19 that goes on for the linear. And in the case of
20 our gas pipeline, it's 17 miles long, which, you
21 know, you can send out -- you could do some
22 planning in one area and come there four months
23 later and two of the businesses have closed, and
24 -- and people may have sold their homes. And so
25 it might make sense to have the noticing go on

1 closer to when the construction's going to occur.

2 And that -- one way to do it might be
3 to do it by region.

4 MR. MURPHY: I agree. And I think
5 that's -- and -- we've worked on a number of
6 pipeline projects, and that's generally how we've
7 done it in the past.

8 HEARING OFFICER SHEAN: Okay. We're
9 going to make up sort of a "to do" list. And I'm
10 going to put on it that we're going to try to work
11 out some language that would identify the site,
12 and then the concept of a rolling notification, at
13 least in Noise, and it may work out into certain
14 other areas, as well.

15 So --

16 MR. McKINSEY: Yeah. In fact, also
17 part of that is that that would also logically be
18 breaking up the gas pipeline from the -- the site
19 base construction.

20 HEARING OFFICER SHEAN: Okay.

21 MR. McKINSEY: Is that an issue?

22 MR. REEDE: No. However, if we're
23 going to make it applicable to the gas pipeline,
24 we also may make it applicable to the recycled
25 water 2.3 mile pipeline, and the -- the 1100 foot

1 connector to the --

2 MR. MCKINSEY: Yeah, both --

3 MR. REEDE: -- Santa Ana regional
4 interceptor.

5 MR. MCKINSEY: One of our broad
6 corrections was on the -- the recycled water
7 pipeline. We're not -- that -- that was in the
8 original AFC, but --

9 HEARING OFFICER SHEAN: Right.

10 MR. MCKINSEY: -- we -- we pulled that
11 out as necessary, because of the existing water
12 pipeline that -- that is in the street. So we
13 don't have to construct that. And that showed up
14 in a few places in -- in the Staff assessment,
15 mostly under descriptions. But the -- but the
16 other one is the short -- line connector, and
17 that's not really that problematic, because it's
18 all entirely within the golf course, or that --
19 hanging on that bridge, which is public county
20 property.

21 MR. REEDE: Okay.

22 HEARING OFFICER SHEAN: Well, I foresee
23 that generically we're going to need a rolling
24 notification version here --

25 MR. MURPHY: For any linears. Right.

1 HEARING OFFICER SHEAN: -- for any
2 linear facility, and --

3 MR. CHANDLER: Well, there is only one
4 linear, though.

5 HEARING OFFICER SHEAN: Yeah, there is
6 for you. There will be -- I mean, others are
7 going to have transmission pipelines, and sewage,
8 and everything else, so --

9 MR. MCKINSEY: Well, the water -- the
10 star line is a linear, also. I mean -- so that
11 would make sense to notice that.

12 HEARING OFFICER SHEAN: -- I just
13 assumed that if we can work this out, and get a
14 generic linear facility rolling notification
15 thing, it'll be applicable. So that's number one
16 on my to do list.

17 MR. MCKINSEY: And then, you know, the
18 -- the recycled water supply line has been
19 confusing, because we talked about the wastewater
20 -- sorry, discharge line, and we talked about the
21 recycled water supply line, and they sound one and
22 the same. But the -- the original project
23 description anticipated having to construct a
24 waterline in the streets of the City of -- of
25 Redlands to get the recycled water to the

1 facility. As it turned out, the City of Redlands
2 already had existing pipeline in the street, and,
3 in fact, has their own project to develop their
4 recycled water supply to people in the whole
5 region. And so we're simply tapping into it right
6 at the street.

7 And, but that has been something that,
8 you know, we've -- in the confusion of different
9 water pipelines, it's escaped the clarity quite a
10 few times.

11 HEARING OFFICER SHEAN: Okay. Well
12 then, let me point out, this is one of the reasons
13 in that project description thing that the
14 Committee was asking for, where that kind of
15 clarity can be assured once we get from you the
16 sort of where it is today, as we're ready to go
17 with the -- the record that establishes the basis
18 for the decision. So that -- that's one of the
19 reasons for that concept.

20 All right. Do we have anything on --
21 two through seven, I guess, appear to be pretty
22 much -- at least the substance of them are -- are
23 agreed to.

24 MR. MCKINSEY: The one thing we caught
25 was the County of San Bernardino appears in

1 several of them, when it should be the City of
2 Redlands, I believe.

3 MR. MURPHY: I think when I was
4 preparing this it was still the County of San
5 Bernardino.

6 MR. MCKINSEY: Right. And that shows
7 up in -- yeah, two, six, and eight. Do we know
8 the right title? Is it the City of Redlands?
9 It's probably the planning department, but I don't
10 -- we don't know that for sure.

11 MR. MURPHY: Is that annexation
12 complete?

13 MR. MCKINSEY: Yeah.

14 MR. REEDE: It was completed October
15 17th, for the record.

16 MR. CHANDLER: Let -- let me just
17 clarify that a little bit, though. The actual
18 annexation has been approved by LAFCO, they're the
19 agency, and then the cities and everyone else. It
20 won't finally go through until we drop our appeal,
21 and we haven't done that yet. But we're the only
22 ones that will be holding it up at this point.
23 And the reason we haven't done that is because we
24 have a -- the development agreement with the City
25 of Redlands was approved, and there -- by statute,

1 there's a 90 day appeal period to that -- to that
2 development agreement.

3 And we -- we would sort of like to let
4 that 90 days run to make sure that -- that there's
5 no appeal to that, and that the City of Redlands
6 doesn't get back involved in that, because that's
7 the only leverage we have over them, is the
8 annexation issue.

9 But other than that, there is no issue.
10 I mean, we're -- we're the only ones that are
11 preventing it from being concluded tomorrow. And
12 we could drop our appeal at any time, but we
13 haven't done that.

14 HEARING OFFICER SHEAN: Okay. Let me
15 just -- and on Noise-3, the verification has the
16 30 days prior, and the condition itself doesn't
17 state a particular time. Is that the way you want
18 that left?

19 MR. MURPHY: Yes.

20 HEARING OFFICER SHEAN: Okay. And --

21 MR. ABELSON: Garrett, forgive me for -

22 - HEARING OFFICER SHEAN: Sure.

23 MR. ABELSON: -- for just a second.

24 Just a protocol, since I know you're going to want
25 to keep moving through the next two or three.

1 You stated a 90 day process of appeal
2 on the LAFCO city determinations?

3 MR. CHANDLER: No, the 90 day appeal
4 period applies to the development agreement.

5 MR. ABELSON: As to whether it goes
6 into --

7 MR. CHANDLER: With -- with the City of
8 Redlands. And that doesn't -- that doesn't tie
9 directly to the annexation at all. The
10 development agreement has been -- of course, it
11 was -- it's gone through two readings. It was
12 executed, it was approved twice by the City
13 Council with the second time, and the final
14 approval being October 17th. And then that --
15 that agreement is subject to appeal -- I don't
16 know who would appeal it, but someone in the city
17 or something -- for a period of 90 days.

18 And that in itself isn't tied to the
19 annexation at all.

20 MR. ABELSON: Right. Actually, all I'm
21 really trying to do is figure out how accurately
22 to describe this, assuming we're going to have a
23 PMPD out, let's say, in the next three months.
24 It's possible, certainly, with the current
25 schedule. How to describe accurately the current

1 status of what is -- is -- has the area been
2 annexed, or not. And if not, when will it be
3 annexed.

4 MR. CHANDLER: Well, let me say what I
5 think will happen, and, now, we could change this
6 if there's a need to. But our -- our proposal is
7 -- our plan is that we will let that 90 day appeal
8 period run out, which will be on the 14th of
9 January. The first January meeting of LAFCO I
10 believe is on the 17th of January, so we will
11 notify them before that meeting that we are
12 dropping our appeal, and would ask that they go
13 ahead and conclude that annexation in that January
14 meeting.

15 So the annexation would not officially
16 take effect until that -- that date. Now, if
17 that's a problem, we can re-examine that plan and
18 perhaps determine that we're going to drop our
19 appeal sooner, December or November, if we have
20 to.

21 HEARING OFFICER SHEAN: What would that
22 lead to --

23 MR. REEDE: Yes. Well, that -- that
24 does create a problem.

25 HEARING OFFICER SHEAN: -- an earlier

1 LAFCO action --

2 MR. CHANDLER: Yes. They'll take
3 action as soon as we drop our appeal.

4 MR. REEDE: The problem is that Staff
5 was informed on the 17th and wrote their Staff
6 Assessment based on the information that the
7 annexation had been completed. The local agency
8 changes between the County of San Bernardino and
9 the City of Redlands upon annexation. The
10 conditions were written, for the most part, based
11 upon the property being in the City of Redlands.

12 MR. CHANDLER: And we will be in the
13 City of Redlands. That -- that is entirely within
14 our control.

15 MR. REEDE: But the problem is that we
16 wrote the Staff Assessment based upon the
17 information that it had been annexed. So --

18 MR. CHANDLER: Well, for all intents
19 and purposes, it has.

20 MR. MCKINSEY: We're the only ones that
21 can stop it from being so. Should, for instance,
22 this project not be approved, that would be a very
23 good reason to throw in an appeal and block the
24 annexation, if the -- if -- in other words, it's
25 something I think we would --

1 HEARING OFFICER SHEAN: Okay. I think
2 the way to deal with this is --

3 MR. MCKINSEY: -- proceeding with the
4 risk on that.

5 HEARING OFFICER SHEAN: -- whatever the
6 analysis we may -- knowing what we now know, is
7 that the Proposed Decision indicates that the
8 matter had -- is still subject to the appeal. But
9 I would just say the Commission won't -- we'll
10 schedule whatever -- a Commission action on a
11 Proposed Decision for consideration and possible
12 adoption after a time that we would know that the
13 annexation has been completed and there are no
14 further -- either appeals or the potential that
15 the annexation can be undone. Right?

16 MR. CHANDLER: Well, there is no
17 potential it can be undone except by us.

18 MR. MCKINSEY: See, if we get a
19 decision --

20 MR. CHANDLER: It's already been
21 approved.

22 MR. MCKINSEY: -- that is written for
23 the City of Redlands, and then we yank ourselves
24 out of the City of Redlands, what we're really
25 doing is destroying our decision.

1 HEARING OFFICER SHEAN: But there's
2 some further action by LAFCO that's necessary;
3 right? There is a last step, if I understood you
4 correctly.

5 MR. CHANDLER: Well, I -- I'm not sure
6 I can answer that exactly, but my understanding is
7 that we simply need to drop our appeal, and they
8 affirm their previous decision, and -- and that's
9 --

10 HEARING OFFICER SHEAN: Right. Well, I
11 don't think we should make a bigger deal of this
12 than it is. But it just seems that before --
13 before the decision is rendered, the -- this
14 matter needs to be closed.

15 MR. ABELSON: What -- what I think I'm
16 hearing is a chicken and egg issue, but let's just
17 be sure I'm getting the problem.

18 You -- you don't want to drop your
19 appeal until you know you've got your ticket from
20 us --

21 MR. MCKINSEY: Well, it's actually --

22 MR. ABELSON: -- and we can't give you
23 your ticket until we know what rules we're
24 operating under.

25 MR. MCKINSEY: The real issue is the

1 development agreement with the City of Redlands,
2 which, even though it doesn't tie on the
3 annexation, like in any negotiation situation once
4 -- once we drop our appeal, then the City of
5 Redlands completely has us, and we have no other
6 options if there are any terms that -- that seem
7 ambiguous or that are still getting resolved under
8 the development agreement.

9 So strategically, it's to our advantage
10 to -- to hold ourselves in that position where we
11 have the ability to stop the process. That's the
12 same kind of strategic advantage that it has if --
13 if we're applying for a permit, and in the process
14 of applying for the permit we commit ourselves to
15 a new jurisdiction. Say that this project doesn't
16 happen, and then the property is now under that
17 new jurisdiction and it may turn out there's
18 another use for it that might've been better had
19 we stayed in the county with the property.

20 But I -- it is an issue if we -- we had
21 proceeded under the understanding that -- that we
22 had demonstrated more than sufficient evidence
23 that -- that it's reasonable to believe that we
24 will be appropriately subject to the City of
25 Redlands LORS. And that, if anything, we're

1 proceeding under our risk that -- that that
2 wouldn't become so.

3 In other words, I don't think that the
4 -- the Warren-Alquist Act and the regulations
5 require anything other than the Staff be
6 comfortable with some degree of probability,
7 because there's never a single certainty. But --
8 but it doesn't, for instance, it doesn't say
9 expressly anywhere in there that -- that we can't
10 get a decision that makes some assumptions as to
11 things that occur.

12 I mean, maybe the -- another solution
13 is there ought to be a condition in there that
14 says show proof that -- that we dropped our appeal
15 on annexation. We do that a lot where we see
16 things that are going to happen. Like a lot of
17 times you'll see a Fish and Wildlife opinion that
18 even though it's intrinsic to the project going
19 forward, we throw -- it's not going to be
20 completed until after the approval decision, but
21 we see enough probability that it will be
22 completed, that, if anything, we throw a condition
23 in there that says evidence that you've gone
24 through that step.

25 So I didn't see this as a barrier,

1 other than we needed to show that we -- we had
2 advanced enough that it -- it isn't an issue
3 whether we will be subject to the County of San
4 Bernardino or the City of Redlands. That we
5 clearly now have within our grasp the ability to
6 be subject to the City of Redlands LORS, so we can
7 get a permit based on the City of Redlands LORS.
8 And that's what our intent was.

9 HEARING OFFICER SHEAN: Okay.

10 MR. ABELSON: One thing here, the way
11 this thing is written, and Bob, correct me if I'm
12 wrong, this is based on the County of San
13 Bernardino. So basically, what you're saying,
14 this is around the County of San Bernardino --
15 around the City of Redlands to what it is right
16 now.

17 MR. REEDE: Okay. So the condition
18 needs to be changed to reflect the City of
19 Redlands.

20 MR. ABELSON: That's correct.

21 MR. McKINSEY: Well, you're talking
22 about not the conditions, you're talking about the
23 description.

24 MR. ABELSON: The description, yes.

25 MR. McKINSEY: The analysis.

1 MR. ABELSON: I guess he was talking --

2 MR. MCKINSEY: But we -- we already
3 pointed out in the conditions where it's -- citing
4 the reporting to the county, but the -- the
5 conditions reflect the City of Redlands, in terms
6 of the limits. But this is actually -- I think
7 it's an important issue to understand.

8 As he indicated, we have lots of
9 options. If it were to be shown that that -- that
10 that's a requirement, we can drop the appeal.
11 That's not our preference. We can also throw in a
12 condition that says we have to complete the
13 appeal, or complete the, you know, final and
14 provide proof of that.

15 MR. REEDE: But my instinct says that -
16 - and Staff -- I think you better do one or the
17 other, for sure. And the reason that I say that
18 is because basically, we can't issue something
19 except on determination that it's compliance with
20 all applicable laws and ordinances. I mean, until
21 your appeal is done there aren't any applicable
22 laws and ordinances in the City of Redlands,
23 because you aren't in there.

24 MR. MCKINSEY: Unless we have a
25 condition that that's one of the conditions, is

1 that --

2 MR. REEDE: Well, that's a creative
3 perhaps solution to it, and I'd defer a little bit
4 to Garret's preferences that way, how the
5 Committee might want to respond to that. This --
6 this may be an issue --

7 HEARING OFFICER SHEAN: Well, this may
8 all go away. You -- you have to do something by
9 the middle of January, or withdraw your appeal, if
10 I'm understanding correctly. And I -- I don't see
11 the Commission being able to make a decision prior
12 to the 17th of January. So you either walk in to
13 a Commission meeting having withdrawn your appeal
14 and the LAFCO action having occurred, and
15 everything is settled, or it's not, and the
16 Commission may choose to do either, you know, keep
17 the matters pending or do some other thing, in
18 their wisdom. And we'll just make a
19 recommendation based upon the condition at the
20 time we're there.

21 MR. ABELSON: And I -- I think that's
22 actually a two step that could work. Your
23 suggestion of a condition in the interim, so that
24 whatever was going out of the public document,
25 Garret, in effect we're trying to describe what

1 the current status of this thing is and describe
2 it accurately, so that we get that done, and
3 whatever the revised versions of these templates
4 are and the texts are.

5 And then the second point that you
6 make, Garret, that ultimately there do have to be
7 applicable laws when the Commission acts, and we
8 have to know that those are -- are basically
9 relevant, that's a timing question, and it sounds
10 like that's going to be mooted out just be the
11 timing that was expected and the schedule for when
12 this would go before the Commission, anyway.

13 MR. MCKINSEY: All right. I -- I would
14 be nervous, just because we could drop our appeal
15 and -- and they could have a flash flood and that
16 meeting could get cancelled, and the next meeting
17 might be February 1st. So having a condition, or
18 we drop our appeal early enough, you know, to
19 catch a meeting in December, or even --

20 MR. CHANDLER: They only meet once a
21 month.

22 MR. MCKINSEY: -- to make sure that we
23 clear that. But if we had the condition there,
24 then that also allows us to -- to use a February
25 meeting if we miss the January one. I mean, this

1 is your decision in terms of --

2 HEARING OFFICER SHEAN: I just suspect
3 the Commission -- this is a big enough deal that
4 they're probably going to want to, at the time
5 they make a decision, know that the annexation has
6 been firmed up and is essentially complete.

7 MR. CHANDLER: Well, we can -- we can
8 deal with that.

9 HEARING OFFICER SHEAN: Okay.

10 MR. MCKINSEY: If we were to do a
11 condition, maybe it would make sense to be a Land
12 Use condition; correct? And we're going to hit
13 that topic tomorrow; right?

14 HEARING OFFICER SHEAN: I think, as I
15 say, I think there's very little likelihood that
16 they're going to want to load out a decision that
17 would say there is a subsequent condition that the
18 annexation be complete. I think, just knowing
19 these guys, they're going to want to know that the
20 annexation has occurred, not that it will occur.

21 MR. CHANDLER: I think we can -- we'll
22 work that out so that that happens.

23 HEARING OFFICER SHEAN: Okay. Sure,
24 okay. And it seems like it will correspond to
25 your general timeframe.

1 Okay. Let me just ask, with regard to
2 Condition Number 6, I'm -- the within 30 days of
3 achieving 80 percent output or greater, that's to
4 capture the idea that it's about as noisy as it's
5 going to get; is that -- is that right?

6 Now, in seven, you say it's the -- the
7 survey is to be conducted within 30 days of full
8 operation. Now, is that -- and one is for the
9 public, and the other is for workers.

10 MR. MURPHY: For workers, right.

11 HEARING OFFICER SHEAN: Are they both
12 trying to capture the nearest same operating
13 condition --

14 MR. MURPHY: That's correct.

15 HEARING OFFICER SHEAN: -- which is as
16 noisy as we can get it.

17 MR. MURPHY: And what we can do is make
18 a modification to that, to make it consistent. We
19 can make -- make it consistent.

20 HEARING OFFICER SHEAN: Okay. They
21 could be one and the same, then. Let's just try
22 to figure out that, because we're -- we're trying
23 to pare down the number of triggering events for
24 -- for this. So -- okay. We'll work on that.

25 Oh, I guess -- let me ask you as to

1 Number 7, the verification. That's within 30 days
2 of completing the survey as -- how about the --
3 the use of the next monthly construction report?
4 Is that --

5 MR. MURPHY: That would be -- that
6 would be fine.

7 HEARING OFFICER SHEAN: Okay.

8 MR. MURPHY: Could I put it in parens,
9 or --

10 HEARING OFFICER SHEAN: No, I'll just -
11 - we'll -- as I say, we're going to go through
12 some of these verifications, just try to tidy them
13 up so we can put them on a schedule that has the -
14 - the most compressed -- I mean, what -- what you
15 don't know is that we -- we've gotten a list of
16 all the verification events, and there are 55 of
17 them, through various phases, and we're trying to
18 consolidate those.

19 MR. MURPHY: You got -- you got that
20 from the Applicant?

21 HEARING OFFICER SHEAN: Pardon me?

22 MR. MURPHY: You received that from the
23 Applicant?

24 HEARING OFFICER SHEAN:: No, this is
25 from the Staff.

1 MR. MURPHY: Okay.

2 HEARING OFFICER SHEAN: So, since this
3 is essentially a ministerial function, I just
4 wanted to make sure I understand what -- what the
5 -- what you're trying to capture in terms of
6 either the greatest amount of noise, and when it
7 needs to be reported. So we have, I think, now a
8 pretty good idea of that.

9 MR. MURPHY: Okay.

10 HEARING OFFICER SHEAN: Okay. And, at
11 least I'm pretty well satisfied on Noise. Is
12 there anything anybody else wants to raise?

13 No. Okay. We're done with Noise.

14 Now, did you want to move to --

15 MR. REEDE: Yes, I wanted to move to
16 Power Plant Efficiency, Reliability, and are you
17 going to address Facility Design also?

18 Okay, we're going to ask to move
19 Efficiency and Reliability together, and then
20 Geology right after that. And the rest of the
21 sequence.

22 HEARING OFFICER SHEAN: All right. Let
23 me just -- since I indicated on the notice that we
24 were going to do this, no -- no one at this point
25 is requesting a hearing on -- on the Noise issue,

1 so that we can take that by uncontested
2 declarations. Is that okay with everybody?

3 MR. REEDE: Yes.

4 MR. McKINSEY: That's fine.

5 MR. REEDE: And basically, we'll see
6 revised conditions from the Applicant, or from the
7 Staff, or where the revised conditions come from.
8 Or will they show up in the PMPD?

9 HEARING OFFICER SHEAN: Well, they
10 could either show up in the PMPD, or, as I say,
11 I'm -- I have a running to do list here, and it
12 may be that the Staff is in the best position, in
13 consultation with the Applicant here, to come up
14 with the generic language about this rolling
15 notification for a linear facility, so that we can
16 kind of figure out how to plug -- plug that in.
17 So that's -- and I think we'll go over that at the
18 Prehearing Conference, so we can --

19 MR. MURPHY: Is that something I should
20 contact John about, or --

21 MR. McKINSEY: Yeah. However it'll
22 work best. I mean, if you want to try to draft it
23 and then -- or if you want to -- we can talk. I
24 mean, that'd be the easiest way. Make sure that -
25 - I don't think it'll be too hard, that it's just

1 a matter of finding the right way to describe it
2 so it's workable.

3 HEARING OFFICER SHEAN: Right. Somehow
4 we're going to make the concept of rolling
5 notification, which I know what it means, into a
6 paragraph. Because that's the way government does
7 it.

8 All right. We're now on Efficiency and
9 Reliability. And my review of this basically gets
10 us to the point where on Efficiency, to satisfy
11 sort of the CEQA element in all this, the facility
12 is efficient. It doesn't consume an inordinate
13 amount of resources. And there's no basis for any
14 conditions. Right, Steve?

15 MR. BAKER: I'd just like to point out
16 that we need to fix a typographical error on page
17 7.

18 HEARING OFFICER SHEAN: Which page?

19 MR. BAKER: Page 7. The first line
20 under conclusions.

21 HEARING OFFICER SHEAN: Okay.

22 MR. BAKER: The number there should be
23 it would generate 1,056 megawatts.

24 MR. MCKINSEY: Page 485 in the --

25 HEARING OFFICER SHEAN: Yeah, 485 in

1 the --

2 MR. MCKINSEY: Yeah.

3 HEARING OFFICER SHEAN: -- in the Staff
4 Assessment. Okay.

5 MR. BAKER: I think you've adequately
6 summarized the area of Efficiency.

7 HEARING OFFICER SHEAN: All right. So
8 that takes Efficiency out? I mean, is there
9 anymore? So the comment on the --

10 MR. REEDE: One zero five six.

11 HEARING OFFICER SHEAN: One zero five
12 six.

13 Any comments or additional matters on
14 Efficiency? Then I'm going to show that no
15 hearing's been requested on that. And we will
16 take it by uncontested declarations.

17 And we'll move now to Reliability, and
18 having read that, it's basically that this
19 facility is expected to operate within the norms
20 and standards in the industry as to both equipment
21 availability and maintenance of the facility. It
22 has adequate water and fuel supply, and from
23 either -- and from natural hazards it's not
24 expected to be less available than industry norm.
25 And that's about that; right? And therefore, no

1 conditions are recommended.

2 Okay. And with that, we will indicate
3 that there is no request to have an evidentiary
4 hearing on any issue related to Reliability.
5 We'll take it on uncontested declarations. And
6 thanks, Steve.

7 MR. BAKER: Thank you.

8 MR. REEDE: Excuse me.

9 HEARING OFFICER SHEAN: You want him
10 for --

11 MR. REEDE: For the record, could you
12 give her your name?

13 MR. BAKER: My name is Steve Baker.

14 HEARING OFFICER SHEAN: Did you want to
15 do the Facility Design stuff now?

16 MR. BAKER: I'll just --

17 HEARING OFFICER SHEAN: And would you
18 please also send up Bob Anderson now.

19 Should we be going over this now, or --

20 MR. REEDE: Pardon me?

21 HEARING OFFICER SHEAN: What do you
22 want -- did you want to do something next, out of
23 order, or --

24 MR. REEDE: No. Because actually,
25 Geology was supposed to be next.

1 HEARING OFFICER SHEAN: Okay.

2 MR. REEDE: But we can knock Facility
3 Design out fairly quickly, because there was only
4 one condition, and -- that was in conflict, and
5 that related to the HVAC system, because
6 basically, the Applicant didn't adjust it.

7 HEARING OFFICER SHEAN: Okay. Do you
8 want to -- shall we do this now? Do you want to
9 do it now?

10 MR. MCKINSEY: Yeah.

11 HEARING OFFICER SHEAN: Okay.

12 MR. MCKINSEY: We're just going to get
13 caught up a little here. Numbering things, and
14 labeling them.

15 HEARING OFFICER SHEAN: That's why we
16 hope to get to a common format. Then we won't be
17 shuffling pages back and forth.

18 MR. MCKINSEY: Okay. Do you have a
19 page on that?

20 HEARING OFFICER SHEAN: Their
21 Mechanical 3 is on page --

22 MR. REEDE: Basically, nothing was
23 addressed.

24 HEARING OFFICER SHEAN: -- page 468 of
25 the Staff Assessment.

1 See, if you go to page 2023, under
2 Standard Mechanical Conditions, and your
3 stipulation.

4 MR. MCKINSEY: Right.

5 HEARING OFFICER SHEAN: That was --

6 MR. MCKINSEY: Now I understand what
7 you were getting at. I was thinking you were
8 saying that we weren't -- no, we don't have an
9 issue with this condition.

10 MR. CHANDLER: We don't.

11 MR. MCKINSEY: In fact, I think that
12 was an omission by error. But I remember --

13 MR. REEDE: So it wasn't mentioned, and
14 you'll stipulate that you accept that particular
15 condition.

16 MR. ANOUSH: That's good. By
17 stipulating the CBC code, we, quote, unquote,
18 umbrella the whole thing, HVAC, the structural,
19 and the rest of the --

20 HEARING OFFICER SHEAN: Okay.

21 MR. ANOUSH: So there is no problem.

22 HEARING OFFICER SHEAN: So you
23 stipulate that you accept the Commission's
24 condition, and thank you very much.

25 (Laughter.)

1 MR. REEDE: Okay. Well --

2 MR. ANOUSH: Am I excused?

3 MR. REEDE: Yes, you are.

4 Mr. Anderson, Geology.

5 HEARING OFFICER SHEAN: Okay. So we'll
6 indicate now, with -- with that change, with the
7 inclusion of Mechanical 3, that there are no
8 issues on Facility Design, no one is requesting a
9 hearing on any matter, and that will be taken by
10 uncontested declarations.

11 Okay. We'll go now to Geology.

12 MR. ANDERSON: Good morning. I'm Bob
13 Anderson. I wrote the -- oh. Good morning. I'm
14 Bob Anderson, and I wrote the Staff Assessment
15 section on Geology and Paleontology. Also within
16 that section you'll find notes regarding surface
17 water hydrology. And entertain any questions or
18 comments that you might have. I don't have any --

19 HEARING OFFICER SHEAN: The main one,
20 obviously -- let me just indicate, having read all
21 this, the main one has to deal with this
22 liquefaction analysis. Because that's the
23 principal substantive difference between the
24 Applicant and Staff's presentation. That's their
25 GEO-2. Page 438 of the Final -- Staff Assessment.

1 MR. MCKINSEY: That's -- yeah, that's
2 not a problem.

3 HEARING OFFICER SHEAN: That's okay?

4 MR. MCKINSEY: That's not a problem.
5 That's totally --

6 HEARING OFFICER SHEAN: Okay.

7 MR. ANDERSON: Is there anything for
8 Paleontology or Surface Water Hydrology?

9 MR. MCKINSEY: No.

10 MR. REEDE: Well, let's --

11 HEARING OFFICER SHEAN: Let's just do
12 the clean-up. Let's just go through a couple of
13 these.

14 Just so I have a clear understanding,
15 on GEO-2, your prior to completion of the final
16 design of the project, the owner shall have a
17 liquefaction analysis conducted. So this -- this
18 is intended to advise the engineering geologist
19 whether or not they're going to have to do some
20 remedial work with the soils for the foundations;
21 is that the idea?

22 MR. ANDERSON: Could you speak up a
23 little bit?

24 HEARING OFFICER SHEAN: Are we working
25 on -- is the idea behind this that the completion

1 of that plan at that time is so that the
2 engineering geologist can inform the Applicant
3 about whether or not some work has to be done on
4 the underlying soils for adequate foundations for
5 the facility? Is that --

6 MR. ANDERSON: Yes, that's the general
7 trend. What's happened in the area, there is a
8 regional liquefaction remedial action plan that's
9 already been incorporated. And that's one of the
10 aspects, one of the benefits of lowering the
11 regional groundwater table. And that was
12 discussed in the text of the Staff Assessment, and
13 the Applicant was already cognizant of that.

14 So that would more than likely be one
15 of the main remedial action alternatives should
16 liquefaction analysis point to any kind of work to
17 be done for that particular site. It's got a high
18 ground acceleration potential for that site of
19 28G, and the groundwater, even though it's about
20 100 and 510 feet below the existing grade, it
21 turns out that liquefaction can occur at depths in
22 excess of that. It's not common in literature.
23 There was a case in 1971 with a similar earthquake
24 that liquefaction occurred at 160 feet below
25 grade, but that's not this particular site, and

1 that's not this particular environmental study
2 we're looking at here.

3 What we're trying to do is -- is make
4 sure that the design engineer team has what they
5 need relative to the CBC, which is driving this,
6 and a good solid foundation in engineering
7 geologic practice. And the Applicant's very well
8 aware of this, is what I recall from our previous
9 dealings.

10 HEARING OFFICER SHEAN: Okay.

11 MR. MCKINSEY: One thing that actually
12 -- as we were looking at the verification side of
13 it, in fact, I don't know how applicable this is
14 for pipelines which don't really have a
15 foundation, that are buried in roadbeds.

16 MR. ANDERSON: Right. But they can
17 rise out of the roadbed itself, and that's where a
18 lot of deformation in utility corridors occurs, is
19 liquefaction. This particular project has a
20 potential problem that they're crossing the San
21 Jacinto fault, as well, but on a -- on a project
22 level basis, not just one little piece of one
23 little linear.

24 My concern would be more on
25 liquefaction issues relative to this, because you

1 can get what is the equivalent of ponded
2 groundwater in liquefaction, or in -- excuse me,
3 utility corridor areas if, in fact, you had a
4 coincident event of a good sized earthquake and
5 you've had your seasonal rains that have come
6 through the area. At other times of the year, it
7 probably won't be a factor for something as light
8 and as -- and is so near to the surface as your
9 utility corridor. And if, in fact, you had a -- a
10 transient phenomena of saturated soils in the near
11 surface in the utility corridor, you can have the
12 pipe rise right out of the bed.

13 MR. MCKINSEY: Do we need to have the
14 ability to do a liquefaction analysis on the
15 pipeline separate? I mean, one of the things, you
16 know, the long leg of our construction is the
17 facility, and kind of like we got it before with
18 that pipeline, we -- we've commenced a
19 liquefaction analysis already for the facility.

20 The pipeline is going to be a -- a few
21 minutes late. It may also be a little -- it may
22 take a little longer, simply because I -- I'm
23 guessing here, but it's going to go to different
24 regions and require -- so the question would be,
25 would we be able to parse out the triggering of

1 the -- before construction of -- before the final
2 design of the pipeline, we have a liquefaction
3 analysis for the pipeline.

4 As opposed to right now, it's just one
5 complete analysis and one triggering step.

6 MR. ANDERSON: Is the timing of the
7 project with the linears and the pipelines, in
8 particular, such that you would probably be
9 working on the main facility first and linears
10 later?

11 MR. CHANDLER: Yeah. Yes.

12 MR. ANDERSON: I have no problem with
13 that, whatsoever.

14 MR. CHANDLER: Much later, probably a
15 year later.

16 MR. ANDERSON: I have no problem
17 whatsoever with that kind of a proposal. To do
18 the main site first, and then while you're doing
19 other activities you can catch the liquefaction
20 part two, if you will, for utility corridors
21 afterwards. And also to give you that much
22 information on liquefaction potential in that
23 area. And it may turn out to be that you decide
24 that you don't need it, based on the first one.

25 But we're looking at a CBC 1804.5 as --

1 as the driver, if you will, and then also if you
2 find something else other than the -- guidelines
3 that are reasonable for that site, and your geo-
4 tech engineers -- engineering geologists are
5 willing to stamp it, then we would be willing to
6 entertain it.

7 MR. ANOUSH: How far out of the
8 boundary do you consider -- we're doing the power
9 plant facility as we speak. But would you be
10 willing to consider that for the linear pipeline
11 as well, or do you want an independent geo-
12 technical report for the pipeline?

13 MR. ANDERSON: I'd be looking for the
14 pipeline outside the two-mile radius. I'm not
15 saying you need to do the entire liquefaction
16 analysis for two miles. That's an awful lot of
17 work. You concentrate on the footprint area of
18 the -- of the project for the power plant, and
19 maybe out 200 feet out from the limits of that
20 particular project area.

21 And for the utility corridor itself,
22 get wit your engineer who knows your -- your
23 geology at that particular -- those particular
24 corridors, and it may be something as -- for like
25 50 feet either side of the centerline of the

1 utility corridor. In other words, keep it
2 focused, but at the same time if there's
3 liquefaction that could occur adjacent to it that
4 might deflect or -- or deform the utility
5 corridor, you know about it.

6 Again, it may turn out to be in your
7 Phase 1, if you will, liquefaction analysis, that
8 there's a judgment made on -- on information
9 provided at -- stop right there.

10 MR. REEDE: So, Garret, with your
11 permission. On the three Geologic standard
12 conditions, are you stipulating to the Staff's
13 three conditions? Because you didn't supply any
14 Geologic conditions.

15 MR. MCKINSEY: Yeah, except it sounds
16 like we may need to modify two slightly, as we
17 just discussed. GEO-2.

18 MR. REEDE: To split it into the --

19 MR. ANDERSON: And that would be one of
20 the two.

21 MR. REEDE: Right. Primary facility,
22 and then linear.

23 MR. MCKINSEY: Right.

24 MR. REEDE: Okay. So you'll stipulate
25 to that, then; right?

1 MR. MCKINSEY: Yeah. Yes.

2 MR. ANDERSON: I think it's reasonable
3 that we don't walk into a corner that if, in fact,
4 Phase 1 says we've got to cover for the linears,
5 essentially, there's enough there to make that
6 judgment, then Phase 2 is not necessary. If it
7 points to you need it for Phase 2, then by all
8 means, it's done.

9 HEARING OFFICER SHEAN: Well, this
10 should go on the to do list. Can we have the
11 Staff come up with whatever you think is the
12 appropriate language that would capture what
13 you've just described? Do --

14 MR. REEDE: Well, I -- I think at this
15 point the Applicant needs to, and Staff would
16 either sign off on it or not.

17 MR. MCKINSEY: Yeah. We'll draft --
18 for GEO-2 I -- yeah, it might be better.

19 MR. REEDE: Okay.

20 MR. MCKINSEY: And then we'll submit it
21 to you.

22 MR. ANDERSON: Sure. Okay. Not a
23 problem.

24 MR. REEDE: All right. And he -- when
25 he approves it -- well, he either approves it or

1 rejects it, and then it's forwarded on to --

2 MR. MCKINSEY: To the Committee.

3 MR. REEDE: -- to the Committee.

4 MR. MCKINSEY: Yeah. Okay.

5 MR. ANDERSON: Do you have a timeline
6 for this? Is this before the hearings when they
7 kick off in earnest?

8 MR. REEDE: Well, he needs to be -- the
9 16th, before the 16th. So --

10 MR. MCKINSEY: Oh, yeah, it'll be much
11 --

12 MR. ANDERSON: Okay. This is not a
13 lot.

14 MR. REEDE: Okay. Well, as soon as you
15 can get it to him, we'll get it and -- we'll get
16 rid of it.

17 HEARING OFFICER SHEAN: And on that to
18 do list, do we -- on number one, the Noise, the
19 draft, that was to be coming from --

20 MR. REEDE: From the Applicant.

21 HEARING OFFICER SHEAN: -- from the --

22 MR. REEDE: Because they have to
23 stipulate to it.

24 HEARING OFFICER SHEAN: Okay. We have
25 to agree with their stipulation. Okay.

1 Then I guess we ought to go through
2 these Paleo, just to knock them out. The
3 differences seem to be minor, so it shouldn't take
4 a lot.

5 The PALEO-3, if we can go to that. In
6 the first paragraph of the Staff Assessment, it
7 appears on page 442, that appears to have added
8 basically the last sentence of the paragraph. Is
9 that --

10 MR. REEDE: On PALEO-3, documentation
11 for training of additional new employees shall be
12 provided in subsequent monthly compliance reports,
13 as appropriate. Is that what you're --

14 HEARING OFFICER SHEAN: No, I'm sorry,
15 not in the -- the verification may do that, as
16 well. But it was up in the condition itself. The
17 first paragraph of the condition, the sentence
18 starting, the project owner and construction
19 manager shall provide the workers with -- that CPM
20 approved set of procedures for reporting any
21 sensitive paleo --

22 MR. REEDE: Right.

23 HEARING OFFICER SHEAN: --
24 paleontological resources or deposits that may be
25 discovered during project related ground

1 disturbance.

2 MR. REEDE: Right. That -- that's an
3 addition over the -- well, the Applicant will --

4 MR. MCKINSEY: That's not a problem.

5 MR. ANDERSON: That's typically done
6 with these kinds of projects.

7 HEARING OFFICER SHEAN: Okay.

8 MR. ANDERSON: There are -- there are
9 several projects that have had pretty well
10 written, well documented protocols already, and I
11 would suggest --

12 MR. REEDE: Yeah. We're just trying to
13 --

14 MR. ANDERSON: -- if they need that,
15 they can go to our dockets and get a copy of that.

16 MR. REEDE: -- reconcile these
17 differences and see if they're okay with the
18 Applicant. Okay.

19 Number 5 is the next one, PALEO-5.

20 HEARING OFFICER SHEAN: That previous
21 one covered 3 and 4?

22 MR. REEDE: Correct.

23 HEARING OFFICER SHEAN: And let me just
24 -- let me ask you about 7, because I notice that
25 we've got some closure stuff starting to crop in

1 here in this and in other areas.

2 The Committee is thinking of just
3 having one great big grandiose closure condition
4 in the General Conditions, because what's
5 happening is that in most of these topic areas
6 they're saying submit a closure plan that includes
7 this topic area at some time in the future, when
8 you're thinking of closure, or it occurs. And all
9 we're doing is expanding the -- the topic areas
10 without adding any clarity.

11 So if -- if the -- if, in a generic or
12 all -- overarching closure condition there was an
13 inclusion of an aspect that reported potential
14 impacts to Paleontological Resources, that would
15 -- would that satisfy the purpose of your PALEO-7
16 here?

17 MR. ANDERSON: In the -- in the closure
18 section, if you will, of an SA?

19 HEARING OFFICER SHEAN: Right.

20 MR. ANDERSON: And that the protocol
21 for closure for -- with respect to Paleontological
22 Resource stewardship, if you will, would be
23 included in the final closure report?

24 HEARING OFFICER SHEAN: Right. Because
25 presumably that's what --

1 MR. ANDERSON: That -- that would be
2 fine.

3 HEARING OFFICER SHEAN: Okay. I -- I
4 just see the -- the textual creep occurring
5 throughout the -- the documentation, and -- and
6 it's not on -- it's not on you. It's just that --

7 MR. ANDERSON: I have a question about
8 PALEO-7, then. So is it suggested that PALEO-7 be
9 dropped, and then a -- basically there would be
10 elements of it, though it occurred in the general
11 closure segment of the Staff Assessment instead?

12 HEARING OFFICER SHEAN: We -- let me
13 just -- for purposes of the Proposed Decision, at
14 least, what we're going to try to do is to capture
15 all the closure elements in part of the general
16 conditions.

17 MR. ANDERSON: Okay.

18 HEARING OFFICER SHEAN: So that they
19 are not distinct to each topic area, but each
20 topic area that may have something significant
21 will be included in the -- the general overarching
22 closure condition.

23 MR. ANDERSON: So what I'm getting at
24 is we don't drop PALEO-7 right now.

25 HEARING OFFICER SHEAN: We're moving

1 it.

2 MR. ANDERSON: We'll see it -- we'll
3 see it later in your decision document.

4 HEARING OFFICER SHEAN: Correct. It's
5 moving, that's all.

6 MR. ANDERSON: Right. Okay.

7 MR. REEDE: No, I don't have a problem
8 with that. Pooling them all in one -- one
9 umbrella would make a lot of sense. And that ties
10 directly into note five, where the Applicant did
11 not include a proposed conditions for Paleo and a
12 stipulation, but did in the matrix. And I think
13 that may have been a -- just an oversight, where
14 you had it in the matrix but you didn't have it in
15 the document.

16 MR. MCKINSEY: Right.

17 MR. REEDE: So you'll stipulate to that
18 closure condition that you stipulated to in the
19 matrix?

20 MR. MCKINSEY: That's correct.

21 MR. REEDE: Okay. So I think now Paleo
22 is finished.

23 HEARING OFFICER SHEAN: All right. So
24 if we go with the Staff's one through six, is that
25 what we're talking about doing now? That --

1 that's what we would do to polish this off. Is
2 that -- so that's acceptable to the Applicant?

3 MR. MCKINSEY: Yes.

4 MR. REEDE: One through six and eight,
5 I thought.

6 HEARING OFFICER SHEAN: Well, let's
7 see. Did I -- we have a --

8 MR. REEDE: Well, you see, in the
9 standard conditions they have one through eight,
10 and the Staff Assessment, there's only one through
11 seven. There's a blending of --

12 MR. MCKINSEY: Three and four.

13 MR. REEDE: -- three and four, which
14 bumps the numbers down, so we actually have one
15 through seven.

16 HEARING OFFICER SHEAN: We do? Or one
17 through six? Because of the blending, the
18 combining, I thought we, instead of having eight,
19 we now have seven.

20 MR. REEDE: Correct. We now have
21 seven.

22 HEARING OFFICER SHEAN: Right. We now
23 have seven. And if we move the seventh one, which
24 is the closure one, to a general condition, we're
25 down now to six.

1 MR. REEDE: Correct.

2 HEARING OFFICER SHEAN: Okay.

3 MR. REEDE: Okay.

4 HEARING OFFICER SHEAN: All right.

5 MR. ANDERSON: Thank you, sir.

6 HEARING OFFICER SHEAN: Thank you very
7 much.

8 MR. ANDERSON: Have a good day.

9 MR. REEDE: Before you go, though,
10 would you please tell Rick Tyler he's going to be
11 needed?

12 MR. ANDERSON: Rick, now, or in a
13 couple of minutes -- now?

14 MR. REEDE: Yeah. Because by the time
15 he gets down here, we'll be ready for him.

16 MR. ANDERSON: Okay. Thank you.

17 MR. REEDE: Officer Shean, may we
18 please go to the Waste Management conditions?

19 HEARING OFFICER SHEAN: Sure.

20 MR. REEDE: On the next item. The
21 reason I'm asking to go to the Waste Management
22 conditions comparison is because we appear to be
23 all in agreement. However, Staff has four Waste
24 conditions, whereas the Applicant only had three.
25 They didn't address contaminated soil removal.

1 If the Applicant would be willing to
2 stipulate to our contaminated soil condition --
3 contaminated soil removal condition, we can
4 dispense with Waste Management and enter it by
5 declaration.

6 HEARING OFFICER SHEAN: Okay. That's
7 page 146 of the Staff Assessment.

8 MR. MCKINSEY: Yeah.

9 MR. REEDE: And I was --

10 MR. MCKINSEY: The -- the contaminated
11 soil caught us a little unawares, but partly that
12 may be -- when we submitted the AFC I think at
13 that time the full analysis of what was there and
14 wasn't there, and it wasn't complete. However,
15 now we know that we're not going to have any
16 contaminated soil removal issues.

17 HEARING OFFICER SHEAN: Okay.

18 MR. MCKINSEY: And so we were caught a
19 little like -- in other words, we're not sure why
20 we need that condition.

21 MR. REEDE: In the event that some is
22 found, that it's disposed of in a -- a standard
23 method, so to speak. Because I believe in one
24 section it already talks where --

25 MR. MCKINSEY: It's referring to stuff

1 that's already been identified --

2 HEARING OFFICER SHEAN: Well, I guess
3 one of the things that the Committee wants to do
4 is to make sure that -- our conditions relate to
5 potential impacts, or are required to assure LORS
6 compliance. Is there -- so that if -- if there is
7 not a -- if a Staff witness on either Waste or
8 Soils would not testify that there is a potential
9 significant impact related to contaminated soils,
10 we don't need the condition.

11 MR. REEDE: Well, see, what I'm saying
12 is that basically all they have to do is provide
13 the county fire department a statement --

14 MR. MCKINSEY: Yeah. That's what I'm
15 reading in the verification that we actually have
16 to do, is something we could actually do this very
17 time, right now.

18 MR. REEDE: Right. And, you see, it's
19 -- it's not an undue burden, but it's a statement
20 to the county fire department that, you know, the
21 project's free of soil contamination. It's --

22 MR. MCKINSEY: Okay. Here's -- here's
23 the -- there is some soil that is part of the
24 Southern California Edison committed for
25 remediation that is capped, in two areas where --

1 in other words, there's contaminated soil that's
2 not being disturbed, and -- and, in fact, under
3 the remediation plan that had been already
4 resolved and completed from previous owners, is
5 not to be disturbed. That is the -- the in place
6 remediation. And so the "all" would suggest that
7 we need to remove that soil.

8 So maybe there's a way that we can --
9 it would be any -- all contaminated soil that is
10 going to be disturbed for construction.

11 MR. HALL: Or, John, what -- what are
12 we saying, any soil that's required by the
13 existing regulations to be removed will have been
14 removed -- because existing -- well, our
15 understanding, existing regulations and things for
16 the -- for the soil that was identified in the
17 original phase studies, subsequent investigations
18 have deemed it to be either secured, capped, and,
19 you know, not worthy of remediation. Or there's
20 not sufficient contamination to touch. It's --
21 it's been -- the regulatory agents are satisfied
22 with the way the plan is --

23 MR. MCKINSEY: So, see, we're not
24 worried that we can clear --

25 MR. REEDE: Okay. Then how about

1 adding the word to be disturbed. The project
2 owner shall ensure that all contaminated soil to
3 be disturbed is removed from the project site.

4 MR. McKINSEY: Okay.

5 MR. REEDE: Contaminated soil to be
6 disturbed is removed from the project site and
7 disposed of. And then you'd stipulate that you
8 agree to that condition.

9 MR. McKINSEY: Yeah.

10 MR. REEDE: Okay. And you'll turn that
11 in when you turn in the rest of them. Correct?

12 MR. McKINSEY: Yes.

13 MR. REEDE: Okay.

14 HEARING OFFICER SHEAN: Let me -- in a
15 sense --

16 MR. McKINSEY: Actually, I think that
17 is the appropriate -- the soil --

18 HEARING OFFICER SHEAN: That suggests
19 that there is some; right?

20 MR. McKINSEY: It's under the county.

21 MR. REEDE: Yes.

22 HEARING OFFICER SHEAN: I mean, that
23 language suggests that there is such soil.

24 MR. REEDE: Yes. And the Phase 1 and
25 Phase 2 assessment did identify it.

1 HEARING OFFICER SHEAN: Okay.

2 MR. MCKINSEY: Well, we had the San
3 Bernardino County Fire Department.

4 HEARING OFFICER SHEAN: All right.

5

6 MR. HALL: They're hazardous waste, if
7 you were to have a spill. I don't think they're
8 an appropriate agency that we'd be dealing with
9 there.

10 MR. REEDE: No, they're -- they're the
11 ones that --

12 MR. HALL: That's if you have a spill,
13 you report it to the county.

14 MR. MCKINSEY: But that's kind of the
15 idea, is we're -- by doing this, we're assuring
16 them we're not going to have a spill. I think
17 that's addressing their concern.

18 MR. REEDE: Well, what -- what you're
19 doing by addressing this is that if there's any
20 additional contaminated soil to be removed, that
21 the county fire department is notified --

22 MR. MCKINSEY: Sure.

23 MR. REEDE: -- that through or on
24 county roads, there will be hazardous material
25 being moved, because they track shipments. And so

1 they are the appropriate agency to notify.

2 MR. HALL: You know, maybe what we're
3 talking about is if we just -- if we start digging
4 and we discover, you know, a problem, that we're
5 -- nobody's even aware of, that nobody's found or
6 is -- is cognizant of. But right now there's no
7 plans to disturb the areas that were previously,
8 you know, secured.

9 MR. MCKINSEY: Well, we're still okay.
10 It just -- we're making sure that we're all on the
11 page about who we're reporting to, and I think we
12 are. That'll be fine.

13 MR. HALL: All right.

14 MR. MCKINSEY: So all we'd need is that
15 "to be disturbed", as we agreed.

16 MR. REEDE: Okay.

17 MR. MCKINSEY: We just wanted to make
18 sure we had the right agency on there, because it
19 was San Bernardino. But we do.

20 HEARING OFFICER SHEAN: And just to
21 clean up the English, I guess, shall we do
22 disposed at appropriate disposal facilities,
23 instead of disposed of at?

24 That's the way we'll write it. Okay.

25 MR. HALL: When we say start of

1 construction, could we say start or continuation
2 of construction? Let's say we find it during
3 construction. That's --

4 MR. MCKINSEY: In other words,
5 unexpected.

6 MR. HALL: Unexpected. That's --
7 that's where we're going to have an issue.

8 MR. REEDE: Yeah, and start of or
9 during?

10 MR. HALL: Yeah.

11 MR. REEDE: Okay. That's acceptable.

12 HEARING OFFICER SHEAN: I'm sorry. So
13 we're going to take 30 days out?

14 MR. REEDE: No. At least 30 days
15 before the start of, or during construction. Is
16 that what I heard?

17 MR. MCKINSEY: Yeah. In fact, it
18 should probably after the parentheses.

19 MR. REEDE: Yeah.

20 MR. MCKINSEY: The idea is if we
21 encounter soil during construction, then we need
22 to report it.

23 MR. REEDE: Okay. So, or during
24 construction.

25 MR. CHANDLER: And those two words

1 should be in the first sentence, under WASTE-1,
2 too. The last line, facilities before the start
3 of or during construction.

4 MR. REEDE: Okay. So it goes two
5 places. Or during construction. Okay. Do you
6 want to use my book? We're getting ready to do
7 HazMat.

8 HEARING OFFICER SHEAN: Just so it's
9 clear what we're doing here --

10 MR. REEDE: Okay.

11 HEARING OFFICER SHEAN: -- with this.
12 In the condition portion, at the end of the
13 sentence, it will read before the start of
14 construction or during construction period.

15 MR. REEDE: Correct.

16 HEARING OFFICER SHEAN: Is that right?

17 MR. REEDE: Correct.

18 HEARING OFFICER SHEAN: And in the
19 verification, in the second line following the
20 close parentheses --

21 MR. MCKINSEY: The parens. Yeah.

22 MR. REEDE: Correct.

23 HEARING OFFICER SHEAN: -- CEC project
24 manager, close parentheses, or during
25 construction, comma. Is that -- that correct?

1 MR. REEDE: Correct.

2 HEARING OFFICER SHEAN: All right.

3 With that, everyone's happy with --

4 MR. REEDE: Waste Management.

5 HEARING OFFICER SHEAN: -- Waste
6 Management. And there's no request to conduct a
7 hearing on that. We will take that subject by
8 uncontested declarations.

9 MR. REEDE: Okay.

10 MR. MCKINSEY: Yeah, as identified,
11 that are to be disturbed.

12 HEARING OFFICER SHEAN: Okay.

13 MR. REEDE: Okay. Mr. Shean, we now
14 have Mr. Rick Tyler, who prepared the Staff
15 Assessment on Hazardous Materials Management.

16 HEARING OFFICER SHEAN: All right.

17 MR. REEDE: And we're looking at,
18 first, there was disagreement with the CEC general
19 condition. Staff feels it is appropriate that the
20 current condition, which the Applicant stipulated
21 to, is appropriate. The Risk Management and
22 Safety Plan, the Applicant showed that they were
23 submitting the submittal going to the City of
24 Redlands Fire Department, whether -- I mean,
25 whereas the Staff is showing the San Bernardino

1 County Fire Department.

2 And Mr. Tyler, where is it supposed to
3 go?

4 MR. TYLER: My understanding is, in
5 discussion with the two fire departments, that the
6 county actually provides HazMat services, and that
7 the city is the main fire protection, that they
8 provide incipient response to HazMat incidents,
9 but that the -- actually, the county has
10 jurisdiction over the RMP. That was my
11 understanding. That's why I wrote it this way.
12 So if it's --

13 MR. MCKINSEY: You may have it better,
14 because, you know, our existing relationship is
15 with the county. And so it wasn't clear
16 completely how much they would --

17 MR. TYLER: Yeah.

18 MR. MCKINSEY: -- switch over to the
19 City of Redlands when we --

20 MR. TYLER: The City of Redlands deals
21 with fire protection in general, and they would
22 deal with first response to the HazMat incident.
23 But the RMP, I believe, the administering agency
24 would be San Bernardino County Fire, would handle
25 the HazMat issues.

1 MR. MCKINSEY: Do you have an issue?
2 You don't know anything otherwise, do you? In the
3 description you have Shasta County.

4 MR. CHANDLER: We were just going to
5 suggest a change on page 132 to -- from Shasta
6 County to San Bernardino County.

7 MR. REEDE: Okay.

8 (Laughter.)

9 MR. REEDE: See, and five different
10 eyes read that.

11 MR. MCKINSEY: That's not in the
12 condition, that's not --

13 MR. REEDE: Okay. As far as the Safety
14 Management Plan --

15 MR. MCKINSEY: But that's not -- I
16 mean, does that make sense to you, that HazMat
17 would be under the county?

18 MR. CHANDLER: Yeah, that makes sense.
19 Actually, because it's almost joint responders, in
20 a way, you know. It's -- I think the fire
21 department's merged more than any other regulatory
22 agency.

23 MR. REEDE: Okay.

24 MS. HEAD: It's also not in the
25 conditions that are on page 120 --

1 HEARING OFFICER SHEAN: Could you state
2 your name, please?

3 MS. HEAD: I'm sorry. I'm Sara Head,
4 with ENSR. And we just had a question on page
5 128, under the state regulations. It references
6 the TMPP project, rather than the MVPC project.
7 And my recollection is that our ammonia is
8 actually greater than 20 percent, and we will be
9 subject to RMP. I unfortunately only spotted this
10 on the plane up here, so I haven't had a chance to
11 verify, but I think maybe that this text is copied
12 over from another project, and we would like that
13 verified just, you know, to have the document
14 reflect that correctly.

15 HEARING OFFICER SHEAN: Okay.

16 MR. TYLER: Let's see, there's a table
17 at the back -- at the back of the -- yeah, 24. --
18 that should read 24.5 percent.

19 MS. HEAD: Okay. That -- that's my
20 recollection, was that we were over the 20 percent
21 threshold level.

22 MR. TYLER: So that change is -- is
23 fine. That's consistent with the table at the
24 back that actually -- the actual condition
25 specifies 24.5 percent.

1 MR. REEDE: Okay. So we've discovered
2 a couple of typographical errors in the Staff
3 Assessment.

4 MR. TYLER: On page 132, that needs to
5 be changed to San Bernardino County.

6 MR. REEDE: Page 132, change to San
7 Bernardino County from Shasta County.

8 MR. TYLER: I don't know how that one
9 got through.

10 And then it's MVPP, right?

11 MR. MCKINSEY: Yeah. You know, I don't
12 know if we need to -- I mean, by -- just by virtue
13 of getting it on the record, we're probably fine
14 for changes to the Staff Assessment. I mean --

15 MR. REEDE: Right.

16 MR. MCKINSEY: -- I mean, the -- where
17 we're talking about changes to the conditions, we
18 need to relate those --

19 MR. REEDE: Right.

20 MR. MCKINSEY: -- obviously, because
21 the Committee has to understand. But --

22 MR. REEDE: But in actuality, there
23 doesn't need to be a change to Hazardous Condition
24 2.

25 MR. TYLER: No. I don't think so. I

1 believe it's correct. I had discussions with the
2 fire department, and they indicated that --

3 MR. MCKINSEY: It -- yeah, we don't
4 have -- that's -- yeah.

5 MR. REEDE: So you'll stipulate that
6 you accept condition number two. Now, condition
7 number three, which is the Safety Management Plan,
8 we have -- well, in the CEC general conditions, we
9 call for a Safety Management Plan, and in the
10 Staff Assessment we did not ask for that Safety
11 Management Plan.

12 MR. TYLER: Yes, because this project,
13 while it may be subject to RMP, I do not believe
14 will be subject to PSM.

15 MR. REEDE: Okay. Then --

16 MR. TYLER: You have to be above 44
17 percent ammonia and solution to be subject to --
18 to PSM, and the Safety Management Plan would only
19 be applicable to facilities that trigger PSM.

20 MR. REEDE: Okay. So we're not going
21 to have the standard condition.

22 The funding for fire protection, the
23 Applicant has stipulated, based on their
24 development agreement with the City of Redlands, I
25 believe.

1 MR. MCKINSEY: Right. Our City of
2 Redlands encompasses that issue.

3 MR. REEDE: Okay.

4 MR. MCKINSEY: So, like where --
5 sometimes that shows up as a problem, I think, in
6 projects. The -- the development agreement that
7 we have with the City of Redlands ensures that
8 those services are being provided pursuant to the
9 terms of the development agreement.

10 MR. REEDE: Okay. Now, for ammonia
11 store --

12 MR. TYLER: That's actually covered --
13 that's not even -- that's covered under Worker
14 Safety; is that correct, and Fire Protection?

15 HEARING OFFICER SHEAN: We know it's
16 covered elsewhere.

17 MR. MCKINSEY: Well, it's shown up
18 before as conditions under Hazardous Materials.

19 MR. TYLER: Haz -- right. But I think
20 under this case it's actually covered under Worker
21 Safety and Fire Protection.

22 MR. REEDE: Okay. And since we have
23 Mr. Tyler here, if we want to take Worker Safety
24 out of order --

25 MR. MCKINSEY: Actually, we've got --

1 we have one other that we need to check on.

2 MR. REEDE: Okay.

3 HEARING OFFICER SHEAN: Let's keep
4 going through Hazardous here.

5 MR. TYLER: Okay.

6
7 MR. MCKINSEY: On Hazardous 1, we cited
8 a different subsection than you cited. We cited
9 subpart F, 68.130, and we don't have that with us.
10 But you've got J, and a different section number,
11 and I'm not sure what the differences are between
12 those.

13 MR. TYLER: Okay. I can look -- I can
14 look into that. Not listed in B, greater than --

15 MR. REEDE: And perhaps you can report
16 back to us before we close out today.

17 MR. TYLER: Okay.

18 MR. MCKINSEY: Yeah, because it may be
19 that there are -- there isn't any significant
20 difference -- I just know that we have looked at
21 was -- was that other section.

22 MR. TYLER: Did you -- did you -- I
23 know that the state, you have a state version, and
24 it has -- did you reference the state code or did
25 you reference the federal code? You referenced

1 federal as well, right, 40 CFR?

2 MS. HEAD: It was the federal code,
3 CFR.

4 MR. TYLER: Okay. And what was the
5 section that you referenced?

6 MR. MCKINSEY: Subpart F, Section
7 68.130.

8 MR. TYLER: 68.130?

9 MR. MCKINSEY: It's actually Part 40.
10 Yes.

11 MR. TYLER: Okay.

12 MR. REEDE: On ammonia storage, the
13 Applicant did not have any condition listed in
14 either the matrix or -- or the stipulation. And
15 because we realize there will be ammonia storage
16 onsite, we correctly issued a condition of such.

17 MR. TYLER: Right. This is HAZ-3
18 you're referencing?

19 MR. REEDE: Yeah, our HAZ-3.

20 MR. TYLER: And basically, all that
21 states is that you're going to design it to an
22 appropriate code, and that you'll have the
23 appropriate catchment basin that's required for
24 the tank.

25 MR. MCKINSEY: Fine. That's fine.

1 MR. TYLER: Okay.

2 MR. REEDE: So you'll stipulate to
3 that, to adding that condition.

4 HEARING OFFICER SHEAN: In the text of
5 HAZ-3 it says protected by a secondary containment
6 basin, capable, et cetera. Is that the same
7 secondary containment basin in HAZ-4?

8 MR. TYLER: No. It could be, but it
9 doesn't necessarily have to be. HAZ-4 is dealing
10 with protection during deliveries, and spills that
11 would occur between the tank and -- and the
12 storage tank and the delivery vehicle.

13 HEARING OFFICER SHEAN: Okay. So
14 during the delivery is the key.

15 MR. TYLER: Right.

16 HEARING OFFICER SHEAN: The other one
17 is for --

18 MR. TYLER: And that may be a separate
19 basin, or they could utilize the same basin. But
20 the -- the condition gives them flexibility to do
21 whatever they feel is appropriate, so long as it's
22 covered.

23 HEARING OFFICER SHEAN: And does that
24 seem appropriate to you guys?

25 MR. MCKINSEY: Yeah.

1 HEARING OFFICER SHEAN: That's okay?

2 MR. REEDE: So, Garret, to summarize, I
3 think we've wrapped up Hazardous Materials.

4 HEARING OFFICER SHEAN: And I think
5 with that one clarification that he's going to
6 provide, we can consider it uncontested and take
7 it by declaration. Is that correct, from the
8 Applicant's side?

9 MR. MCKINSEY: Yeah.

10 HEARING OFFICER SHEAN: All right. We
11 will -- we will do that.

12 Now, Rick, if we could get that -- it
13 is on my to do list, the subpart section for
14 that --

15 MR. TYLER: Yeah, I'll check those,
16 I'll go up to the library and check as soon as I
17 leave here.

18 HEARING OFFICER SHEAN: -- and we'll
19 finalize that. And --

20 MR. REEDE: But since we have him here,
21 I wanted to go ahead and address Worker Safety, so
22 that we don't have to call him back tomorrow.

23 HEARING OFFICER SHEAN: Sure. Let's
24 see, that's -- and because we're moving fairly
25 rapidly, and are about to hit a couple of more

1 uncontested issues -- okay. I don't happen to
2 have my binder that has Worker Safety in it. If
3 you want to take a brief break here we can go get
4 it.

5 MR. REEDE: Yeah.

6 (Off the record.)

7 MR. REEDE: Back to Mr. Tyler on the
8 clean-up issue of Hazardous Material.

9 MR. TYLER: What I found is that my
10 intent was to include things that were qualified
11 under the State Code Section 25532. That code had
12 referenced federal codes as a basis for the list
13 of materials that they -- they refer to as
14 regulated substance means. And basically, I think
15 the one that I had put in there as for extremely
16 hazardous materials.

17 They now have actually two references.

18 It says, a regulated substance means any
19 substance that is either of the following. And
20 the first reference is to the reference you made,
21 and the second reference is to the reference I
22 made, for extremely hazardous materials. So my
23 suggestion is that we include both references,
24 because that's what the state code basically is
25 based on, is the list that includes both of --

1 both of those lists.

2 MR. REEDE: And the applicant will
3 stipulate to that, and so we can consider
4 Hazardous Materials now uncontested.

5 MR. MCKINSEY: Yes.

6 MR. REEDE: Okay. And as soon as he
7 gets finished writing, we'll move into Worker
8 Safety.

9 MR. TYLER: Did you want to -- did you
10 want to look at that just to -- that's what I just
11 got from the Health and Safety Code, for the RMP
12 program. That's really what we're dealing with.
13 It's not adding materials that would be --

14 MR. REEDE: Mr. Shean, I'd like to move
15 into the Worker Safety, which is scheduled for
16 November the 1st at 10:30. We have availability
17 of Staff, and I believe these issues can be
18 resolved now.

19 HEARING OFFICER SHEAN: What we all
20 need to know for the record is Mr. Reede wants to
21 get out of here as early as possible tomorrow, so
22 he's shoving all of tomorrow's events into today.

23 MR. REEDE: Well, if it's appropriate
24 and if it's an efficient use of state moneys,
25 let's do it.

1 HEARING OFFICER SHEAN: Yes.

2 MR. REEDE: For the record.

3 HEARING OFFICER SHEAN: For the record.

4 MR. McKINSEY: You know, actually --

5 MR. REEDE: The only qualifier that I
6 would have before we start off on that is if we
7 noticed that topic for tomorrow, then we at least
8 will need to have it opened on the record
9 tomorrow, briefly, to state wherever we're at, so
10 if anybody from the outside --

11 MR. McKINSEY: Okay. We've -- along
12 these lines, we were thinking that Land Use should
13 be moved to the 6th, because we want to bring in
14 the City of Redlands and planning representatives,
15 and they're not going to be able to make it up
16 here tomorrow --

17 HEARING OFFICER SHEAN: Okay.

18 MR. McKINSEY: -- but they will
19 probably be available on the 6th down there. And
20 so if we could do Land Use -- now, we can either
21 do Land Use tomorrow, put it off, but I -- a lot
22 of this stuff really pertains to what the City of
23 Redlands wants and doesn't want, and so I think
24 the best way, the most efficient way to resolve
25 Land Use would be to do it on the 6th.

1 HEARING OFFICER SHEAN: All right.

2 Well maybe we can --

3 MR. McKINSEY: So one way to do it
4 would be --

5 HEARING OFFICER SHEAN: -- preview it
6 tomorrow, and we can get a sense of what it is you
7 think that they're going to be looking for.

8 We can do it both places. Originally,
9 we had scheduled it there, and I guess, in
10 consultation with the Staff, and it may have had
11 to do with the personnel availability, or
12 something like that.

13 MR. McKINSEY: Right. That's what I
14 was -- why I was wondering. I don't know if
15 anybody's available on the 6th from Staff. But we
16 were originally hoping to get the City of Redlands
17 person to come up tomorrow, but he had another
18 commitment.

19 HEARING OFFICER SHEAN: Okay.

20 MR. REEDE: Right. And the person had
21 informed me that they wanted to be here, that's
22 why I had asked you to put it on that date.

23 HEARING OFFICER SHEAN: Okay.

24 MR. REEDE: So -- yes, ma'am. So we'll
25 move Land Use in place of Water on 10:30, November

1 the 6th, and put Water at 9:00 o'clock on November
2 the 1st.

3 HEARING OFFICER SHEAN: Okay. Well,
4 we're going to -- we're going to preview some of
5 this Land Use stuff. I'd like to do that, so that
6 --

7 MR. REEDE: Okay.

8 HEARING OFFICER SHEAN: Okay.

9 MR. REEDE: Worker Safety, I've spoken
10 with Mr. Tyler, and because it's the Applicant's
11 intent to be in the City of Redlands, it would be
12 appropriate that the City of Redlands gets those
13 submissions as listed under Worker Safety
14 Condition 2.

15 The other condition that Staff did not
16 include was the exterior lighting condition, and
17 because the Applicant has stipulated that they are
18 in agreement with that particular condition, we
19 would then also include that Condition 3.

20 MR. MCKINSEY: I'm still catching up, I
21 --

22 MR. REEDE: So there would now be
23 Condition 1, 2, and 3, as Staff's recommended.
24 Applicant's already included those three
25 conditions, so I don't see it as a problem.

1 HEARING OFFICER SHEAN: That was yours,
2 out of the stipulations here. Or --

3 MR. MCKINSEY: So your idea is to
4 include it --

5 MR. REEDE: Yes, Condition 3.

6 MR. MCKINSEY: Here, in Worker Safety.

7 MR. REEDE: You already stipulated to
8 it, our normal conditions, and it appears that it
9 was an oversight that it wasn't included, so.

10 MR. MCKINSEY: Yeah. Yeah, that's --
11 that's not --

12 MR. REEDE: Okay. The Condition 2 is
13 project unique. Our standard condition doesn't
14 call out a city. But it's appropriate, since we
15 know what city this particular site's going to be
16 in, that Staff would say make your submissions to
17 the City of Redlands Fire Department.

18 HEARING OFFICER SHEAN: Okay. And
19 that's --

20 MR. TYLER: And, in fact, that is the
21 department. They deal with fire, whereas the
22 other --

23 MR. REEDE: Dealt with hazardous
24 materials.

25 MR. TYLER: -- dealt with hazardous

1 materials. The county's basically the umbrella
2 for HazMat response, and -- for major HazMat
3 response, and then the City of Redlands is the
4 fire department.

5 MR. REEDE: And that's okay with you --

6 MR. TYLER: And they -- they coordinate
7 with each other closely, so that's not a problem.

8 MR. CHANDLER: We'll accept that.

9 MR. REEDE: We'll go with that.

10 HEARING OFFICER SHEAN: All right. So
11 Worker Safety is uncontested, and will be by
12 declaration. All right. Agreed?

13 MR. MCKINSEY: Agreed.

14 HEARING OFFICER SHEAN: Okay.

15 MR. REEDE: Thank you, Mr. Tyler.

16 MR. TYLER: Thank you.

17 MR. REEDE: May we now go back to the
18 schedule for Traffic and Transportation --

19 HEARING OFFICER SHEAN: Sure.

20 MR. REEDE: -- please, sir.

21 Could I have my pages back? Oh, go
22 ahead and take those with you.

23 (Inaudible asides.)

24 MR. REEDE: Okay. Traffic and
25 Transportation, Mr. Shean.

1 HEARING OFFICER SHEAN: Right.

2 MR. REEDE: Let's -- basically, there
3 is no disagreement on Traffic and Transportation.
4 Staff did not include some of our standard
5 conditions, which we will go ahead and agree to
6 include because Applicant has already stipulated
7 to them.

8 MR. MCKINSEY: Do you want us to agree
9 to put them in?

10 MR. REEDE: Yeah.

11 MR. MCKINSEY: Yeah, that's --

12 MR. REEDE: Is that right?

13 MR. MCKINSEY: Yeah.

14 HEARING OFFICER SHEAN: So you're --
15 essentially all of your numbered items, one
16 through five, and then the -- is there going to be
17 the need for a transmission cable crossing
18 protection?

19 MR. MCKINSEY: No. We're not putting
20 any --

21 HEARING OFFICER SHEAN: Because you're
22 not going offsite; right?

23 MR. MCKINSEY: No, there are no offsite
24 transmission linears. Our TRANS-5 was roadway
25 repairs.

1 HEARING OFFICER SHEAN: Correct.

2 MR. McKINSEY: Our TRANS-6 was the
3 designated routes, and 7 was avoiding peak traffic
4 issues.

5 MR. REEDE: And that's what we agreed
6 there needs to be, and the --

7 MR. McKINSEY: Yeah.

8 MR. REEDE: -- in the decision, five,
9 six, and seven.

10 MR. McKINSEY: Those were -- that's all
11 the ones we stipulated to.

12 HEARING OFFICER SHEAN: Okay. So we'll
13 go everything in your column, one, two, three,
14 four, five, six, and seven, and no transmission
15 cable crossing.

16 MR. REEDE: Correct.

17 HEARING OFFICER SHEAN: Correct?

18 MR. McKINSEY: And then -- no, nothing
19 else that we didn't already bring up, like the
20 wastewater line. It's not actually a linear.

21 HEARING OFFICER SHEAN: All right.

22 MR. McKINSEY: The supply line.

23 MR. REEDE: The -- the supply line is
24 being put in by the City of Redlands prior to the
25 project. Correct?

1 MR. MCKINSEY: In fact, it's already
2 there.

3 MR. REEDE: It's already there.

4 HEARING OFFICER SHEAN: Okay.

5 MR. REEDE: Well, that's prior to the
6 project.

7 (Laughter.)

8 MR. REEDE: Mr. Shean, may I move to
9 Public Health, please.

10 HEARING OFFICER SHEAN: Okay. Let me
11 just go through this here. So there's no request
12 to present this matter at hearing. We'll take it
13 by uncontested declarations.

14 MR. REEDE: Correct.

15 HEARING OFFICER SHEAN: All right. Let
16 me close the binder on this.

17 While we're still here on
18 Transportation, I guess -- well, I have everything
19 in mind. All right, what did you want to do next?
20 Public Health?

21 MR. REEDE: Public Health.

22 HEARING OFFICER SHEAN: Okay.

23 MR. REEDE: Staff Public Health
24 conditions are listed in the Air Quality section.
25 However, because the Applicant has agreed and

1 stipulated to cooling tower drift elimination and
2 cooling tower TCE limits, Staff accepts those
3 conditions as being germane to the application.
4 And we would incorporate those, or desire to
5 incorporate those into the Final Decision.

6 HEARING OFFICER SHEAN: Okay.

7 MR. MCKINSEY: Which ones?

8 MR. REEDE: Applicant -- yeah, PUB-1
9 and 2 that the Applicant stipulated to.

10 HEARING OFFICER SHEAN: Now, what's
11 your expectation, in terms of the Air Quality and
12 what we're going to see there, when --

13 MR. REEDE: The South Coast Air Quality
14 Management District, to my understanding, is going
15 to issue a revised PDOC that will basically grant
16 them the permit to operate. They have a number of
17 conditions that will be addressed better on
18 November the 6th, during Air Quality.

19 We had not gotten the PDOC when we
20 issued the Staff Assessment. We are currently
21 waiting on the cumulative impact study from the
22 Applicant so that we can issue one revised Staff
23 Assessment on Air Quality. Hopefully, the
24 cumulative impact study will be coming in very
25 shortly, so that we can issue that revised Staff

1 Assessment with all the conditions in it prior to
2 the evidentiary hearing.

3 MR. MCKINSEY: The -- this subject is a
4 difficult one because to date we have not been
5 able to get South Coast to produce the data that
6 we require, and that's with -- in order to provide
7 the cumulative analysis that's being requested by
8 the Staff. And we -- you've -- we've had, you
9 know, higher-ups trying to tell the South Coast
10 make it a priority. And a lot like this whole air
11 permit process has been, it's -- it's just been
12 one excuse, if you can get somebody to answer the
13 phone, after another.

14 We don't have an issue with doing that
15 cumulative analysis, even though it hasn't been
16 required in that style before. So we would be the
17 first doing it that way.

18 In other words, we want to cooperate.
19 The simple fact is we can't get the data from
20 South Coast to do it. And so if this became an
21 issue, we may want to contend, this might be an
22 area where we have a contention that -- that we
23 have provided enough information to do a
24 cumulative analysis.

25 We -- it's not our desire to try to go

1 against the Staff's desire to provide this new,
2 much more detailed type of cumulative analysis.
3 It's just that we were asked to do this at a very
4 late point, and with the South Coast it's been
5 really hard to get them to do anything in a -- in
6 a short time period.

7 So --

8 MR. REEDE: And I can understand the
9 Applicant's frustration. We've had to elevate it
10 all the way up to the ARB, because of the South
11 Coast's staff inability to meet their previously
12 agreed upon schedules. I've had to intervene, and
13 the Applicant has actually had to pay overtime for
14 work that should've been done on regular time,
15 because they were two months late in issuing their
16 PDOC.

17 HEARING OFFICER SHEAN: Okay. Now, the
18 cumulative impact is a -- this is an Air Quality
19 -- Air Quality orientation --

20 MR. REEDE: It's an Air Quality issue.

21 HEARING OFFICER SHEAN: Okay. And does
22 it have to do with other facilities, either -- I
23 mean --

24 MR. REEDE: Proposed, or --

25 HEARING OFFICER SHEAN: -- proposed or

1 --

2 MR. REEDE: -- under construction.

3 HEARING OFFICER SHEAN: -- or under
4 construction, is that the idea?

5 MR. REEDE: Yes.

6 HEARING OFFICER SHEAN: And it is
7 reaching a level of detail that --

8 MR. MCKINSEY: I -- I didn't come
9 prepared completely to discuss this today, but if
10 I recall, the detail is -- that's going on is it's
11 requiring a -- a particularly small scale that
12 hasn't been -- in other words, it's all projects
13 that could either be considered by the Air
14 District or that are not, as opposed to projects
15 that rise to the level to really contribute
16 significantly to cumulative effects.

17 And that's where there's been a
18 difference. In the past it hasn't been to that
19 level of looking for such small scale efforts,
20 that -- and as I said, we're not necessarily
21 opposed to providing that information. If there's
22 any way at all possible for us to do that, we want
23 to do that for the Staff.

24 HEARING OFFICER SHEAN: Okay. What I
25 understand, then, it might include things that the

1 District either does not permit or has some
2 exemption, or that's so small -- and I don't know
3 how so small is -- but that is in a class or
4 category that would be below their radar.

5 MR. MCKINSEY: Right. Well, they --
6 but they still have apparently some data on that
7 in their database. And so that's what we're being
8 requested to provide, and -- and then do a
9 cumulative analysis based on that information.

10 HEARING OFFICER SHEAN: And I guess the
11 idea is the aggregation of these smaller sources
12 in itself, when combined with what else is in
13 their permitting may -- may be large enough to
14 have some significance in the analysis. Is that
15 the idea?

16 MR. MCKINSEY: That -- I think that's
17 the contention, that's the idea by the Staff. As
18 I indicated, you know, we want to cooperate, but
19 we're not also necessarily convinced that -- we're
20 not conceding that that is the case, and --

21 MR. REEDE: But I think it would be
22 more appropriate if I had my Air Quality Staff
23 here in this discussion, in all fairness to Staff.

24 HEARING OFFICER SHEAN: Sure.

25 MR. MCKINSEY: And, in fact, I'd like

1 to have my air person here, too.

2 HEARING OFFICER SHEAN: No, I
3 understand. I guess I'm just sort of looking
4 forward to the -- I don't know what the worst case
5 is, but at least the planning worst case is if
6 this data is unavailable to you in the timeframe
7 to submit it to them, and for them to analyze it
8 in a timeframe to get it before the Committee --

9 MR. MCKINSEY: We've been trying to get
10 it for months.

11 HEARING OFFICER SHEAN: Okay. And --

12 MR. REEDE: And we've also intervened
13 to try to get that cumulative information from
14 South Coast. And as I said, we've gone all the
15 way up the chain of command, and let them know
16 that under the 100 day rule, they've violated it
17 severely. Under our standard -- we have already
18 entered a standard agreement with South Coast that
19 they will provide feedback on applications to us
20 within a period of time. They were so out -- so
21 far outside of that that I had no other choice but
22 to go up the chain of command and let everybody in
23 the world know that there were problems with
24 getting data products out within the timeframes
25 required, not only under our normal agreement, but

1 especially since they had -- were far outside the
2 Governor's Executive Order.

3 HEARING OFFICER SHEAN: Okay. But --

4 MS. TOWNSEND-SMITH: Is there any
5 response from the South Coast Air Quality
6 Management District? I mean, have they --

7 MR. REEDE: Yes. We finally got the
8 PDOC from them.

9 MS. TOWNSEND-SMITH: Ellie Townsend-
10 Smith, Advisor to Commissioner Robert Pernell.
11 And basically, what I was trying to find out, what
12 the response is from SCAQMD, South Coast Air
13 Quality Management District, and response in terms
14 of getting the data that the Applicant needs for
15 this particular project.

16 MR. REEDE: Just to give you a brief
17 history, and not belabor it. They originally were
18 supposed to provide us the PDOC August 14th. They
19 were unable to meet that date, and because we had
20 time I said okay, I'll give you additional 30
21 days. Well, I began calling them around the time
22 that I was supposed to get it. They did not mail
23 it to us until October the 20th, and have since
24 notified us that they intend to issue a revised
25 PDOC to open the public noticing period.

1 Now, the one that they sent me on the
2 20th, I duly docketed it. I docketed it, and it
3 was my understanding from Siting Management that
4 once it was received, it was open for public
5 comment. There were subsequent meetings between
6 the Applicant and South Coast, because of some
7 disagreements with some of the conditions and some
8 of the analysis that had gone into the PDOC. And
9 because of that disagreements, they've now come to
10 an agreement, and so they're going to issue a
11 revised PDOC.

12 But that does not get them off the
13 hook, so to speak. They should've had this done
14 on August 14. Here I am, three months later, and
15 I still don't have the document that my Staff can
16 perform an analysis with in a timely manner.

17 There was a flurry of phone calls that
18 got the Applicant to agree to pay overtime to
19 South Coast to get their work product out. And
20 South Coast did, in fact, bill for overtime. So
21 the issue will be resolved sooner or later,
22 hopefully sooner, and prior to the evidentiary
23 hearing.

24 MS. JONES: This is Melissa Jones. I'm
25 Advisor to Commissioner Moore.

1 Does the data that the Applicant's
2 referring to here that's needed for the cumulative
3 study, is that a part of the PDOC, or is that
4 separate? And if it is separate, then how are
5 they in terms of the 100 days to provide that
6 information?

7 MR. REEDE: Well, that information
8 should've been provided back in early July, I
9 believe.

10 MS. JONES: That's when it was
11 requested?

12 MR. REEDE: It was originally
13 requested, I believe, in June. We have taken the
14 position that we're moving with all diligence to
15 complete our Air Quality analysis, but from a
16 logistics standpoint, with the priority of other
17 plants, the Air Quality engineer assigned cannot
18 focus on completing his work product for
19 Mountainview until he has all the information.

20 MS. JONES: Thank you.

21 MS. HEAD: This is Sara Head. And just
22 to clarify. The cumulative analysis is not needed
23 for the PDOC. Strictly speaking, all of the
24 permit requirements have been met, and the permit
25 does not require a cumulative analysis. That is,

1 I'd say, more of a --

2 MR. MCKINSEY: Yeah. In fact --

3 MS. HEAD: -- CEQA type issue.

4 MR. MCKINSEY: -- the first time we
5 requested the information, they actually put us to
6 the public communication office. In other words,
7 they said this doesn't have to do with the PDOC,
8 we don't care about it, so you've got to go
9 through our public communication office and
10 they'll get back to you within 180 days.

11 And we said no, you don't understand,
12 this is connected to our project, and that didn't
13 even change until Mr. Reede called them and -- and
14 indicated that this was an issue. And so, but it
15 is, in other words, they view it, and indeed, from
16 the South Coast perspective, it has nothing to do
17 with their PDOC and their -- analysis.

18 MR. ABELSON: But, you know, I have
19 filed one sort of related question where I --
20 basically getting at, which is that if the PDOC
21 appears to be in the process of getting itself
22 resolved, so that eventually it is going to be in
23 the record in a usable way, and it doesn't contain
24 this information, and we're hung up, rather than
25 have this be an item that at some point either

1 Staff is going to have to concede it or we're
2 going to have to litigate it, because that's where
3 we're going, the question I kind of hear you
4 asking is how are we going to get it. And what I
5 hear you saying is well, don't look at us, we've
6 done what we can.

7 MR. MCKINSEY: Well, we're continuing
8 to try. I just can't make a promise.

9 MR. ABELSON: I didn't -- I didn't mean
10 that in any pejorative sense. And so I guess I
11 would ask Mr. Reede, and perhaps even the
12 Committee, whether there's anything, since we're
13 all here in the workshop, that anybody
14 collectively thinks we can do to get this -- this
15 nugget out of the tree.

16 MR. REEDE: Well, I'm going to call,
17 during our lunch break, to find out where it is
18 and why we can no longer wait. But I've been
19 calling the Assistant Executive Director. So, you
20 know, I haven't been waiting -- I haven't been
21 calling my peers any longer, because my peers
22 aren't getting the work out. And so I've resorted
23 to calling the Assistant Executive Director, to
24 put pressure on them to resolve it.

25 MS. JONES: At some point I want to

1 discuss if there's something that the Committee or
2 Executive Director wants to do.

3 HEARING OFFICER SHEAN: Okay. Let me
4 just -- a couple of thoughts, but I need a little
5 bit more information.

6 So have you, either as part of the AFC
7 or in response to the data requests, provided
8 other information to the Staff sufficient for them
9 to perform this cumulative analysis in the absence
10 of -- of an analysis of a type that would not
11 include this information?

12 MR. MCKINSEY: We -- well, I don't want
13 to speak for what they would say they require. We
14 feel that we've provided a sufficient cumulative
15 impacts analysis. But once again, that doesn't
16 mean that we won't try to provide anything else we
17 can that will satisfy them. But, yes, we have.

18 HEARING OFFICER SHEAN: I understand.
19 It was just a question of whether we're -- doesn't
20 seem appropriate to just mark time until this
21 thing has finally gotten out of the South Coast,
22 if it can be gotten from them. And I guess --

23 MR. REEDE: They have the data, Mr.
24 Shean, because they provided it on another one of
25 my projects. Now, they provided 635 potential

1 stationary sources. And from that, we had to
2 glean it down to about 42 that were actually
3 appropriate. But it's not that they can't do it.
4 They've done it in the past.

5 HEARING OFFICER SHEAN: Okay. And is
6 the physical location of these potential sources
7 the primary difference between the data --

8 MR. REEDE: Well, you see, it's sorted
9 by Zip code. And --

10 HEARING OFFICER SHEAN: It is.

11 MR. REEDE: -- and there's a difference
12 in Zip codes between Southeast L.A. and San
13 Bernardino County. So --

14 HEARING OFFICER SHEAN: So the answer
15 is yes, the location difference is why whatever
16 prior data you have --

17 MR. REEDE: Correct.

18 HEARING OFFICER SHEAN: -- is not
19 transferable to this proceeding.

20 MR. REEDE: Correct. That is correct.

21 HEARING OFFICER SHEAN: Okay. And are
22 we talking about the -- you want this information
23 in greater proximity to the proposed facility?

24 MR. REEDE: Yes. The information
25 should be more closely appropriate to the location

1 of the proposed plant.

2 HEARING OFFICER SHEAN: So was the
3 information that you received previously a basin-
4 wide database?

5 MR. REEDE: No.

6 HEARING OFFICER SHEAN: No.

7 MR. REEDE: That was only in about
8 seven Zip codes, in and around a six mile radius
9 of --

10 MR. MCKINSEY: He's referring to
11 information received as part of a different
12 project.

13 MR. REEDE: Right.

14 MS. JONES: And which project?

15 MR. REEDE: That was Nuevo Azalea
16 Project. And we're only looking at the six mile
17 impact zone, and there's, you know, seven or eight
18 Zip codes within that six mile radius of the
19 plant.

20 MS. JONES: So this isn't the first
21 time that Staff has --

22 MR. REEDE: Gotten --

23 MS. JONES: This, then, wouldn't be the
24 first time the Staff has done this type -- or
25 requested this type of a cumulative analysis.

1 MR. REEDE: No.

2 MR. MCKINSEY: This is the second time.
3 And -- and it hasn't actually been made part of a
4 decision before.

5 MS. JONES: Thank you.

6 MR. REEDE: Mr. Shean, may we go back
7 to the Public Health comparison?

8 HEARING OFFICER SHEAN: Sure.

9 MR. REEDE: And I would suggest that
10 because the Applicant has produced two stipulated
11 conditions, that Staff agrees with those two
12 stipulated conditions on cooling tower drift
13 elimination and the cooling tower TCE limits, and
14 that this be considered uncontested and accepted
15 by declaration.

16 HEARING OFFICER SHEAN: Is that fine
17 with the Applicant? All right, we'll show it that
18 way. But I don't -- I guess I don't want to
19 entirely get off this other thing, because it
20 seems to me that --

21 MR. REEDE: Well, may I suggest we come
22 back to it --

23 HEARING OFFICER SHEAN: Okay. Sure.

24 MR. REEDE: -- since we have --

25 HEARING OFFICER SHEAN: All right. If

1 we have --

2 MR. REEDE: -- our Socioeconomic person
3 here, and we can close that issue out --

4 HEARING OFFICER SHEAN: Why don't we do
5 that.

6 MR. REEDE: -- and close out
7 Alternatives, and then close out the day.

8 HEARING OFFICER SHEAN: All right.

9 Why don't we go ahead, then, with
10 Socioeconomics.

11 MR. REEDE: Okay. We have Mr. Jon
12 Davidson, a Staff Consultant, addressing
13 Socioeconomics, and it's my understanding that the
14 only difference between our conditions is that
15 they were numbered backwards, and the Applicant --

16 (Laughter.)

17 MR. MCKINSEY: It's not acceptable.

18 MR. REEDE: -- has stipulated for the
19 school development fees the City of Redlands, and
20 the Staff had designated San Bernardino County,
21 and that goes back to annexation issue.

22 Realizing that it will be annexed into
23 the City of Redlands within a fortnight, so to
24 speak, school development fees would be
25 appropriate to go to the City of Redlands.

1 HEARING OFFICER SHEAN: Okay. So
2 that's --

3 MR. DAVIDSON: You know, if I might
4 just indicate, the school district receiving the
5 fees is the same, regardless. The difference is
6 that evidence of the payment of fees is presented
7 to the building department at the time of permits,
8 building permits are issued. So it would just be,
9 you know, the evidence of payment of fees to the
10 Redlands School District would have to be
11 provided, regardless of who issues permits.

12 HEARING OFFICER SHEAN: Okay. So will
13 -- the language that's in SOCIO-2 just is the --
14 directing the -- the filing to the County of San
15 Bernardino Building Department would occur anyway,
16 is that what we're saying? And it's just that
17 there really --

18 MR. REEDE: No.

19 MR. DAVIDSON: Well, the City of
20 Redlands.

21 MR. REEDE: That it goes to the City of
22 Redlands.

23 HEARING OFFICER SHEAN: Okay, the City
24 of Redlands. So where it -- where in SOCIO-2 it
25 shows the County of San Bernardino Building

1 Department, we want to show what, now?

2 MR. REEDE: City of Redlands Building
3 Department.

4 HEARING OFFICER SHEAN: Applicant's in
5 accord with that?

6 MR. McKINSEY: Yes.

7 MR. REEDE: There were no other issues
8 on Socioeconomics. And I would ask that they be
9 considered uncontested and by declaration, with
10 the Applicant's agreement.

11

12 MR. McKINSEY: Agreed.

13 HEARING OFFICER SHEAN: All right.

14 Let me just -- I do have a question
15 here. Now -- and this is with regard to the
16 Socioeconomic Figure 1, census tracts with high
17 minority population.

18 Your -- your selection of a six or six
19 and a half mile radius is based upon air quality
20 concerns; is that correct?

21 MR. REEDE: Jon, do you want to answer
22 that?

23 MR. DAVIDSON: Yeah. We -- we used the
24 six mile radius as recommended by the EPA in their
25 guidelines for addressing environmental justice

1 issues, and environmental justice issues are often
2 related to air quality effects on local
3 populations, so they're the same.

4 HEARING OFFICER SHEAN: Is there a
5 specific recommendation for this distance?

6 MR. DAVIDSON: Yes, I believe there is.

7 HEARING OFFICER SHEAN: Pardon me?

8 MR. DAVIDSON: I believe there is, yes.

9 HEARING OFFICER SHEAN: Okay. Can you
10 --

11 MR. REEDE: Typically, our zone, so to
12 speak, for the determination of our radius,
13 historically has been that required under HazMat
14 Management, and it's a combination of Hazardous
15 Material Management, Public Health, and Air
16 Quality impacts. And it comes up, and it's ten
17 kilometers, which is right at six miles.

18 HEARING OFFICER SHEAN: Okay.

19 MR. REEDE: And this is not precedent
20 setting. We've used six miles in all cases. And
21 --

22 HEARING OFFICER SHEAN: Do you have
23 whatever these EPA references are that he's
24 talking about?

25 MR. REEDE: They can be provided.

1 HEARING OFFICER SHEAN: Well, it's not
2 a -- it's not an immediate matter, but we'd like
3 to see them before we try to crank this decision
4 out. So at some point, if you could loop that
5 through the Staff --

6 MR. REEDE: Yeah.

7 MR. DAVIDSON: Certainly. I have a
8 copy, actually, that I can leave with you, if
9 you're interested.

10 HEARING OFFICER SHEAN: Okay. I'd
11 appreciate that. Thank you.

12 Okay. With that, I think we're all
13 done with Socioeconomics. Is that right?

14 MR. REEDE: Yes. Thank you, Mr.
15 Davidson.

16 HEARING OFFICER SHEAN: All right.
17 We'll indicate that --

18 MR. REEDE: Hope you all catch the
19 early flight back.

20 HEARING OFFICER SHEAN: -- no request
21 for hearing on Socioeconomics. We'll take it by
22 uncontested declaration.

23 MR. REEDE: And Alternatives is the
24 last issue.

25 HEARING OFFICER SHEAN: There were no

1 conditions or anything here, and there just are
2 two different analyses. I just want to make sure
3 we're -- we have pretty much come to common
4 ground, as far as I can tell.

5 MR. REEDE: In the Alternatives
6 section, we cite the -- I'll try and get to the
7 page -- we address why this plant is actually
8 exempt from an Alternatives section. But we have
9 as much a full discussion as possible. And I'll
10 let Staff counsel further address why we acted in
11 the manner that we did.

12 Mr. Dave Abelson.

13 HEARING OFFICER SHEAN: Sure. Go
14 ahead.

15 MR. ABELSON: Well, I'm happy to -- to
16 explain the thinking, Officer Shean. Basically,
17 there is a provision in the Public Resources Code
18 which is cited in the section that appears as the
19 Applicant has indicated, to exempt, in the data
20 adequacy phase, exempt them from providing
21 information at that phase.

22 But that's all that section does. It
23 doesn't outright exempt these types of plants from
24 any Alternative analysis of any kind under any
25 circumstances.

1 On the other hand, Staff sought to give
2 some meaning to the -- to the earlier provision on
3 data adequacy by essentially looking at the
4 circumstances in which there appeared that there
5 were potential impacts, and asking whether or not
6 any alternative sites that it was aware of could
7 lessen those impacts at all, and the answer was
8 no, at least based on a preliminary screening.

9 And as a result, Staff concluded that
10 it was reasonable not to go into any detailed
11 sites analysis in a case of this particular type,
12 covered by that particular exemption under the
13 data adequacy provisions.

14 Now, that is exclusively with regard to
15 the issue of alternative sites, not with regard to
16 alternative configurations at this site or
17 alternative technologies, and so on, where a
18 traditional alternatives analysis has been
19 provided.

20 So what we have is basically a somewhat
21 truncated sites analysis, but not zero. And
22 that's -- that's what's been provided.

23 HEARING OFFICER SHEAN: Okay. And I
24 think we all know that the -- there are basically
25 two sources for this. The lineage of the

1 Application for Certification coming out of the
2 notice of intention would've had alternate sites
3 considered in the NOI, and then there's an
4 independent requirement in CEQA for the
5 consideration of alternatives that are needed to
6 mitigate potential impact which cannot be
7 mitigated. So I think we know where we are.

8 MR. REEDE: With that --

9 MR. MCKINSEY: Yeah, we're in accord.

10 MR. REEDE: Pardon me?

11 MR. MCKINSEY: We're in accord with
12 that.

13 MR. REEDE: With that, Officer Shean, I
14 would like to ask that for the order of topics for
15 tomorrow, since we --

16 HEARING OFFICER SHEAN: All right. So
17 no one's requesting a hearing on Alternatives.

18 MR. REEDE: Correct.

19 HEARING OFFICER SHEAN: Correct?
20 Correct.

21 MR. ABELSON: And I would note, at
22 least in the document that I have, that
23 Alternatives topic was not on the list that I saw
24 at all, including the no conditions list. Now,
25 maybe I didn't print out the right document, but I

1 don't see Alternatives on it.

2 HEARING OFFICER SHEAN: We had it on
3 the order of topics. Let me look here and see.

4 MR. MCKINSEY: It's on the -- the
5 schedule.

6 MR. ABELSON: Yeah. No, no, I
7 understand that. I'm talking about the actual
8 comparison document that we've been using today.

9 HEARING OFFICER SHEAN: Oh, correct,
10 because we're --

11 MR. MCKINSEY: Because there aren't any
12 conditions.

13 HEARING OFFICER SHEAN: There aren't
14 any.

15 MR. REEDE: For the order of topics for
16 tomorrow, it's my understanding that Water
17 Resources and Water Quality will move into the
18 slot for Agricultural Resources and Land Use.

19 HEARING OFFICER SHEAN: Let me just
20 indicate, in the e-mail exchange between --

21 MR. REEDE: The --

22 HEARING OFFICER SHEAN: -- Lorraine
23 White and me, when she asked for a specific time I
24 think I told her on the order of 11:00 to 11:30.
25 So unless you're going to notify them of the time

1 change --

2 MR. REEDE: I will notify her that we
3 need her here at 9:00 o'clock.

4 HEARING OFFICER SHEAN: Okay.

5 MR. REEDE: And so Land Use will be
6 shifted to San Bernardino on the 6th.

7 HEARING OFFICER SHEAN: Yeah, but I --
8 I would like to preview that here while we're --
9 because is your Land Use person available to go to
10 San --

11 MR. REEDE: Yeah. Well, our Land Use
12 person is available tomorrow morning. I will
13 inquire as to both he and the consultant's
14 availability to be there on the 6th. I don't
15 foresee a major problem right now.

16 HEARING OFFICER SHEAN: Let's just --
17 let's see what we're talking about.

18 MR. REEDE: If we could go to that
19 first item, Development Plan Approval. The reason
20 there's no general condition is because we had a
21 copy of a development plan that was signed off by
22 the counselor, so we dropped that particular
23 condition.

24 HEARING OFFICER SHEAN: Okay.

25 MR. REEDE: So that one's dead.

1 General and specific plans, I think that's
2 mainly -- because we addressed the general and
3 specific plan and the Applicant didn't. The
4 development plan, the Applicant addressed it, and
5 we didn't.

6 HEARING OFFICER SHEAN: Okay.

7 MR. REEDE: On the extended roadway,
8 the Applicant didn't address it, but we did.

9 HEARING OFFICER SHEAN: Well, I --

10 MR. REEDE: Transmission Pipeline, the
11 development plan --

12 HEARING OFFICER SHEAN: Okay. Why
13 don't we stop, because I -- I would like to
14 preview this tomorrow, because we're going to get
15 the City of Redlands people coming in.

16 MR. REEDE: Well, they can't be here
17 for tomorrow.

18 HEARING OFFICER SHEAN: I understand
19 that. But if they're coming in on the 6th, let's
20 -- let's go through this stuff. Where -- where
21 it's possible to clean up, we'll do that so that
22 they -- we get to them and their involvement in as
23 clean a fashion as we can get.

24 MR. MCKINSEY: Do you want to do that
25 tomorrow?

1 HEARING OFFICER SHEAN: Yeah, just
2 we'll dress it up a bit so that we're not -- so we
3 present the best face in terms of our process and
4 what we've got.

5 MR. REEDE: Okay.

6 HEARING OFFICER SHEAN: Okay.

7 MR. REEDE: Transmission System
8 Engineering. We can work on those tomorrow.

9 HEARING OFFICER SHEAN: Yeah. And
10 those are going to go fast, so we're going to have
11 some time for Land Use, for Water, and I guess you
12 might as well give the Compliance people a heads
13 up to see whether or not they can assist us with
14 this umbrella closure, temporary closure or
15 emergency closure kind of thing, because I would
16 rather try to treat that as an umbrella deal than
17 --

18 MR. REEDE: Closure.

19 HEARING OFFICER SHEAN: -- each topic
20 area.

21 MR. REEDE: Might I suggest that you,
22 as the Hearing Officer, contact --

23 HEARING OFFICER SHEAN: All right, Mr.
24 Eller, Mr. Najarian, et cetera.

25 MR. REEDE: -- management --

1 HEARING OFFICER SHEAN: Okay.

2 MR. REEDE: -- so that they're aware of
3 that workload priority shift.

4 HEARING OFFICER SHEAN: Shouldn't be a
5 big deal. Somehow a lot of these areas have been
6 given generic language, and if we can just work on
7 that a bit, I bet we can -- I bet we can --

8 MR. REEDE: It may be just shifting
9 around -- well, it is just shifting around. But
10 because he's the author of the general conditions
11 and compliance section, I would feel more
12 comfortable with --

13 HEARING OFFICER SHEAN: I'll --

14 MR. REEDE: -- with him and/or his --

15 HEARING OFFICER SHEAN: -- I'll
16 approach him.

17 MR. REEDE: -- boss to --

18 HEARING OFFICER SHEAN: I will --

19 MR. REEDE: -- get it resolved.

20 HEARING OFFICER SHEAN: -- I will do
21 that.

22 MR. REEDE: I don't believe there are
23 any other additional issues.

24 MR. ABELSON: The only other thing I
25 understood was that because we did Worker Safety

1 today, we'll at least open it on the calendar
2 tomorrow to the extent there's anybody in the
3 public who might have anything to say about it.
4 We'll reprise what was done today, just to let
5 everybody know.

6 HEARING OFFICER SHEAN: Right.

7 MR. ABELSON: And that way no one who
8 might have elected to come only tomorrow for that
9 issue will feel that they were left out.

10 HEARING OFFICER SHEAN: That's right.
11 They will be out there somewhere.

12 All right. That's great.

13 Thank you very much. We're all done
14 until tomorrow morning.

15 (Thereupon the Workshop was
16 adjourned at 11:50 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 Committee Workshop; 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 Workshop, nor in any way interested in the outcome of said Workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of November, 2000.

