

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the GWF Tracy Peaker Project) 01-AFC-16
Project in San Joaquin County)
(GWF Energy LLC))
_____)

HOLIDAY INN EXPRESS HOTEL & SUITES

LODI ROOM

3751 TRACY BOULEVARD

TRACY, CALIFORNIA 95304

THURSDAY, MARCH 14, 2002

10:00 A.M.

Reported by:
Duncan Fankboner
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner, Presiding Member

Robert A. Laurie, Commissioner, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Cheryl Tompkin, Hearing Officer

Ellen Townsend-Smith, Advisor to Commissioner
Pernell

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

Alvin J. Greenberg, Ph.D., REA, QEP, President
Risk Science Associates

Joe Morgan, Senior Project Manager, URS

Steve Baker, P.E., Senior Mechanical Engineer

Eileen Allen, Senior Planner, Land Use/Traffic &
Transportation Unit

Negar Vahidi, Senior Associate, Aspen
Environmental Group

Jacob Hawkins, Environmental Planner, Aspen
Environmental Group

Sally M. Salavea, Senior Planner, PCR

Bill Reeds, Director, Development & Engineering
Services, City of Tracy

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

APPLICANT

John P. Grattan, Esq., Counsel for Applicant
Grattan and Galati

Irwin D. Karp, Esq., Counsel for Applicant
Grattan and Galati

Amanda Monchamp, Counsel for Applicant

Douglas W. Wheeler, Vice President, GWF Power
Systems Company, Inc.

David A. Stein, P.E., Senior Project Manager, URS
Corporation

James A. Adams, REA, Senior Project Manager, URS
Corporation

Rob Greene, INCE Bd. Cert., Manager, Noise &
Vibration Environmental Planning, URS Corporation

Jennifer L. Hernandez, Esq.; Beveridge & Diamond,
P.C., Environmental & Land Use Law

David A. Stein, P.E., Senior Project Manager, URS

INTERVENORS PRESENT

Irene Sundberg, Tracy resident

Robert Sarvey, on behalf of the Sarvey family

John D. Bakker, Esq.; Meyers, Nave, Riback, Silver
& Wilson, representing City of Tracy

Howard L. Seligman, Esq.; Seligman & Willett,
Inc., representing Charles Tusso

Michael H. Weed, Esq., representing Larry Chang

David Blackwell, Esq., co-counsel representing
Larry Chang

Dennis C. Noble, Esq., representing John Corcorus
and Roger Traina

Charles Tusso, on behalf of the Tusso family
Robert Sarvey

ALSO PRESENT

Lynn G. Bedford, Board of Supervisors, San Joaquin
County

Brad Williamson, Business Representative, Int'l
Brotherhood of Electrical Workers, Local 595

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

P R O C E E D I N G S

10:05 a.m.

PRESIDING COMMISSIONER PERNELL: Good morning and welcome. This again is a continuation of the evidentiary hearing of the GWF Energy LLC application for certification for the GWF Tracy Peaker Project.

My name is Commissioner Pernell. I am the presiding member. My associate member is Commissioner Laurie. Our hearing officer Ms. Tompkins (sic), and my advisor is Ellen Townsend-Smith.

Commissioner Laurie, do you have any opening comments?

COMMISSIONER LAURIE: Thank you, Commissioner Pernell. No, I would just note, however, that, as I indicated yesterday, I have to leave at 2:00 o'clock, and it's rude of me, but I don't want anybody taking it personally if I have to get up in the middle of their presentation, and I'll apologize in advance for that.

PRESIDING COMMISSIONER PERNELL: Thank you.

COMMISSIONER LAURIE: And there's a roomful of people saying thank God, maybe we can

1 get him to leave at 11:00, so --

2 (Laughter.)

3 PRESIDING COMMISSIONER PERNELL:

4 Hopefully by 2:00 o'clock we'll be further along
5 than the middle.

6 With that, I'd like to turn -- This
7 morning we're still on Land Use, and we'll begin
8 with staff, the staff witness. At this time I'll
9 turn the hearing over to our hearing officer,
10 Ms. Tompkins.

11 HEARING OFFICER TOMPKIN: Thank you,
12 Commissioner Pernel. I am going to now ask
13 Ms. Willis -- Well, first of all, let me have the
14 parties identify themselves for the record so we
15 know who is here today. And we'll begin with the
16 applicant.

17 APPLICANT COUNSEL GRATTAN: John Grattan
18 for the applicant. Irwin Karp to my right, and
19 Amanda Monchamp right behind me. In the audience
20 we have Doug Wheeler from GWF, and also Dave Stein
21 and members of the URS consulting team.

22 HEARING OFFICER TOMPKIN: Thank you.

23 APPLICANT COUNSEL GRATTAN: Oh, and
24 also, I'm sorry, Jim Adams and Jennifer Hernandez.

25 HEARING OFFICER TOMPKIN: Thank you,

1 Mr. Grattan. Ms. Willis?

2 STAFF COUNSEL WILLIS: Thank you. Can
3 you hear us back there?

4 UNIDENTIFIED SPEAKER: Not really.

5 STAFF COUNSEL WILLIS: We're going to
6 need another mic.

7 PRESIDING COMMISSIONER PERNELL: They
8 only have one mic.

9 STAFF COUNSEL WILLIS: They're trying to
10 make it loud enough, but I don't think it's going
11 to be --

12 Thank you. I'm Kerry Willis, staff
13 counsel, and to my left is Negar Vahidi, Eileen
14 Allen, and Jacob Hawkins, who will be presenting
15 our Land Use testimony today.

16 HEARING OFFICER TOMPKIN: And can we
17 please have the intervenors identify themselves.

18 INTERVENOR WEED: Michael Weed and David
19 Blackwell for intervenor Larry Chang.
20 Thank you, Ms. Willis.

21 At this time I'm going to ask the
22 intervenors to identify themselves.

23 INTERVENOR SUNDBERG: Irene Sundberg,
24 resident of the City of Tracy.

25 INTERVENOR SARVEY: Howard Seligman, for

1 intervenor Charles Tusso.

2 INTERVENOR BAKKER: John Bakker, on
3 behalf of the City of Tracy. Bill Dean is to my
4 left. Bill Reeds will be here shortly.

5 INTERVENOR TUSO: This is Chuck Tusso,
6 and after the length of yesterday's meeting I'm
7 here working for Howard Seligman.

8 (Laughter.)

9 INTERVENOR NOBLE: I'm glad somebody is
10 working. My name is Dennis Noble, representing
11 two property owners, Corcorus and Traina.

12 HEARING OFFICER TOMPKIN: Thank you.

13 At this time, then, we'll proceed to the
14 staff witness on Land Use. Ms. Willis?

15 STAFF COUNSEL WILLIS: Thank you. At
16 this time staff would like to call Negar Vahidi,
17 Eileen Allen, and Jacob Hawkins, and they all need
18 to be sworn in.

19 Whereupon,

20 NEGAR VAHIDI, EILEEN ALLEN, and JACOB HAWKINS
21 Were called as witnesses herein and, after first
22 being duly sworn, were examined and testified as
23 follows:

24 HEARING OFFICER TOMPKIN: Please
25 proceed.

1 STAFF COUNSEL WILLIS: And I'd like to
2 start with Ms. Vahidi.

3 DIRECT EXAMINATION

4 BY STAFF COUNSEL WILLIS:

5 Q Would you please state your name for the
6 record.

7 A Yes. My name is Negar Vahidi.

8 Q Was a statement of your qualifications
9 attached to your testimony?

10 A Yes, it was.

11 Q And could you briefly just state your
12 education and experience, as it pertains to land
13 use analysis.

14 A Yes. I hold a bachelor of arts degree
15 from the University of California, Irvine in
16 political science. And I hold a master of public
17 administration from the University of Southern
18 California. I've been conducting land use and
19 socioeconomics impact analysis for ten years for a
20 variety of projects ranging from residential
21 development to major infrastructure for flood
22 control, crude oil pipelines, transmission lines
23 and power plants.

24 Q Thank you. Did you prepare or assist in
25 preparing the testimony entitled Land Use analysis

1 or, I mean, Land Use in the staff assessment?

2 A Yes.

3 Q And was that analysis wholly replaced by
4 the Land Use analysis in the staff assessment
5 supplement?

6 A Yes.

7 Q Did you also prepare or assist in
8 preparing that analysis?

9 A Yes.

10 Q And do you have any changes to the
11 written testimony today?

12 A I do not.

13 Q Okay.

14 STAFF COUNSEL WILLIS: I'd like to go to
15 Ms. Allen.

16 BY STAFF COUNSEL WILLIS:

17 Q Could you please state your name for the
18 record.

19 A Eileen Allen.

20 Q Was a statement of your qualifications
21 attached to your testimony?

22 A Yes, it was.

23 Q And could you briefly state your
24 education and experience, as it pertains to land
25 use analysis.

1 A I have a bachelor's degree from UC,
2 Berkeley in rhetoric and communication, and a
3 master's degree in environmental planning and
4 management from UCLA. I have over 20 years'
5 experience professionally dealing with land use
6 and energy issues.

7 Q And could you please state your role at
8 the Energy Commission.

9 A I am the supervisor of the Energy
10 Commission's Land Use and Traffic and
11 Transportation Unit.

12 Q Thank you. Did you prepare or assist in
13 preparing or supervise the testimony entitled Land
14 Use in the staff assessment?

15 A Yes, I did.

16 Q And did you also assist or supervise in
17 preparing an analysis in the staff supplement?

18 A Yes, I did.

19 STAFF COUNSEL WILLIS: I'd like to turn
20 to Mr. Hawkins.

21 BY STAFF COUNSEL WILLIS:

22 Q Could you please state your name for the
23 record.

24 A Yes, my name is Jacob Hawkins.

25 Q And was a statement of your

1 qualifications attached to your testimony?

2 A Yes, it was.

3 Q And could you briefly state your
4 education and experience.

5 A I have a bachelor's in science, in
6 biology, concentration in ecology, and a minor in
7 ethical studies and science and technology.
8 Completing that I went on to a master's in
9 environmental science and management. After
10 graduating from that, I went to work at Aspen
11 Environmental Group, which for since doing that,
12 this last June I have worked on 12 CEC projects,
13 four of which of them land use, including Tracy,
14 Tesla, East Altamont, and Lindon Claire
15 (phonetic).

16 Q Thank you. Did you prepare or assist in
17 preparing the testimony entitled Land Use in the
18 staff assessment?

19 A Yes.

20 Q And did you also assist or prepare the
21 testimony in the staff assessment supplement?

22 A Yes.

23 STAFF COUNSEL WILLIS: And now I'd like
24 to turn to Ms. Vahidi. Well, maybe I'll ask each
25 one of you.

1 BY STAFF COUNSEL WILLIS:

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

5 A (Vahidi) Yes.

6 A (Allen) Yes.

7 A (Hawkins) Yes.

8 Q Thank you.

9 Ms. Vahidi, what is the purpose of your
10 testimony today?

11 A The purpose of my testimony in
12 compliance with state law is to conduct an
13 independent assessment of land use, including
14 environmental impacts, compliance with LORS, and I
15 have provided my independent interpretation of the
16 local LORS.

17 Q What documents did you review in
18 performing your analysis?

19 A We started out with the applicant's
20 application for certification, and we also
21 reviewed the applicable plans and policies,
22 including the San Joaquin general plan, the San
23 Joaquin development title, which is, in effect,
24 their zoning code; the Mountain House master plan.

25 And, as far as legal regulations, the

1 documents that we normally use and have looked at
2 for this assessment include the California
3 Environmental Quality Act, Federal Aviation
4 Administration regulations, the Subdivision Map
5 Act, the California Land Conservation Act, and the
6 Delta Protection Act.

7 Q Did you review any documents of the City
8 of Tracy?

9 A Yes.

10 Q And could you describe those documents.

11 A Yes. We reviewed the South Schulte
12 specific plan and the Tracy Hills specific plan,
13 which are both considered City of Tracy general
14 plan implementation documents, and the South
15 Schulte specific plan EIR.

16 Q Did you speak with any of the staff of
17 San Joaquin County?

18 A Yes.

19 Q And could you please briefly describe
20 those conversations or list them?

21 A Yes. We spoke with Chandler Martin, who
22 is a senior planner, on several occasions,
23 including once on August 22nd, 2001; October 25th,
24 2001; January 8th, 2002; January 29th, 2002. And
25 we spoke with Mr. Jim Van Buren, who is a planner,

1 on October 24th, 2001 and October 25th, 2001.

2 Q And did you also speak with any of the
3 staff of the City of Tracy?

4 A Yes. We spoke with Vickie Lombardo, who
5 is a planner, on November 28th, 2001; January 2nd,
6 2002 on two occasions; and January 29th, 2002. We
7 spoke with Mr. John Palmer, who is a planner as
8 well, on January 8th, 2002; and Ms. Margaret
9 Wimberly, assistant city clerk, on March 5th,
10 2002, and Planning Commissioner Irene Sundberg on
11 February 7th, 2002.

12 BY STAFF COUNSEL WILLIS:

13 Q Ms. Allen, do you have anything to
14 supplement on those discussions with the City of
15 Tracy? Did you meet with anyone?

16 A I talked informally with Mr. Dean on
17 January 9th, 2002, following staff's Land Use
18 workshop on the staff assessment. I also talked
19 informally with him when I met him at the city
20 offices on January 15th, 2002. I've had informal
21 telephone conversations with him also, also during
22 the first two weeks of January.

23 BY STAFF COUNSEL WILLIS:

24 Q And, Ms. Vahidi, did you conclude that
25 the project would be in compliance with all land

1 use laws, ordinances, regulations, and standards?

2 A Yes, with the incorporation of staff's
3 proposed mitigation.

4 Q Would the mitigation -- I'm sorry, would
5 the project be in conformance with all County land
6 use LORS?

7 A Yes, again with mitigation.

8 Q And could you please describe the
9 mitigation that you're proposing today.

10 A Yes. We have two mitigation measures
11 proposed. Land One requires a copy of the
12 recorded certificate of compliance for the site,
13 prepared in accordance with the Subdivision Map
14 Act to ensure that the site is a legally
15 subdivided property.

16 And Land Two addresses the conversion of
17 10.3 acres of prime farmland to non-agricultural
18 use by requiring the applicant to provide
19 mitigation fees to the American Farmland Trust for
20 the establishment of the Tracy Peaker Project
21 Trust Fund and the development of an agricultural
22 mitigation plan that describes the long-term
23 management of the remaining agricultural
24 operations on the site for the remaining 29.7
25 acres.

1 Q Thank you.

2 STAFF COUNSEL WILLIS: I'd like to turn
3 Ms. Allen's attention to previously marked
4 Exhibit I believe it was 60, the letter dated
5 September 18th, 2001 from San Joaquin County
6 Community Development Department to Ms. Cheri
7 Davis, project manager of the Energy Commission.

8 BY STAFF COUNSEL WILLIS:

9 Q Do you have that letter in front of you?

10 A Yes, I do.

11 Q Ms. Allen, have you seen this letter
12 prior to these evidentiary hearings?

13 A Yes, I have.

14 Q The first paragraph of the letter
15 indicates this letter was sent in response to
16 staff's conversations. Are you familiar with this
17 section of the letter?

18 A Yes, I am.

19 Q And do you have any personal or direct
20 knowledge of any phone conversations with the
21 County staff that relate to the contents of this
22 letter?

23 A Yes. In early September 2001 I talked
24 with Ms. Sullivan of the County's Community
25 Development staff. I'm going to look at my notes

1 regarding the substance of my conversation with
2 her. I told Ms. Sullivan of the County staff that
3 we needed a letter discussing three items: the
4 County's conclusions regarding the project's
5 consistency with its laws, ordinances,
6 regulations, and standards, what we've been
7 referring to throughout this proceeding as LORS;
8 the County's position on the project within the
9 Williamson Act agricultural land preserve; and the
10 conversion of prime farmland as a potential
11 impact.

12 We routinely ask local jurisdictions for
13 their conclusions on LORS items, and related items
14 that the County may care to share with us, noting
15 that the site characteristics are different for
16 each case. The Commission staff regards the local
17 jurisdiction's written conclusions as an important
18 but not crucial piece of information. The local
19 agency's conclusions are included in the staff's
20 overall review of the body of Land Use
21 information.

22 Q Now, Ms. Allen, you mentioned a phone
23 conversation with Ms. Sullivan. Did the staff
24 request information from the County or other local
25 agencies in any other form?

1 A Yes.

2 Q And could you please describe that.

3 A After the Energy Commission receives an
4 application, we routinely send a letter to various
5 agencies, including local agencies, notifying them
6 that we have received the application. And in
7 that letter, we ask them to comment on the
8 application, any issues that concern them, and
9 also consistency with their local LORS.

10 So we sent that letter to San Joaquin
11 County. It's dated August 22nd. We sent a
12 similar letter to the City of Tracy with that same
13 date and the same wording.

14 Q So just as a point of clarification, the
15 letter that was sent out by the Energy Commission
16 to local agencies requested comments on any part
17 of the project; is that your testimony?

18 A Yes.

19 Q But the phone conversation you had
20 specifically with Ms. Sullivan was relating to
21 just Land Use LORS?

22 A Yes.

23 APPLICANT COUNSEL GRATTAN: Excuse me
24 just a moment. Can I ask counsel to get a little
25 bit closer to the microphone? I'm hearing the

1 answers fine, but the questions not completely.

2 STAFF COUNSEL WILLIS: Thank you.

3 PRESIDING COMMISSIONER PERNELL: Could
4 you repeat the last question, please.

5 STAFF COUNSEL WILLIS: Okay.

6 BY STAFF COUNSEL WILLIS:

7 Q The question was, just as a point of
8 clarification, that the letter sent to the local
9 agencies was requesting comments on any part of
10 the project, if that was your testimony?

11 A Yes, that's correct.

12 Q And then finally, if the conversation
13 you had with Ms. Sullivan, if you only requested
14 information on Land Use LORS.

15 A Yes, that's correct.

16 Q Now, yesterday there was quite a bit of
17 discussion with the applicant's witness regarding
18 Exhibit 60, the letter from Mr. Hulse from the San
19 Joaquin County Community Development Department.
20 In that letter the word "findings" has been used
21 in the text of the letter and in the attachments;
22 are you aware of that?

23 A Yes, I am.

24 Q Thank you. In your professional opinion
25 and in your analysis, does the word "findings," as

1 it relates to this letter, have any special
2 significance to you in conducting your Land Use
3 analysis?

4 A No. In this context, I regard the word
5 "findings" as synonymous with "conclusions."

6 Q So your testimony today would be that if
7 the word "conclusions" had been used, there would
8 be no change in your testimony today.

9 A Yes.

10 Q Now, if the word "determinations" had
11 been used, would that change your analysis?

12 A No, it would not have.

13 Q At any point in time, did you believe
14 the County staff or the Board of Supervisors had
15 made a determination or approved the project on
16 its merits?

17 A Not at all.

18 Q After the September 18th letter was
19 issued, did you ever follow up with the County
20 staff to discuss the contents of that letter?

21 A Yes. On December 21st, 2001, I went to
22 Stockton to meet with Ms. Sullivan and
23 Mr. Chandler Martin, and I met with them in their
24 offices.

25 Q And what was the purpose of your

1 meeting?

2 A To discuss their overall letter of
3 September 18th and clarify some points that I had
4 questions on.

5 Q At any point in time during that
6 conversation did the County staff retract or
7 change any of the portions of the letter that we
8 have received on September 18th?

9 A No, they did not.

10 Q Ms. Allen, have you ever reviewed the
11 Well Head project permit application?

12 A No, I had not heard of the Well Head
13 project until last night.

14 Q So is it your testimony that the
15 determinations by the County and the Well Head
16 project did not influence you in your analysis of
17 this particular project?

18 A They did not influence me whatsoever.

19 Q Ms. Allen, finally, is any local
20 jurisdiction required to issue permits for a power
21 plant project under the -- over 50 megawatts?

22 A No. No, they are not.

23 Q And could you explain a little more?

24 A The California Energy Commission has
25 exclusive jurisdiction for issuing permits for

1 thermal power plants with a capacity of 50
2 megawatts or greater.

3 Q So just as a final clarification, did
4 you expect or request the County staff of Board of
5 Supervisors to make a determination on the merits
6 of this project?

7 A No, I did not, and, as a matter of fact,
8 they did not.

9 STAFF COUNSEL WILLIS: Thank you.

10 BY STAFF COUNSEL WILLIS:

11 Q Ms. Vahidi, could you please state what
12 the current County general plan zoning for the
13 proposed site is.

14 A The current San Joaquin County zoning
15 for the site is Ag40, which is agricultural with
16 40-acre minimum lot size.

17 Q Did the County staff determine that a
18 power plant would be a compatible use for this
19 land use designation?

20 A Yes.

21 Q And how was that conveyed to you, that
22 determination?

23 A That was conveyed in a few ways, and one
24 was in a phone conversation and a fax to Kerry
25 Sullivan, of the County planning staff, in which

1 CEC staff requested the County to provide a
2 discussion of the proposed projects, three
3 components: the proposed project's conformance
4 and consistency with local LORS, the Williamson
5 Act contract findings, and the significance of
6 prime agricultural land conversion.

7 And we also spoke with County Planning
8 Director Mr. Ben Hulse -- Actually, we didn't
9 speak with him, he sent a letter to Cheri Davis,
10 our project manager, the letter that's been
11 discussed at length, the September 18th letter.

12 Q Is the power plant a permitted use under
13 the County's development title?

14 A With issuance of a conditional use
15 permit, yes. And in his letter to CEC staff,
16 Mr. Hulse -- the September 18th letter --
17 Mr. Hulse states that the Community Development
18 Department finds that the proposed use is
19 consistent with the development title special use
20 regulations as stated in Attachment A findings.

21 Q Originally the project site was on the
22 Williamson Act land. What did you conclude in
23 your analysis relating to the project's
24 compatibility with the Williamson Act?

25 A In the September 18th letter, Mr. Hulse

1 stated that the County development title finds
2 that the project is consistent with the Williamson
3 Act, as stated in Attachment A, the findings. We
4 also had discussions with the State of California
5 Department of Conservation, and they in a letter
6 deferred to the County and accepted their
7 determination as we describe in our Land Use
8 testimony.

9 And worth noting is that the contract,
10 the Williamson Act contract on the site did expire
11 March 1st, and so, therefore, we don't consider
12 this an issue any longer.

13 Q Thank you. Did you consider the City of
14 Tracy's land use laws, ordinances, regulations,
15 and standards in your analysis?

16 A Yes. We reviewed the South Schulte
17 specific plan -- The site is located in the South
18 Schulte plan area -- and the Tracy Hills specific
19 plan, and we also spoke with City planning staff.

20 Q Could you please explain the term
21 "sphere of influence."

22 A Yes. "Sphere of influence" is defined as
23 a plan for the probable physical boundaries and
24 service area of a local government agency, as
25 defined by California Government Code Section

1 56076.

2 Q After conducting your thorough analysis
3 of local LORS, in your opinion what is the
4 applicable local jurisdiction for this project?

5 A The County of San Joaquin.

6 Q And then did you determine that the
7 County LORS applied to this project?

8 A Yes.

9 Q Did you determine that this project
10 would create significant adverse environmental
11 impacts?

12 A Yes. The conversion of agricultural,
13 prime agricultural land as designed by Department
14 of Conservation.

15 Q Are you proposing any conditions of
16 certification to mitigate for this impact?

17 A Yes. And we propose condition of
18 certification Land Two, which, as I described
19 before, requires the applicant to provide
20 mitigation fees to the American Farmland Trust for
21 the establishment of the TPP Trust Fund and the
22 development of an agricultural mitigation plan
23 describing the long-term management of the
24 remaining agricultural operations on the 29.7
25 acres on the site.

1 Q Ms. Vahidi, are you aware of the
2 resolution that was passed by the County Board of
3 Supervisors on February 12th, I believe?

4 A Yes.

5 Q Could you please read the third
6 paragraph down, "Now, therefore, be it resolved"?

7 A Yes. "Now, therefore, be it resolved
8 that the San Joaquin County Board of Supervisors
9 opposes the construction and operation of said
10 proposed Tracy peaker project until such time as
11 the concerns of the County have been addressed and
12 mitigated."

13 Q Now, you have mentioned before, but
14 could you please restate, did you have
15 conversations, discussions, meetings with the
16 County staff?

17 A Yes, we did.

18 Q At any of these meetings or during any
19 of these conversations, did County staff express
20 any concerns over this project?

21 A County staff has not ever expressed any,
22 did not ever express any concerns over the project
23 during any of our contact with them.

24 BY STAFF COUNSEL WILLIS:

25 Q Ms. Allen, I'd like to ask you the same

1 question, did you meet with County staff?

2 A Yes, I have.

3 Q And, at any point in time, did they
4 express any concerns to you regarding this
5 project?

6 A No, they did not.

7 BY STAFF COUNSEL WILLIS:

8 Q And, Mr. Hawkins, I'd like to ask you
9 the same question, did you either meet or have
10 discussions with County staff?

11 A Yes, I had discussions with County
12 staff.

13 Q And, at any point in time, did they
14 express any concerns to you regarding this
15 project?

16 A No, they did not.

17 STAFF COUNSEL WILLIS: Thank you.

18 That concludes our testimony. These
19 witnesses are available for cross examination.

20 PRESIDING COMMISSIONER PERNELL:

21 Commissioner Laurie.

22 COMMISSIONER LAURIE: Thank you,
23 Mr. Chairman.

24 Ms. Vahidi, good morning.

25 THE WITNESS: Good morning.

1 COMMISSIONER LAURIE: It's good to see
2 the presence of another anteater in the room.

3 (Laughter.)

4 COMMISSIONER LAURIE: Especially since
5 we have all these Cal and Stanford graduates --

6 THE WITNESS: That's right.

7 COMMISSIONER LAURIE: -- taking up our
8 valuable space.

9 EXAMINATION BY COMMITTEE

10 BY COMMISSIONER LAURIE:

11 Q In regards to the recommendation for a
12 certificate of compliance, the certificate of
13 compliance being the instrument utilized to get
14 formal verification that the parcel was, in fact,
15 legally created, what is your rationale, what is
16 the evidence or information you had before you
17 that you believe necessitates the obtaining of
18 that certificate?

19 A Can you repeat the question, I'm sorry?

20 Q Sure. My understanding of certificates
21 of compliance is they're normally granted in order
22 to ensure that when a series of parcels or acing
23 of the parcels be marketed, and the City or County
24 has a question as to the legitimacy of the
25 creation of that parcel, you get a certificate and

1 that provides formal, legal verification of the
2 legal creation of that parcel.

3 This parcel really is not being
4 marketed, and my question for you is why are you
5 recommending that a certificate of compliance be
6 obtained?

7 A We asked for the certificate of
8 compliance merely to ensure that it had been, the
9 legal lot adjustment had occurred, to ensure that
10 before, for project approval, CEC project
11 approval.

12 And to ensure -- we often put this
13 condition into our staff assessments to ensure
14 that that happens, so that if a portion of the
15 site is used for the power plant, in the future
16 they don't go and market other pieces of the land
17 for other purposes.

18 Q And this is a result of the lot line
19 adjustment action?

20 A Yes, it is.

21 Q Okay. Are you questioning the legality
22 of the lot line adjustment?

23 A We're not questioning it, it's merely to
24 ensure that it has occurred so that we have proof
25 of that, the Commission has proof of that.

1 Q Okay. There would be a recorded
2 document verifying the finalization of the
3 boundary line adjustment; would there not?

4 A I would believe so, yes.

5 COMMISSIONER LAURIE: Okay.

6 PRESIDING COMMISSIONER PERNELL: Thank
7 you.

8 HEARING OFFICER TOMPKIN: Does applicant
9 wish to question this witness?

10 APPLICANT COUNSEL GRATTAN: With the
11 committee's indulgence, we would reserve our cross
12 examination until the end.

13 HEARING OFFICER TOMPKIN: We'll proceed
14 with questioning by the intervenors.

15 INTERVENOR BAKKER: I guess the City of
16 Tracy will start. Bear with me for a moment.

17 COMMISSIONER LAURIE: Mr. Chairman,
18 while we're bearing with counsel, can I ask one
19 more question, please?

20 PRESIDING COMMISSIONER PERNELL: Yes,
21 Commissioner.

22 BY COMMISSIONER LAURIE:

23 Q Ms. Vahidi, I thought I heard you
24 testify that you would find consistency with LORS
25 with the issuance of a conditional use permit.

1 Was that your testimony?

2 A Just to make sure I'm giving you the
3 correct answer, no, my testimony was that it would
4 have -- Well, hold on just for one second.

5 Under the County's development title, if
6 it were to have been permitted by them under, with
7 a conditional use permit, it would have been.

8 Q Is it your opinion that should the
9 Energy Commission certify this project, that it
10 must issue an either site approval or conditional
11 use permit in order to make a LORS finding?

12 A No, absolutely not.

13 COMMISSIONER LAURIE: Thank you.

14 And thank you, Mr. Chairman.

15 PRESIDING COMMISSIONER PERNELL: Thank
16 you, Commissioner Laurie.

17 We shall proceed with the City of Tracy.

18 INTERVENOR BAKKER: Thank you.

19 I have a preliminary question for the
20 panel in general.

21 CROSS EXAMINATION

22 BY INTERVENOR BAKKER:

23 Q In our review of the staff assessment,
24 we didn't see any land use maps included with
25 either of the staff assessments. Can you tell us

1 why that was?

2 A Well, I can speak for myself and I had
3 two co-authors, so I'll let them speak as well.
4 Based on the fact that the site was zoned Ag40 and
5 it was easily described in text narrative, and the
6 fact that there were numerous figures available in
7 the AFC, we didn't see it necessary to provide a
8 map.

9 A (Allen) I concur with Ms. Vahidi.

10 A (Hawkins) And I concur with her
11 statement as well.

12 Q Thank you. The staff assessment didn't
13 include any diagram that showed existing
14 development in the site, either; is there a reason
15 why that was not included?

16 A We described it at length in text.

17 Q Okay. Do you think it is important and
18 typical to include a land use map and diagrams of
19 existing developments in land use analyses?

20 A Not always. I've done it both ways in
21 the many years I've done land use assessments for
22 EIRs and EISs.

23 Q Okay. Is it your opinion that -- Well,
24 let me just ask you this. Is it not particularly
25 important in determining whether a project is

1 compatible with its surroundings to have a land
2 use map, one, and a map of existing development?

3 A I believe that if it's described in text
4 narrative in a descriptive manner, you can make
5 conclusions similar to being able to look at
6 graphics.

7 Q Would it not be helpful to the public
8 and members of -- and the Committee to have a map
9 to use to analyze the land use impacts of this
10 project?

11 A I can't really say what would be
12 helpful. I mean, some people like graphics and
13 some people like text, it just -- it doesn't
14 really matter.

15 Q Okay, thank you. Just for the panel,
16 I'm just going to briefly cover a few of the
17 issues concerning the TPP's conformance with the
18 County's LORS, so why don't we just get right into
19 that.

20 I believe in the staff assessment, I
21 guess that's the supplement to the staff
22 assessment at page 3.4-15, you conclude that the
23 TPP is consistent with County general plan land
24 use policies that require, and I'll quote, "that
25 development be compatible with adjacent uses and

1 complement and blend in with its setting."

2 The reason for your conclusion, it is
3 stated, is because "the project is adjacent to the
4 industrial compound containing Owens-Brockway,
5 Nutting-Rice and Tracy Biomass." Is that your
6 testimony?

7 A Can you tell me exactly where you're
8 looking on that page?

9 Q Yeah, I'm sorry, that's from the
10 supplement to the staff assessment at page 3.4-15.

11 A And is that the third bullet item?

12 Q Oh, my apologies. That would be the
13 second bullet item --

14 A I believe it's the third --

15 Q Oh, it's the third bullet item, my
16 apologies.

17 A -- under CODPP 10 and 11.

18 Q Right.

19 A Yeah.

20 Q In making this determination, did you
21 consider the impacts on other surrounding
22 properties?

23 A Yes.

24 Q In making this determination, did you
25 consider the proposed land uses shown in the Tracy

1 UMP and also in the South Schulte specific plan?

2 A Those two plans were evaluated and
3 reviewed under cumulative projects, under plant
4 projects.

5 Q Okay, but you didn't consider -- In
6 making this determination under the County general
7 plan policies, you did not consider --

8 A No, because those are the County's
9 general plan policies.

10 Q Okay.

11 A And not the City's.

12 Q Would it have been -- I'll just leave it
13 at that. Thank you.

14 Now, did the County have any input in
15 making this determination regarding consistency
16 with these two general plan policies that I'm
17 referencing here?

18 A No. As is normally done for Land Use
19 policy consistency analysis, when we review
20 applicable plans and policies, we go through and
21 pick out what we think is applicable to the
22 project, and we take a look at it with respect to
23 the proposed project and do a consistency
24 analysis.

25 So on those particular ones, we did not

1 ask the County to give us policy analysis
2 language.

3 Q Okay. So your testimony is you that did
4 an independent analysis of the County's general
5 plan policies.

6 A With the ones that are laid out in the
7 testimony, yes.

8 Q Okay. And you didn't seek clarification
9 from the County as to the meaning of those
10 policies or anything like that.

11 A Other than the agency letter that was
12 sent that we requested regarding the development
13 title, no.

14 Q Okay. Just a final question on that
15 third bullet point there: In analyzing those
16 general plan policies, did you consider whether
17 adding a power plant to this area and expanding
18 the area's industrial use, whether that would
19 prolong its use as a site for heavy industry?

20 A As far as the length of time a use
21 occurs on a site, that's not what I would be
22 looking at normally.

23 Q Okay, thank you. I believe that your
24 testimony, and this would be in the supplemental
25 staff assessment, you state that the County

1 concluded that the TPP project is consistent with
2 the County's general plan policies; is that
3 correct?

4 A Can you point me to where we said that?
5 I just want to make sure I'm on the same --

6 Q This would be at the bottom of page
7 3.14-15, the very last paragraph -- It's not a
8 full paragraph, it continues on the next page.

9 A Right. Can you restate your question,
10 then, please?

11 Q Yes. I just wanted to clarify that your
12 testimony states that in the County's
13 September 18th letter, the County concluded that
14 the TPP project is consistent with the County's
15 general plan policies.

16 A Yes.

17 Q Okay. Can you show us where, in the
18 September 18th letter, that the County considers
19 the consistency of the TPP project with its
20 general plan policies?

21 A Well, reason would have it that a zoning
22 ordinance -- i.e., the development title -- the
23 purpose of it is to implement the general plan
24 under land use law. So, therefore, under the
25 paragraph entitled local laws, ordinances,

1 regulations, and standards, the discussion of the
2 Ag40 zone and the fact that he states that power
3 plants fall under the use type of Utility
4 Services, Major and the fact that he's saying that
5 this is conditionally permitted in the Ag zone, we
6 would conclude that that's considered in
7 compliance with our LORS, with the policies of the
8 general plan, since it's consistent with the
9 zoning.

10 Q Okay. Just for clarification, though,
11 nowhere in that --

12 A And it does mention the general plan.
13 It says the site is designated A-g on the general
14 plan and is zoned Ag40, in the first sentence of
15 that paragraph.

16 Q Okay. But, just for clarification,
17 nowhere in the letter does it discuss the four-
18 bulleted County general plan policies that --

19 A Not in the same exact verbatim way that
20 we've discussed them.

21 Q Does it discuss them at all, the
22 policies in question?

23 A Not the four that you're stating, not
24 the four bulleted ones that you're asking about.

25 Q Okay, thank you. Ms. Vahidi, are you

1 approval with the site approval requirements under
2 the County's development regulations or
3 development title?

4 A Admittedly, I am not thoroughly familiar
5 with those site approval requirements, because
6 it's not something that I would be looking at.
7 I'm CEC Commission staff, so I wouldn't know.

8 Q Okay. But is it your -- I thought I
9 heard in your testimony earlier that you said a
10 conditional use permit is required.

11 A I did not say that.

12 Q What would have been required, but for
13 the Commission's --

14 A If it was a power plant under 50
15 megawatts, a conditional use permit would have
16 been required by the County of San Joaquin to
17 approve the project.

18 Q Ms. Vahidi, just for clarification, can
19 we -- can you tell me what your understanding of
20 the Commission's role in analyzing the LORS of the
21 County or another jurisdiction that would have
22 jurisdiction but for the Commission's
23 jurisdiction?

24 A Sure. I'll let Eileen answer that,
25 because she is our senior staff at the CEC.

1 INTERVENOR BAKKER: Thank you.

2 THE WITNESS: The Warren Alquist Act, in
3 Section 25523(d) (1) requires the Commission to
4 make findings regarding the conformity of the
5 proposed site and related facilities with relevant
6 local, regional, state, and federal standards,
7 ordinances and laws.

8 In order to come to these conclusions
9 regarding conformity, we generally ask the local
10 government entity that would have jurisdiction but
11 for the Commission being the lead agency to give
12 us their written conclusions on the project's
13 conformity with its LORS, with its land use LORS.

14 For this case we contacted San Joaquin
15 County's Community Development Department which
16 resulted in the County's September 18th letter.

17 In addition to --

18 BY INTERVENOR BAKKER:

19 Q Well, you're getting beyond my question.
20 I guess my question was simply what the
21 Commission's role is.

22 A Our role is to do an independent
23 analysis of the consistency of the project with
24 laws, ordinances, regulations, and standards,
25 including the local jurisdiction.

1 INTERVENOR BAKKER: Okay, thank you.

2 BY INTERVENOR BAKKER:

3 Q Ms. Vahidi, are you aware, then, making
4 a site approval or issuing a site approval, the
5 County is required to find that the issuance of a
6 permit will not be significantly detrimental to
7 the public health, safety or welfare, or be
8 injurious to the property or improvements of
9 adjacent properties?

10 STAFF COUNSEL WILLIS: I'm going to
11 object to this question; I think she just
12 testified she wasn't familiar with the site
13 approval process for the County.

14 INTERVENOR BAKKER: Okay, thank you.

15 BY INTERVENOR BAKKER:

16 Q So did you ever consider the
17 requirements for site approval?

18 A Since I am not familiar with it, no.

19 Q Thank you. I just want to focus you a
20 little bit on some -- I don't know if this
21 question is for the panel or if it's for anyone in
22 particular, but I'm going to just go ahead and ask
23 it.

24 In the supplement to the staff
25 assessment, and I believe this is also in the

1 staff assessment, you testified that you disagree
2 with the conclusions in the County's
3 September 18th letter with regard to the findings
4 that the source of power requires locating the use
5 in an area designated as agricultural. This is at
6 page 3.4-17, I believe, of the supplement; is that
7 correct?

8 A Yes.

9 Q I guess I didn't complete the finding.
10 The County's finding is that, in the
11 September 18th letter, that the source of the
12 power requires locating the use in an area
13 designated as agricultural, since the TPP requires
14 access to natural gas, electric transmission, and
15 water; is that correct?

16 A That's what the County said in their
17 letter, yes.

18 Q Thank you. And I guess your testimony
19 also suggests that the TPP would be better suited
20 for industrially zoned properties; is that your
21 testimony?

22 A Well, our testimony is that it's an
23 industrial type of land use and logically would be
24 located in an industrial zoning district.

25 Q Okay, thank you. Now, I guess it was a

1 December 21st conversation -- This may be better
2 directed to Ms. Allen -- County staff stated that
3 it was possible -- I'm reviewing your testimony --
4 County staff apparently stated that it was
5 possible that non-agricultural-zoned sites in the
6 region could also provide access to natural gas,
7 electric transmission, and water; is that correct?

8 A Yes.

9 Q Now, in your testimony you nonetheless
10 concluded that the County staff's interpretation
11 of the ordinances or the regulations is
12 reasonable. Can you tell us how you reached that
13 conclusion?

14 A I allowed for the possibility that there
15 could be a reasonable interpretation such that you
16 could conclude that they were not saying that a
17 power plant must be exclusively located in an
18 agricultural zone. I allowed for the possibility
19 that they were saying that because of the
20 characteristics of the agricultural zone that a
21 power plant would be acceptable there.

22 So that was one of the reasons why I
23 went and talked with the County staff on
24 December 21st about that sentence in their letter.
25 They confirmed my possible conclusion that there

1 was another interpretation that indeed it was
2 possible for the project to be located in non-
3 agricultural zones, but they found it acceptable
4 in the Ag zone because of the infrastructure in
5 the area.

6 Q Okay, thank you. Did you have any
7 discussions with Mr. Hulse on this issue?

8 A No, I talked only with Mr. Martin and
9 Ms. Sullivan of Mr. Hulse's staff.

10 Q Okay, thank you. I think at this point
11 I'm going to move on to some discussion regarding
12 the Tracy land use plans and the sphere of
13 influence.

14 The revised staff assessment now
15 considers the City of Tracy's Tracy Hills specific
16 plan and South Schulte specific plan in its
17 discussion of land use impacts. Does the staff
18 consider these plans, including the City of
19 Tracy's general plan, to be LORS affecting the TPP
20 project?

21 A No, as we stated in our testimony.

22 Q Okay. And what is that conclusion based
23 on?

24 A That conclusion is based on the fact
25 that the proposed TPP site is located within the

1 jurisdictional boundary of San Joaquin County.

2 Q Okay, thank you. I don't know if you
3 have a copy of the Commission's regulations in
4 front of you and the Warren Alquist Act. I
5 believe I may have copies that I could provide you
6 with, if necessary.

7 A We have the Warren Alquist Act here, and
8 I believe Ms. Willis has a copy of the
9 Commission's regulations, so I think we're set.

10 Q Okay. Let me just refer you to Section
11 25523 of the Warren Alquist Act, and we're at
12 subdivision (d)(1). Now, this section talks about
13 findings that the Commission is required to make.

14 A Wait, I'm sorry, (d)(1)?

15 Q Yeah, subdivision (d)(1) of Section
16 25523.

17 A Okay.

18 Q Okay. In general, would you agree that
19 this section requires the Commission to find that
20 the proposed site is in conformance with relevant
21 local standards, ordinances, and laws?

22 A Can you restate your question?

23 STAFF COUNSEL WILLIS: And just, I would
24 like to have Ms. Allen answer this question,
25 because she's the most familiar with the process.

1 INTERVENOR BAKKER: Oh, thank you.

2 THE WITNESS: Okay.

3 BY INTERVENOR BAKKER:

4 Q Would you agree with that, or do you
5 want me to restate the question?

6 A Yes, please.

7 Q Would you agree that subdivision (d)(1)
8 of Section 25523 generally requires that the
9 Commission make a finding of conformity of the
10 proposed site with other relevant local standards,
11 ordinances, and laws?

12 A Yes.

13 Q Now, would you agree that the Tracy
14 general and specific plans that cover the site in
15 question would be considered relevant local
16 standards, ordinances, and laws?

17 A No.

18 Q And what is that conclusion based on?

19 STAFF COUNSEL WILLIS: And just for
20 clarification, these witnesses are not legal
21 experts, are not attorneys. So if you're asking
22 for a legal conclusion I would state an objection.

23

24 I would ask that Ms. Allen just answer
25 what she would do in the process of her normal

1 work at the Commission.

2 INTERVENOR BAKKER: Okay, thank you.

3 THE WITNESS: I concluded that they were
4 not relevant, because the site is clearly within
5 San Joaquin County's jurisdiction. The South
6 Schulte plan area has not been annexed to the City
7 of Tracy.

8 After some discussion with counsel, my
9 conclusion that the South Schulte plan and the
10 Tracy Hills plan were not relevant as far as LORS
11 was confirmed. She shared my opinion that they
12 were not LORS because the site is clearly within
13 San Joaquin County's jurisdiction.

14 BY INTERVENOR BAKKER:

15 Q Are you aware of any other situations
16 where this has come up for the Commission and the
17 Commission has made a determination and a final
18 decision regarding, on this particular issue,
19 involving a site that's within a city's sphere of
20 influence but actually within the jurisdiction of
21 the County?

22 A I personally am not.

23 Q Okay, thank you. I'd like to direct
24 your attention to Appendix B, to the Commission
25 site regulations. We discussed this briefly

1 yesterday during Ms. Hernandez's testimony.
2 Appendix B begins beings at I believe it's page 89
3 of the Commission's regulations. I printed this
4 off a list, so it may not be as accurate as the
5 Commission's.

6 A Yes, we have Appendix B.

7 Q Okay, and now I'm referring you to
8 subdivision G(3)(a)(2), and can you just briefly
9 describe the purpose of Appendix B and what it's
10 used for, before we get to that?

11 A I need to give you a little background
12 on Appendix B, which we commonly call the data
13 adequacy regulations.

14 Q Okay.

15 A The purpose of the data adequacy
16 regulations is for the Commission to be able to
17 determine whether there is sufficient information
18 contained in the application for the Energy
19 Commission staff to begin its analyses. So one of
20 the purposes of item 3(2)(i), a discussion of any
21 trends in recent zoning changes and potential
22 future land use development is to be able to give
23 the Commission staff, members of the public and
24 any interested parties an idea of the overall
25 trends for growth and development in the area

1 around the project.

2 The data adequacy regulations do not
3 require an exhaustive comprehensive discussion.
4 It's a judgment call that we make routinely as to
5 whether there is sufficient information there
6 regarding trends and recent zoning changes and
7 potential future land use development for us to
8 begin the analysis.

9 Q Okay. So it's your testimony that this
10 subdivision G(3)(2) doesn't have any bearing on
11 whether or not Tracy's LORS or Tracy's planning
12 documents are relevant LORS?

13 A As to the question of whether they are
14 relevant LORS, no.

15 Q Okay.

16 A There's no connection.

17 Q So if that information is not relevant
18 LORS, why does the Commission request that
19 applicants provide it?

20 A For the big picture, for overall
21 background on what's happening in the area. Just
22 because it's not relevant LORS doesn't mean that
23 it isn't relevant for another topic such as
24 cumulative impacts.

25 Q Okay, thank you. Now, I'd like to also

1 direct your attention to G(3)(b), which is toward
2 the bottom of the page.

3 A Yes.

4 Q Now, what does that generally state?

5 A It's to the compatibility of the
6 proposed project with current and expected land
7 uses, conformity with any long-range land use
8 plans adopted by various entities ranging from the
9 federal to the local level.

10 A (Vahidi) It's worth noting that it does
11 say permitted land uses.

12 A (Allen) Yes, that's the part of the
13 final sentence, the discussion shall identify the
14 need, if any, for variances or any measures that
15 would be necessary to make the proposal conform
16 with permitted land uses.

17 Q So noted. I would -- I think the first
18 clause or the first sentence states that an
19 application needs to contain a discussion of the
20 compatibility of proposed facilities with expected
21 land uses, and conformity with any long-range land
22 use plans adopted by any local planning agency;
23 would you agree with that?

24 A Yes.

25 Q Okay. So does that not suggest to you

1 that Tracy's planning documents would be relevant
2 LORS for this project or other conditions --

3 A (Vahidi) With respect to -- Why don't
4 you go ahead and finish your question and then I
5 think I can answer it.

6 Q Under the -- Even though the Commission
7 has adopted these standards for data adequacy,
8 does not this provision suggest to you that
9 planning documents adopted by a city outside of
10 its boundaries but nonetheless adopted by the city
11 are relevant LORS for the purposes of the
12 Commission's analysis?

13 A Well, are you talking -- Are you
14 speaking in general terms, or are you saying
15 specifically with regard to what the City of Tracy
16 plans in this case? I mean, are you --

17 Q Well, I was speaking generally, but I
18 would be happy to hear an answer with regard to
19 the specifics of this case.

20 A (Allen) In one of my previous answers I
21 discussed the data adequacy concept and how it's
22 involved at the very beginning of the process. As
23 the staff goes through the discovery phase that
24 involves data requests and public workshops and
25 discussion with all interested parties, we often

1 get new information that goes well beyond data
2 adequacy information, and we may arrive at
3 different or expanded conclusions.

4 Q Okay. Does your testimony contain a
5 discussion of trends in recent zoning changes and
6 potential future land use development?

7 A I believe that it does in the context of
8 the cumulative impact discussion.

9 Q Did the AFC and the supplemental AFC
10 contain that information?

11 A The supplement to the AFC did contain a
12 discussion of the Tracy Hills and South Schulte
13 specific plan.

14 Q Okay. Does your testimony contain a
15 discussion of the compatibility of the TPP with
16 present and expected land uses in conformity with
17 any long-range land use plans adopted by any local
18 planning agency?

19 A Yes.

20 A (Vahidi) Yes.

21 Q Did the AFC and the supplemental AFC
22 contain that information?

23 A (Allen) Yes.

24 Q Thank you. Now, I believe somewhere in
25 your testimony, and bear with me for a moment here

1 so I can point you to where this is, you rejected
2 the City's land use compatibility concerns because
3 in 1988 the City of Tracy decided to approve the
4 specific plan for residential designations close
5 to an existing industrial area.

6 A Please cite the page in the testimony.

7 Q I believe it's in the summary, which
8 would be at page 3.4-20.

9 A Yes.

10 Q I'm sorry, it's not --

11 A Yeah, I don't see anything about 1988 on
12 that page.

13 Q Yeah, I don't see it there, so bear with
14 me.

15 A I know the discussion that you're
16 thinking of. I'll look for it myself.

17 Q I'm sure it's at the beginning at 3.4-19
18 in the paragraph headed South Schulte Specific
19 Plan, either there or on the discussion on the
20 Tracy Hills specific plan.

21 I guess, yeah, it's about a third of the
22 way down, 3.4-19 in the discussion of the Tracy
23 Hills specific plan.

24 A Are you looking at a sentence that
25 starts, "The City of Tracy's 1998 decision to

1 approve the concept; i.e., the Tracy Hills
2 specific plan of residential development"?

3 Q That's correct.

4 A Okay, we have it.

5 Q Okay. Now, do you believe this
6 consideration is consistent with the CEC's role in
7 determining consistency with applicable local laws
8 and regulations?

9 A Yes.

10 Q Well, your testimony suggests that you
11 are taking issue with the City's decision in 1998
12 to designate this territory or land residential;
13 isn't that a decision that should be made by the
14 City and not by the CEC or the CEC staff?

15 A Well, within the context of the City of
16 Tracy staff raising concerns through Mr. Dean's
17 letter about the compatibility of the project with
18 the planned development in the area, we have
19 latitude to comment.

20 Q Okay. Well, is this project an
21 expansion of an existing use or if the site
22 converting additional land to industrial use
23 beyond what is currently an industrial use?

24 A We believe that it's an expansion of an
25 existing industrial area.

1 Q Okay, thank you. Now, there is some
2 other discussion in your testimony regarding, and
3 this is on the same page and it begins with the
4 sentence, "Furthermore," about a third of the way
5 down the page --

6 A Yes.

7 Q -- and you state that "Staff believes
8 that there is room for designating an additional
9 open space buffer adjacent to the existing
10 industrial area"; is that correct?

11 A Yes.

12 Q Now, I would ask you again, do you
13 believe this consideration is consistent with the
14 CEC's limited role in determining consistency with
15 applicable laws, local laws and regulations?

16 A We're merely agreeing with the City's
17 plans themselves, which acknowledge that buffering
18 is an option, as is normal planning practice.

19 Q Well, Ms. Vahidi, since this is an
20 expansion of an existing use --

21 A Not an existing use.

22 Q -- existing industrial use --

23 A Existing industrial area.

24 Q Okay, that's fine -- wouldn't this
25 project, if it's approved, create a need for

1 additional buffers that wouldn't otherwise be
2 required?

3 A I believe in my professional opinion
4 that even without the proposed project being
5 implemented, that the implementation of the South
6 Schulte plan would need to buffer the rezoned
7 very low residential areas, of which the proposed
8 project site is one of them, with buffering from
9 the existing industrial cluster that's existing to
10 the northwest of the South Schulte plan area.

11 Q But I guess my question is doesn't
12 this-- If this project were approved, it would
13 bring that buffer out further into the land that's
14 designated for residential, correct?

15 A Correct.

16 Q Okay, thank you. Now, I want to ask a
17 few questions relating to some compliance with the
18 CEC's regulations. And I don't know if it would
19 be helpful to the committee for me to pass out
20 some excerpts of these regulations or whether we
21 can just refer to them with the witness.

22 PRESIDING COMMISSIONER PERNELL: I think
23 you can proceed.

24 INTERVENOR BAKKER: Okay. And then if
25 it's helpful to you, we'll --

1 PRESIDING COMMISSIONER PERNELL: If it's
2 helpful, yes.

3 INTERVENOR BAKKER: Okay, thank you.

4 BY INTERVENOR BAKKER:

5 Q Now, I want to direct your attention,
6 and this might be best handled by Ms. Allen -- I'm
7 not certain, but I want to direct your attention
8 to Regulation 1714C.

9 A I'm looking at item 1714C.

10 Q Okay. Now, are you familiar with this
11 section generally?

12 A Generally.

13 Q Okay, and can you tell us what it
14 generally requires?

15 A The executive director of the Energy
16 Commission needs to send a notice to the Coastal
17 Commission, the Conservation and Development
18 Commission, the Department of Fish and Game, the
19 local air pollution control district, Water
20 Resources and Control Board, and to all federal,
21 state, and local agencies which have jurisdiction,
22 a notice about the project application having been
23 received.

24 However, the overall context of Section
25 1714 is that this applies to projects that require

1 a certificate of public convenience and necessity
2 issued by the Public Utilities Commission.

3 Q Well, we heard that testimony earlier --
4 Well, I guess that wasn't testimony, we heard that
5 in an objection yesterday, and that's a legal
6 conclusion. I don't know --

7 STAFF COUNSEL WILLIS: So I guess I'd
8 ask counsel to clarify, then, what are you asking
9 this witness? Because it does sound like you're
10 asking for legal conclusions, if you're going to
11 walk her through the regs and ask her opinion.

12 INTERVENOR BAKKER: All right. Is it
13 your position, Counsel, that this section does not
14 apply?

15 STAFF COUNSEL WILLIS: Well, that is our
16 position, and we did concur with the applicant,
17 but I'm asking you what your question is of this
18 witness.

19 I mean, if you want to ask her has she
20 relied on this for her testimony today, I think
21 that's a fair question.

22 INTERVENOR BAKKER: Okay.

23 BY INTERVENOR BAKKER:

24 Q What I want to focus on, and bear with
25 me, I believe that Section C requires Commission

1 staff to issue the notice to the agencies with
2 jurisdiction.

3 STAFF COUNSEL WILLIS: And I'd like to
4 object that counsel is testifying.

5 HEARING OFFICER TOMPKIN: Well, if I'm
6 understanding you, Counsel, you're asking her how
7 she used this section in practice and whether she
8 would have used it for the project; is that
9 correct?

10 INTERVENOR BAKKER: What I'm trying to
11 establish is that I want to get, I want to lay a
12 foundation so that we can talk about whether the
13 staff complied with the sections that follow,
14 1714.3 and 1714.5, which generally require a
15 notice, a determination of compliance from the
16 agencies with jurisdiction over, that would
17 otherwise have jurisdiction over the project.

18 HEARING OFFICER TOMPKIN: Well, I think
19 you can ask them whether they applied those
20 sections or found those sections applicable in
21 their analysis of this project, and then you can
22 argue whether or not they should have it seems to
23 me.

24 INTERVENOR BAKKER: Okay. Well, I'd be
25 happy to try and elicit that testimony from the

1 staff.

2 HEARING OFFICER TOMPKIN: So why don't
3 you go ahead and rephrase or restate your
4 question.

5 BY INTERVENOR BAKKER:

6 Q So you told us what 1714C requires, and
7 you stated, among other things, that it requires
8 the executive director to transmit a copy of a
9 notice of application to, among others, all local
10 agencies which would otherwise have jurisdiction
11 but for the Commission's exclusive authority.

12 STAFF COUNSEL WILLIS: I'm going to
13 object to the line of questioning and ask the
14 committee for a determination of relevance.

15 HEARING OFFICER TOMPKIN: How is it
16 relevant, Counsel?

17 INTERVENOR BAKKER: Well, as I stated
18 earlier, I wanted to inquire as to whether or not
19 staff complied with Sections 1714.3 and 1714.5,
20 and those sections only apply if Section 1714
21 applies. So I'm trying to elicit from staff
22 whether or not they believe those sections apply.

23 PRESIDING COMMISSIONER PERNELL:
24 Commissioner Laurie.

25 COMMISSIONER LAURIE: Thank you,

1 Commissioner Pernell. The question and concern
2 that I have is that 1714.3, as I read it, simply
3 imposes the obligation of the CEC to request
4 certain agencies to do certain things.

5 INTERVENOR BAKKER: Right.

6 COMMISSIONER LAURIE: And if counsel is
7 alleging lack of compliance with that section and
8 you're going to argue that that is some kind of a
9 substantial violation, the information I'd be
10 looking for is what communication other than the
11 notice was sent to the agency that specified the
12 information sought.

13 INTERVENOR BAKKER: Okay. And that was
14 the question I was going to get to with staff, ask
15 them what conversations or documentation they sent
16 to the County requesting this information that the
17 County is required to prepare, pursuant to 1714.3
18 and 1714.5.

19 May I simply ask the witness?

20 HEARING OFFICER TOMPKIN: Ask the
21 question.

22 INTERVENOR BAKKER: Okay.

23 BY INTERVENOR BAKKER:

24 Q If I may, Ms. Allen, can you tell us
25 what information was provided to the County or

1 what staff requested from the County as far as a
2 determination of compliance with the County's LORS
3 for this project?

4 STAFF COUNSEL WILLIS: I do believe Ms.
5 Allen testified to that on direct, but I will --
6 if the committee wishes for her to repeat her
7 answer, we will be happy to.

8 HEARING OFFICER TOMPKIN: We'll permit
9 it. You may answer.

10 THE WITNESS: On August 22nd, 2001, a
11 letter was sent that says to agency distribution
12 list, and it's titled beyond that, "Request for
13 Agency Participation in the Review of the Tracy
14 Peaker Project Application for Certification."
15 This is a routine type of letter that's sent out
16 shortly after we receive these applications. This
17 letter is signed by Paul Richins, Jr., the Energy
18 Facilities Licensing Program Manager. This letter
19 was sent to Kerry Sullivan at San Joaquin County.

20 You have asked me specifically about
21 what communication was sent to the County.

22 BY INTERVENOR BAKKER:

23 Q Okay, thank you. Does this letter
24 anywhere request that the County provide the
25 information that's required by Regulation 1714.3?

1 A The letter states, "We request your
2 cooperation by completing your review and issuing
3 any preliminary and final formal notices, findings
4 and opinions within 35 days and 65 days,
5 respectively, from the date the Energy Commission
6 determines the AFC to be adequate. And in the
7 local jurisdiction context, we're looking for
8 written conclusions on the consistency with local
9 LORS."

10 Q So the letter didn't spell out the
11 information that's required by 1714.3?

12 A Not specifically.

13 Q Okay, thank you. And when was the
14 project or the application deemed data adequate by
15 the Commission?

16 A I would have to refer to Ms. Davis on
17 that. I do not recall the date, so --

18 Q Do you have any documents you can refer
19 to? I'm sure that -- Can you tell us when that
20 was?

21 STAFF COUNSEL WILLIS: I might refer you
22 to the staff assessment.

23 THE WITNESS: We believe that is
24 October 17th, 2001.

25 BY INTERVENOR BAKKER:

1 Q Okay, and when was Mr. Hulse's letter
2 issued?

3 A September 18th, 2001.

4 Q Okay. So did you ever follow up with
5 the County and request that they provide any
6 written determination within 35 days of the
7 project's or the application's being deemed data
8 adequate?

9 A That was my telephone conversation with
10 Ms. Sullivan in early September, which resulted in
11 the September 18th letter.

12 Q Okay. But at that point the project had
13 not yet been deemed data adequate; is that
14 correct?

15 A Yes, they are free to send in their
16 conclusions at any point once they've received our
17 letter.

18 Q Okay, and then it's my understanding,
19 then, in this proceeding there was a second AFC
20 submitted and it was a supplemental AFC; is that
21 correct?

22 A AFC supplement.

23 Q Okay, and was that an entirely new
24 application or was it just updating some of the
25 information in the previous AFC?

1 A Updating and adding.

2 Q Okay. And then was a separate agency --
3 was a separate request for agency participation
4 issued at that point? With another letter sent to
5 the agency distribution list requesting review of
6 the supplemental AFC?

7 A I believe so.

8 Q Okay.

9 A Ms. Davis is the expert on that. I
10 believe so.

11 Q Okay, thank you.

12 A When we receive the supplement, we
13 routinely send out a new letter saying we've
14 received the supplement, please review it.

15 STAFF COUNSEL WILLIS: And, Madam
16 Chairman or Hearing Officer, may I clarify for the
17 record, the staff -- there are 15 to 20 technical
18 areas that are covered by 15 to 20 different staff
19 members. Some are consultants, some are on staff
20 with the Energy Commission.

21 Not each staffperson knows the entire
22 process of when everything went out to what agency
23 or when the application was filed or deemed data
24 adequate. They are working on their technical
25 area. This technical area is on land use.

1 I would ask the committee to ask counsel
2 to focus on the issue of Land Use, which I believe
3 Ms. Allen has testified her contacts with the
4 County and the City regarding Land Use analysis,
5 whether or not the whole -- when the AFC was sent
6 out or when letters to agencies were sent out
7 really are not part of her testimony in Land Use.
8 It really was part of the project manager's
9 directive I think before a few days ago that she
10 come up with a chronology. But it's not part of
11 this witness's testimony.

12 And I would ask that the questions be
13 directed to the testimony that we've prefiled.

14 HEARING OFFICER TOMPKIN: And we will so
15 instruct counsel.

16 INTERVENOR BAKKER: Okay.

17 BY INTERVENOR BAKKER:

18 Q The focus of my question was whether or
19 not the County of San Joaquin ever issued a formal
20 determination of compliance with its LORS. And I
21 don't know if you can answer that.

22 A I would not use the word "determination
23 of compliance." When I received the
24 September 18th letter I reviewed it and determined
25 that the County had given us their written

1 conclusions.

2 Q Okay. And how many days after the
3 filing of the application was that, approximately?
4 Or maybe after the agency, the request for agency
5 participation was sent?

6 A About three weeks.

7 Q Okay. So the County of San Joaquin had
8 three weeks to determine whether or not this
9 project complied with its LORS?

10 A I was not controlling the amount of time
11 that they took to respond.

12 Q So you're not familiar with this. Did
13 you make contact with Kerry Sullivan at the County
14 in this time frame, after August 22nd but before
15 September 18th?

16 A Yes, I did. I talked with her on the
17 phone and I said that we needed a letter, and I've
18 discussed the items that I said we needed in the
19 letter.

20 Q Okay. But you didn't request a formal
21 determination of compliance, you just requested a
22 discussion of some of the issues.

23 A I didn't go so far as to say that I
24 needed a discussion of the issues. I have
25 testified as to the items that I asked her to

1 address.

2 Q Okay. I thought that you referred to
3 your notes from your conversation with
4 Ms. Sullivan earlier and you used the phrase
5 discussion, so that's what I was referring to.

6 A Okay. I asked her for a discussion of
7 three items.

8 Q But you did not request a formal
9 determination of compliance, correct?

10 A That's right.

11 Q Thank you. Now, I'm going to refer you
12 to Section, another siting regulation, and this is
13 Section 1744, and I'm going to refer you to
14 subdivision (b), (c) and (d) of that section.

15 A Yes. I have reviewed (b), (c) and (d)
16 here.

17 Q Okay. Now, is it your testimony that
18 the County of San Joaquin complied with these
19 sections in issuing the letter and in their
20 subsequent discussions with you?

21 STAFF COUNSEL WILLIS: I'm going to
22 object to the question; I believe that calls for a
23 legal conclusion from this --

24 INTERVENOR BAKKER: Okay.

25 STAFF COUNSEL WILLIS: If you would like

1 to rephrase the question as to what she relied on,
2 that would be most appropriate.

3 INTERVENOR BAKKER: Okay.

4 HEARING OFFICER TOMPKIN: Sustained.

5 INTERVENOR BAKKER: Thank you.

6 BY INTERVENOR BAKKER:

7 Q Now, the second sentence of subdivision
8 (b) states that the Commission staff shall assist
9 and coordinate the assessment of the conditions of
10 certification to ensure that all aspects of the
11 facility's compliance with applicable laws are
12 considered.

13 You testified earlier that you believe
14 the project complies with all applicable laws,
15 correct?

16 A Yes.

17 Q Okay. So it's your belief that you
18 complied with this provision.

19 A Yes.

20 Q Okay, thank you. Now, subdivision (d)
21 of this section states that if an applicant or any
22 responsible agency asserts that an applicable
23 mandate cannot be complied with, the Commission
24 staff shall independently verify the non-
25 compliance and advise the Commission of its

1 findings in the hearing.

2 Are we faced with that situation now?

3 Do we have an agency that's asserting non-
4 compliance with an applicable mandate? And I'm
5 referring to the County of San Joaquin.

6 A I think that we are not facing that
7 situation.

8 Q Okay.

9 STAFF COUNSEL WILLIS: Yeah, maybe you
10 could restate your question.

11 BY INTERVENOR BAKKER:

12 Q Have you reviewed the written testimony
13 of Ben Hulse?

14 A Yes, I have.

15 Q Okay, and in that testimony he --

16 STAFF COUNSEL WILLIS: I'd prefer --

17 INTERVENOR BAKKER: Well, I withdraw the
18 question, I'm sorry.

19 STAFF COUNSEL WILLIS: Yeah, I was going
20 to say before, I do not want to -- Mr. Hulse has
21 not testified yet.

22 PRESIDING COMMISSIONER PERNELL: All
23 right. Let me interrupt you, Counsel. And we've
24 been -- You know, again, this committee has been
25 giving latitude. But the question before the

1 witnesses is on land use and compliance of LORS.

2 If there is a question that they did not
3 comply, if that's where you're going, then that's
4 what you need to state or prove, that they did not
5 comply with LORS.

6 INTERVENOR BAKKER: Okay.

7 PRESIDING COMMISSIONER PERNELL: As it
8 relates to the County of San Joaquin. And then I
9 have to ask you how much longer do you think that
10 you're going to need to continue, or to complete
11 your testimony here?

12 INTERVENOR BAKKER: I'm almost done. At
13 most, ten minutes, and maybe even less than that.

14 PRESIDING COMMISSIONER PERNELL: Your
15 cross.

16 INTERVENOR BAKKER: Correct.

17 HEARING OFFICER TOMPKIN: At this time
18 if you wish to make an offer of proof of evidence
19 of lack of compliance, because that does seem to
20 be the direction of your questions, whether or not
21 the County was given adequate opportunity or
22 direction in terms of commenting on whether or not
23 there was compliance of LORS. Do you have any
24 evidence of non-compliance? Would you like to
25 make an offer of proof on that issue?

1 INTERVENOR BAKKER: Well, I think the
2 record reflects that -- I think we're going to
3 need to talk with -- This will have to await the
4 testimony of Mr. Hulse. He's going to testify
5 later.

6 PRESIDING COMMISSIONER PERNELL: And I
7 think we'll never get there if you continue going
8 down this road.

9 (Laughter.)

10 INTERVENOR BAKKER: I'm sorry?

11 PRESIDING COMMISSIONER PERNELL: We're
12 all anxious to hear from Mr. Hulse.

13 INTERVENOR BAKKER: Okay. If I may, I'd
14 just like to review my notes and make sure I
15 caught all my questions, and then that will be the
16 end of my cross of this witness, these witnesses.

17 BY INTERVENOR BAKKER:

18 Q Now, if I may, Ms. Allen, I just wanted
19 to ask one brief question. Is it typical for the
20 Commission to request a determination of
21 compliance from agencies with land use
22 jurisdiction?

23 A Not a determination of compliance.
24 Determination of compliance requests are usually
25 restricted to our interaction with local air

1 districts.

2 Q Okay. So it's only air districts that
3 the Commission typically requests determinations
4 of compliance from.

5 A Yes.

6 Q Okay.

7 A The Commission routinely requests
8 written conclusions regarding consistency with
9 local agencies, LORS, as far as land use.

10 INTERVENOR BAKKER: Nothing further.
11 Thank you.

12 PRESIDING COMMISSIONER PERNELL: Thank
13 you.

14 HEARING OFFICER TOMPKIN: Thank you.

15 INTERVENOR WEED: Michael Weed for
16 intervenor Chang. I just have two brief questions
17 and then I'll turn it over to Mr. Blackwell, with
18 the committee's approval.

19 CROSS EXAMINATION

20 BY INTERVENOR WEED:

21 Q Ms. Allen, if you could -- I think it
22 may have been touched on in some of the questions
23 the City has asked you, but you testified that you
24 went to speak with members of the County staff
25 about some, you characterized them as questions, I

1 think you first time you referred to them, their
2 conclusions.

3 Could you amplify on the issues that you
4 wanted to discuss with them and you raised in that
5 conversation?

6 A Yes. You're referring to my meeting the
7 County offices on December 21st, 2001?

8 Q Correct.

9 A Yes. I wanted to clarify the statement
10 that the County staff had written, saying that the
11 proposed project needed to be located in an
12 agricultural zone. They did clarify their
13 thinking on that for me.

14 I also talked with them about their
15 general plan policy CODPP 25, such that the policy
16 encouraged the expansion of existing facilities,
17 as opposed to new development where development
18 had not occurred before. I told them that I
19 thought this project could possibly be
20 accommodated on the existing Tracy Biomass site,
21 and, therefore, I thought that that siting would
22 be consistent with CODPP 25.

23 They talked with me about how yes, that
24 was possible, but that was not the scope of their
25 review in this case. They were responsible for

1 looking at the project as proposed, and assessing
2 its consistency with their LORS, which, in this
3 case, were their general plan and the County
4 development title.

5 Q And when they described to you their
6 reasons, I think you just said that it had to be
7 located, that they convinced you or described to
8 you their rationale that the property had to be
9 located in an agricultural zone; is that what you
10 stated?

11 A They elaborated on their written
12 conclusion such that it could also be located in a
13 non-agricultural zone. They thought that that
14 particular agricultural zone presented some
15 infrastructure features that were desirable for a
16 project of this type. But they agreed with my
17 premise that yes, a power plant could also be
18 located in a non-agricultural zone.

19 And they explained their thinking that
20 led to the written statement in more detail to me.

21 Q Thank you. As I understand the position
22 of the staff and the applicant, the reason that
23 the City of Tracy LORS are not applicable to the
24 TPP is that land use jurisdiction exclusively lies
25 with the County of San Joaquin. Therefore, they

1 can't be considered as LORS applicable to the
2 project; is that an accurate summary?

3 A Yes.

4 Q Okay. And as it was described in
5 Ms. Hernandez's testimony yesterday, if, for
6 example, there were an actual agreement where the
7 County automatically referred projects within the
8 sphere of influence to the City, that would not be
9 the case. Then the LORS would obviously be
10 applicable in that context; would you agree with
11 that statement?

12 A I'd have to look at the case as
13 presented.

14 Q And then you discussed earlier the
15 relevance or the meaning of the sphere of
16 influence; could you summarize your testimony on
17 that just briefly or restate it?

18 A Well, that was Ms. Vahidi's testimony.

19 Q Right, right. I'm sorry, I meant to
20 direct the question to her.

21 A (Vahidi) Sure. The State's Government
22 Code defines a sphere of influence as a plan for
23 the probable physical boundaries and service areas
24 of a local government agency.

25 Q Okay, and the project obviously is

1 located within the City's sphere of influence,
2 correct?

3 A The project site is located in the
4 City's sphere of influence.

5 Q Right, but you find that irrelevant to
6 the issue of whether the City's LORS are
7 applicable to an analysis of the project and its
8 compliance with those LORS?

9 A The City's LORS don't apply for a number
10 of reasons, and I can elaborate, if you like.

11 PRESIDING COMMISSIONER PERNELL: I think
12 it's already been stated.

13 INTERVENOR WEED: Just trying to
14 understand how to reconcile the fact that the
15 sphere of influence exists, the project is in it,
16 and it's suppose to bring the City's concerns into
17 the process. But it seems to be completely
18 ignored to me, and so I'm just trying to
19 understand the rationale.

20 PRESIDING COMMISSIONER PERNELL: All
21 right. Well, that's an interpretation on your
22 part whether it's ignored. It's been stated here
23 last night and again today that staff took it
24 under consideration.

25 INTERVENOR WEED: Okay.

1 BY INTERVENOR WEED:

2 Q Did staff also take into consideration
3 what I described to me as the routine
4 administrative practice of the County to refer all
5 applications that are made to the County within
6 the City's sphere of influence to the City for
7 their comment?

8 A Again, because the project site is not
9 within the jurisdiction, they were not required to
10 refer it.

11 Q Are you aware that there is almost --
12 very consistent I guess would be a fair
13 description of the practice by the County to refer
14 virtually all applications within the sphere of
15 influence to the --

16 A The application did not go to the
17 County, the application came to the Commission.

18 Q No, but I mean in the general sense, in
19 a land use processing sense. Are you aware of
20 that practice by the County?

21 A I'm assuming you're asking her questions
22 that are outside of this project, because she's
23 testifying to this project which the application
24 was filed at the Energy Commission, not another
25 land use project that might have happened at

1 another time.

2 Q Understood, that's correct. Are you
3 aware of that?

4 A In a general sense, in my practice as a
5 land use person, it is normally the practice of
6 County jurisdictions to refer projects as they
7 feel necessary to a City which has a sphere of
8 influence within their jurisdiction.

9 Q But you're not aware of any specific
10 practice between the County of San Joaquin and the
11 City of Tracy with respect to that?

12 A Not related to this project.

13 Q Ms. Allen, are you aware of that
14 practice between the County and the City?

15 A In the general area of land use, as a
16 professional I am aware of the practice which is
17 often considered a courtesy of referring a project
18 to a nearby jurisdiction for comment.

19 Q But that wasn't relevant to your
20 analysis, in terms of the applicability of the
21 LORS.

22 A For the LORS, we've already discussed
23 how we regarded it as relevant to cumulative
24 impacts.

25 Q Right.

1 INTERVENOR WEED: Okay, thank you. I
2 have nothing further. I'll turn it over --

3 INTERVENOR BLACKWELL: Good morning,
4 David Blackwell, on behalf of intervenor Chang.

5 HEARING OFFICER TOMPKIN: Go ahead.

6 CROSS EXAMINATION

7 BY INTERVENOR BLACKWELL:

8 Q With regard to the cumulative impacts
9 analysis set forth in the supplemental staff
10 assessment, am I correct in understanding that you
11 believe that the South Schulte specific plan is a
12 reasonably foreseeable development project?

13 A Yes. It's considered a cumulative
14 project on our list.

15 Q Well, would you, therefore, disagree
16 with any testimony to the contrary?

17 A You'd have to direct me to the testimony
18 that states it. I'm not sure what your question
19 is.

20 Q If someone says I do not believe that
21 South Schulte specific plan is a reasonably
22 foreseeable development project, would you
23 disagree with that?

24 A Not necessarily.

25 Q Why?

1 A Because one could be led to believe that
2 it is -- At this point in time, it is a
3 speculative project for various reasons.

4 Q But I believe you said reasonably
5 foreseeable.

6 A It's a reasonably foreseeable in the
7 future based on the fact that there is a specific
8 plan and an EIR -- that's been adopted, a specific
9 plan EIR that's been certified. However, it's
10 worth noting that there are no infrastructure
11 plans that have been guaranteed for it, and
12 because of measure A, which is a slow growth
13 initiative, based on our discussions with the City
14 of Tracy, the City of Tracy did not believe that
15 this project -- Because of the City Council's
16 decision and measure A being passed, the City
17 Council wanted to pursue developing project sites
18 or land within their current jurisdiction before
19 they pursued lands that have not been annexed.

20 And in the case of the South Schulte
21 planning area, there are no applications for
22 annexation, and there is no annexation process
23 under LAFCO that is going on right now. So one
24 could be led to believe that at the current time
25 it could be considered a speculative project under

1 CEQA.

2 Q But despite those issues you just
3 raised, you did perform a cumulative impact
4 analysis under CEQA; isn't that correct?

5 A Yes.

6 Q And under that analysis you determined
7 that South Schulte is a reasonably foreseeable
8 development project, correct?

9 A Yes.

10 COMMISSIONER LAURIE: Excuse me,
11 Counsel, I'm sorry, Mr. Chairman.

12 You just asked the witness to explain if
13 somebody wanted to argue if it's not reasonably
14 foreseeable, what would your argument be, and she
15 just explained it. Then you just asked, you
16 just -- in your position it was reasonably
17 foreseeable. I don't understand the point of the
18 questioning. Can you explain that to me?

19 INTERVENOR BLACKWELL: Certainly. If
20 staff is taking the position, from what I
21 understand, that South Schulte specific plan is,
22 under CEQA, under a cumulative impact analysis, a
23 reasonably foreseeable development project.

24 COMMISSIONER LAURIE: Okay.

25 INTERVENOR BLACKWELL: And I was

1 wondering whether she would take issue or staff
2 would take issue with another expert saying South
3 Schulte specific plan is not a reasonably
4 foreseeable development project. It's quite
5 simple.

6 THE WITNESS: Are you --

7 PRESIDING COMMISSIONER PERNELL: I think
8 the question has been answered. Please hold on.

9 BY INTERVENOR BLACKWELL:

10 Q And from what I understand from the
11 supplemental staff assessment under the South
12 Schulte specific plan, the actual project site
13 would be, have a land use designation of very low
14 residential; is that correct?

15 A RVL, yes. It's rezoned for that.

16 Q And, Ms. Vahidi, I believe you testified
17 earlier but correct me if I'm wrong that you said
18 that the TPP would be commensurate to an
19 industrial use; is that correct?

20 A Yes.

21 Q And, therefore, am I correct in assuming
22 that the TPP would not be a consistent use for a
23 very low residential land use designation?

24 A As the project site is rezoned,
25 according to the South Schulte specific plan, the

1 project as proposed wouldn't be consistent. But
2 it's not -- The plan has been adopted, but the
3 site has not been annexed.

4 Q Thank you. And, Ms. Vahidi, earlier in
5 your testimony you mentioned the Tracy documents
6 that you did review, but I don't believe you
7 mentioned that you reviewed the UMP; is that
8 correct?

9 A We did review the UMP, and it's worth
10 noting that the specific plans of the City are
11 implementation documents of the general plan and,
12 under state law, specific plans must be consistent
13 with the City's general plan.

14 INTERVENOR BLACKWELL: And I don't want
15 to beat the LORS issue to death, but I just have a
16 couple of questions, Commissioner Pernell.

17 BY INTERVENOR BLACKWELL:

18 Q The definition, as has been brought up
19 by Mr. Bakker and others, is that -- is it correct
20 that the definition is either it's any applicable
21 local regulations or any relevant local
22 regulations; is that your understanding what LORS
23 are?

24 A Applicable is a terminology I've used,
25 more so than relevant.

1 Q Now, are you aware of any authority,
2 whether it be case law, statute or otherwise, that
3 requires the CEC review only one jurisdiction's
4 LORS?

5 STAFF COUNSEL WILLIS: I'm going to
6 object; that asks for a legal opinion.

7 INTERVENOR BLACKWELL: I'm asking
8 whether she knows and I'm asking what the state of
9 the law is. I'm asking her knowledge.

10 STAFF COUNSEL WILLIS: I can't answer
11 that; I'm not an attorney, so --

12 BY INTERVENOR BLACKWELL:

13 Q Ms. Allen, are you aware of any?

14 A I would give the same response as
15 Ms. Vahidi. That's outside the scope of my
16 testimony and I'm not qualified to answer the
17 question.

18 Q And I believe your testimony, Ms. Vahidi
19 and Ms. Allen, was, in your opinion, the project's
20 -- I'm sorry, Tracy's LORS do not apply because
21 the project site has not been annexed by the City;
22 is that correct?

23 A That's one of the many reasons.

24 Q Okay. Would it make any difference if
25 there was an annexation application actually

1 pending before LAFCO?

2 PRESIDING COMMISSIONER PERNELL: I think
3 this question has been answered over and over.

4 INTERVENOR BLACKWELL: I don't think
5 this question has.

6 PRESIDING COMMISSIONER PERNELL: Well,
7 wait a minute. The issue is who has jurisdiction,
8 and the jurisdiction is the San Joaquin County.
9 All of this what if, what if, what if is not
10 relevant.

11 INTERVENOR BLACKWELL: Well, actually,
12 Commissioner Pernell, I believe it is relevant to
13 the extent that the --

14 PRESIDING COMMISSIONER PERNELL: Well,
15 state your relevancy.

16 INTERVENOR BLACKWELL: To the extent
17 that the CEC staff is incorrect as to what
18 applicable LORS --

19 PRESIDING COMMISSIONER PERNELL: Okay,
20 hold that. Are you saying that they're incorrect?

21 INTERVENOR BLACKWELL: Yes, I am.

22 PRESIDING COMMISSIONER PERNELL: Then
23 prove it.

24 INTERVENOR BLACKWELL: I can't prove it.
25 I have to ask questions. And the point is, when

1 we -- If this is brought up on judicial review,
2 someone else may also feel that the staff erred in
3 not taking into account the City's LORS.

4 PRESIDING COMMISSIONER PERNELL: Well,
5 let me ask you -- Well, scratch that.

6 HEARING OFFICER TOMPKIN: You're asking
7 a hypothetical. You're saying that if there was
8 an application pending, would it make a
9 difference. Are you prepared to make some offer
10 of proof that, in fact, an application was
11 pending? Otherwise, it is an irrelevant question.

12 INTERVENOR BLACKWELL: Even as a
13 hypothetical?

14 HEARING OFFICER TOMPKIN: If it's a
15 hypothetical that has no application to this
16 proceeding.

17 INTERVENOR BLACKWELL: Oh, these people
18 aren't testifying experts in any way? They're
19 just lay witnesses?

20 HEARING OFFICER TOMPKIN: No, they're
21 testifying as experts. My point is that if you
22 can make an offer of proof that there is an
23 application pending, then that might be relevant
24 to this proceeding. But the evidence to date is
25 that there is no annexation in process, pending or

1 otherwise, that I'm aware of. So it's really not
2 a relevant question, and we're trying to focus the
3 questioning here.

4 So are you prepared to make an offer of
5 proof that there is such an application pending?

6 INTERVENOR BLACKWELL: I do not have
7 that offer of proof, Madam Hearing Officer. My
8 point is, I just want to find out where along the
9 spectrum the City's land use regulations do kick
10 in. Because so far it looks like the
11 determination is, well, the property hasn't been
12 annexed. And I'd like to see if anything short of
13 annexation would kick in the City's LORS.

14 HEARING OFFICER TOMPKIN: I'll permit
15 that question, whether anything short of
16 annexation at this point.

17 STAFF COUNSEL WILLIS: And I would like
18 to object to that line of questioning. I mean,
19 we've already established that the project has not
20 been annexed, and I'm not sure what the -- I still
21 would object to the relevance of it.

22 HEARING OFFICER TOMPKIN: I'll sustain
23 it. Move on.

24 BY INTERVENOR BLACKWELL:

25 Q Isn't it true that ignoring Tracy's LORS

1 contravenes the stated goals contained in the
2 Commission's strategic plan with regard to
3 cooperating with other agencies?

4 STAFF COUNSEL WILLIS: I'm going to
5 object to that question. That assumes -- I'm not
6 sure where you're coming from with that question.
7 You've put stated goals, and that assumes
8 something that has not been put into evidence.

9 HEARING OFFICER TOMPKIN: Sustained.

10 INTERVENOR BLACKWELL: Is it possible to
11 educate and witness with what those published
12 stated goals are?

13 HEARING OFFICER TOMPKIN: Well, the
14 objection was it assumes facts not in evidence.
15 There's been no proof that they ignored those
16 objectives.

17 INTERVENOR BLACKWELL: Well, could I ask
18 them whether they took into account any of these
19 objectives set forth in the CEC's public strategic
20 plan?

21 HEARING OFFICER TOMPKIN: You can ask
22 the question.

23 BY INTERVENOR BLACKWELL:

24 Q Do you even know what that is?

25 A Admittedly, no.

1 Q Okay. Ms. Allen?

2 A Over the years I've worked on numerous
3 things called strategic plans and electricity
4 reports and all kinds of things like that. But
5 I'm not familiar with anything called the
6 Commission's strategic plan in the last couple of
7 years.

8 INTERVENOR BLACKWELL: Okay. Nothing
9 further.

10 HEARING OFFICER TOMPKIN: Anything
11 further for these witnesses?

12 INTERVENOR SELIGMAN: She wants to go
13 next, and then I'll go after her.

14 INTERVENOR SUNDBERG: Irene Sundberg.

15 CROSS EXAMINATION

16 BY INTERVENOR SUNDBERG:

17 Q I've looked at this page and looked at
18 it and I couldn't figure out what was happening on
19 it. Will you look at the staff assessment,
20 3.14-31. And my question is this original project
21 has grown from nine acres to 10.3 acres. Can
22 someone explain this to me, how this happened,
23 what's happened here?

24 A I can't answer that, that would be a
25 question for the applicant.

1 Q Okay, thank you. Has GWF provided the
2 certificate of compliance to the compliance
3 project manager prior to these hearings?

4 APPLICANT COUNSEL GRATTAN: We can
5 answer that. I know that we can answer both of
6 those questions.

7 THE WITNESS: (Vahidi) I don't know.

8 INTERVENOR SUNDBERG: Okay. Because I
9 thought staff would know that, if you guys had
10 received that or not.

11 THE WITNESS: We may not have -- We've
12 been here a lot, so I don't know --

13 HEARING OFFICER TOMPKIN: It's
14 acceptable if you don't know the answer to simply
15 state you don't know the answer and maybe we can
16 move a little bit more quickly.

17 BY INTERVENOR SUNDBERG:

18 Q On page 3.4-16, in your expert opinion,
19 can someone explain to me the number of ways to
20 interpret the general plan language?

21 A I'm sorry, I don't think I understand
22 your question.

23 Q Well, it's stated in the assessment that
24 there were a number of ways to interpret the
25 general plan language.

1 A (Allen) Yes.

2 Q And can you expound on that for me?

3 A Well, because different people,
4 different land use planners have different
5 experiences and some of us are public sector, some
6 of us are private sector, we would have different
7 ways of interpreting a general plan policy, which
8 is in this case why we normally ask the agencies
9 that have, you know, not jurisdiction but the
10 agencies in which the projects lie to interpret
11 their own plans and policies because they're the
12 ones that developed those plans and policies.

13 Q Thank you. In your testimony, and any
14 one of you can answer this, how do you know the
15 data you're receiving is reliable? How do you
16 make that determination?

17 A (Allen) Under ideal circumstances, we
18 can make a telephone call to the recipient of the
19 letter to confirm that that letter has been
20 received and that they're -- and to discuss
21 whether they're planning to respond.

22 During 2001, we were reviewing over 20
23 power plant applications. So we sent the letter
24 to San Joaquin County on August 22nd, and the same
25 letter was sent to Mr. Bill Dean at the City of

1 Tracy on August 22nd. We did not receive any
2 letter returned from the Postal Service saying
3 that the address was wrong and that kind of thing,
4 so by default, we had to conclude that the letter
5 had been received.

6 Following that, we generally make an
7 attempt to contact the recipients of the letter,
8 which we did.

9 A (Vahidi) Also, I'd like to add to that.
10 As far as what you see in our testimony, it's
11 based on various different things: public
12 documents, conversations, ground truthing,
13 visiting the site, things like that. So
14 verification, we would hope that if there are
15 public documents that are in the public record
16 that we're looking at that the information is
17 hopefully accurate.

18 A (Hawkins) And we would also hope that in
19 our contacts with public staff that those -- that
20 the information that we receive from them is also
21 accurate.

22 INTERVENOR SUNDBERG: Thank you.

23 HEARING OFFICER TOMPKIN: Mr. Seligman?

24 INTERVENOR SELIGMAN: My questions will
25 be asked collectively. I'm not going to try and

1 pinpoint who should answer. I'll just let whoever
2 can give the best answer answer it at this point.

3 HEARING OFFICER TOMPKIN: Please
4 proceed.

5 CROSS EXAMINATION

6 BY INTERVENOR SELIGMAN:

7 Q Is it your understanding that the CEC is
8 the lead agency for this particular project?

9 A Yes, under CEQA.

10 Q And, in the event that the project were
11 less than 50 megawatts, would the lead agency have
12 been the County of San Joaquin?

13 A Yes.

14 Q All right. And as part of the
15 responsibility of the lead agency, is there
16 responsibility for you to make sure that there is
17 compliance with CEQA?

18 A To determine, to assess whether there is
19 compliance with CEQA, yes.

20 Q All right. In connection with the issue
21 of the location of this particular site, one of
22 you indicated that it was your opinion that this
23 was an expansion of an existing industrial area.

24 A It was our collective opinion.

25 Q All right. And on what did you base

1 that?

2 A The existing land use character of the
3 existing three industrial uses next to the project
4 site, adjacent to the project site.

5 Q And how were they identified in the
6 general plan?

7 A Of San Joaquin County?

8 Q Yes.

9 A I believe they're designated industrial.

10 Q And how are they zoned in San Joaquin
11 County?

12 A They are zoned industrial.

13 Q And you understand in this particular
14 project we're dealing with a project that is
15 authorized to be in an agricultural zone; is that
16 correct?

17 A Yes.

18 Q And because -- It makes no difference to
19 you under your assessment in CEQA that this is to
20 be in an agricultural zone as opposed to an
21 industrial zone in making your initial conclusion
22 of the expansion?

23 A Well, as noted in our testimony, it does
24 make a difference, and we did take a look at the
25 impacts to agricultural land conversion. And

1 especially the fact that it's on prime
2 agricultural land.

3 Q If I recall correctly, you also in your
4 testimony indicated the possibility that it would
5 be more appropriate, it might be more appropriate
6 to locate this particular project in an industrial
7 site such as the Biomass facility; is that
8 correct? One of you, I believe, mentioned that.

9 A That's not exactly what we said.

10 Q Well, perhaps the first one that
11 answered, made that reference to the Biomass
12 facility might answer the question.

13 A Okay. Our testimony states that we
14 consider electric power plants to be an industrial
15 type of land use, which are logically located in
16 industrial zoning districts. With respect to the
17 Tracy Biomass site, I was stating that a possible
18 placement of the project on the existing Tracy
19 Biomass site would seem to me to be more
20 consistent with the County's policy 25 in the
21 general plan, CODPP 25, encouraging the expansion
22 of existing infrastructure.

23 Q Is it the consideration of alternative
24 sites a requirement under CEQA?

25 A Yes, it is.

1 Q And to what extent do you believe that
2 you had an adequate discussion of alternative
3 sites in your analysis of the land use issues?

4 STAFF COUNSEL WILLIS: I'm going to
5 object; that issue was dealt in the area of
6 Alternatives. These --

7 INTERVENOR SELIGMAN: No, the question I
8 had -- It might have been dealt with, but the
9 question is to what extent, was it adequately
10 discussed as opposed to perhaps needing more
11 discussion.

12 STAFF COUNSEL WILLIS: Are you asking
13 them their opinion of the staff's Alternatives
14 testimony?

15 INTERVENOR SELIGMAN: Yes.

16 BY INTERVENOR SELIGMAN:

17 Q Do you believe that the comments that
18 were made in your analysis are adequate for this
19 Commission to decide whether or not an alternative
20 site might be more appropriate for this project
21 than --

22 A I can't testify to the Alternatives
23 analysis, but I believe that since we are
24 reviewing the proposed project before us, I think
25 the information in our testimony is adequate for

1 the Commission to be able to make a conclusion.

2 Q What type of information do you believe
3 was in your analysis to discuss the Biomass
4 facility for consideration by the Commission as an
5 Alternative Site?

6 STAFF COUNSEL WILLIS: I'm going to
7 object; once again, they did not perform the
8 Alternatives analysis, so their discussion in Land
9 Use would not relate to the Alternative Sites,
10 only to this proposed site.

11 HEARING OFFICER TOMPKIN: I'll sustain
12 the objection.

13 INTERVENOR SELIGMAN: Is it my
14 understanding, then, that this Commission sees the
15 issue of Alternative Sites as separate from Land
16 Use?

17 HEARING OFFICER TOMPKIN: It was
18 discussed separately. It's a separate subject and
19 that was previously handled.

20 INTERVENOR SELIGMAN: My question is do
21 you see -- is it your ruling that the issue of
22 Alternative Sites is not within the context of
23 Land Use?

24 HEARING OFFICER TOMPKIN: I'm not
25 prepared to go that far, but I think that your

1 question as to these witnesses is -- I'll sustain
2 the objection to Land Use -- to Alternative Site
3 questions.

4 INTERVENOR SELIGMAN: So, essentially,
5 by your ruling you are precluding my discussing
6 that issue as part of a Land Use issue; is that
7 correct?

8 HEARING OFFICER TOMPKIN: If you can
9 bring it into context, it will be permissible.
10 You haven't done so.

11 INTERVENOR SELIGMAN: Well, then I'm not
12 too sure of your response on that.

13 HEARING OFFICER TOMPKIN: Okay. Well,
14 that means I'll sustain the objection. Ask your
15 next question and we'll go from there.

16 INTERVENOR SELIGMAN: All right.

17 BY INTERVENOR SELIGMAN:

18 Q In answer to a prior question, I believe
19 that one of you indicated that in -- it was
20 necessary for the Commission to be able to make a
21 finding that the project would comply with all
22 relevant LORS; am I correct in that?

23 A Yes.

24 Q Was that your testimony?

25 A That's collectively.

1 Q Collective, all right. And I know we
2 have had an inordinate amount of testimony on what
3 applies or what doesn't apply, and my question to
4 you is a little bit different. Do you see any
5 difference as a professional in deciding what
6 applies as opposed to what is relevant?

7 A Not in this context.

8 Q Why not?

9 A In this context it seems like there's
10 little semantic difference between relevant and
11 applicable.

12 Q Is there anything that you're aware of,
13 either in the statute or in the guidelines that
14 defines the word "relevant" or the word
15 "applicable"? Are you aware of anything?

16 A I'd have to review the guidelines at
17 length.

18 Q Is your response then just based on your
19 experience in working in this area over the years
20 that you've previously testified?

21 A Yes, it is.

22 Q As opposed to any -- At this point, as
23 opposed to your knowledge of the existence of any
24 regulations or statutes on this issue.

25 A It's based on my considerable

1 professional experience.

2 Q All right. If I recall correctly, in
3 response to a question that Mr. Weed said, one or
4 both of you were under the impression that the San
5 Joaquin County would routinely refer, have
6 referred this to other governmental agencies that
7 might have applicability to this particular
8 project if they had jurisdiction; do you recall
9 that?

10 A I didn't specifically say San Joaquin
11 County. I said normally, in the course of the way
12 things work with planning jurisdictions, it does
13 happen.

14 Q And it's also my understanding that you
15 acknowledge that this particular project site is
16 within the sphere of influence of the City of
17 Tracy.

18 A Yes, we acknowledge that.

19 Q All right. But you still do not, as I
20 try and end this part of the testimony, you still
21 do not believe that their local rules are
22 relevant, then, to this particular project, other
23 than from a cumulative impact standpoint?

24 A That is correct.

25 Q Okay. Is it also my understanding from

1 your prior testimony that you acknowledge that in
2 connection with Tracy, that there would be
3 conflicts with their existing plans if, in fact,
4 this project were under any portion of their
5 jurisdiction?

6 A As the project -- I'll state it again.
7 As the project is rezoned currently as RVL,
8 residential very low, if the plan area had been
9 annexed into the City of Tracy, then the proposed
10 project would have been inconsistent with that
11 zoning.

12 Q Given that knowledge, did you -- do you
13 find any responsibility on the part of staff to
14 see what steps could be taken to eliminate that
15 possible conflict?

16 A No, because, again, and I'll state this
17 in another way to describe it. Based on our
18 discussions with City staff -- and I'm not going
19 to call the project speculative. Based on our
20 discussions with City staff, the probability of
21 the South Schulte plan area getting annexed was
22 either far into the future or no specific time
23 line could be given because of the various
24 reasons. There was no pending annexation
25 application, none has been put forth, and because

1 of the slow growth initiative, Measure A. And the
2 fact that the City Council is looking to slow
3 growth down within its current existing
4 boundaries.

5 We felt that because of those reasons,
6 this plan was not applicable.

7 Q All right, thank you. Do you believe
8 that during the course of this hearing, do any of
9 you believe that during the course of this hearing
10 any new information has been provided that would
11 warrant further staff assessment?

12 A In the area of Land Use?

13 Q Yes.

14 A No.

15 Q In connection with the letter that was
16 signed by Mr. Hulse that has been testified to by
17 you as well as others, what is -- what conclusions
18 did you reach as to what was intended to be
19 provided to you in the context of that document?

20 STAFF COUNSEL WILLIS: I'm going to
21 state an objection. I don't mind the witness
22 answering this question, but I do feel that this
23 whole entire line of questioning was previously
24 asked by the City of Tracy counsel, and we already
25 covered this on direct. And it's becoming --

1 INTERVENOR SELIGMAN: Well,
2 unfortunately or fortunately, whichever the case
3 may be, I'm not the City of Tracy's
4 representative, but I think I do have the right on
5 behalf of my client as an intervenor to get
6 answers to that question and, if appropriate, to
7 explore further questions.

8 HEARING OFFICER TOMPKIN: Well, Counsel
9 has indicated she's willing to have the witness
10 answer, but it is cumulative, and so I would
11 request that you limit your questioning in this
12 area to new information.

13 INTERVENOR SELIGMAN: I am trying. I
14 think my questions have been concise and I think
15 that I have not gone beyond what would be a
16 reasonable period of time in asking questions.

17 Go ahead.

18 THE WITNESS: Are you willing to restate
19 the question? I know that that goes to the
20 opposite of being concise, but --

21 BY INTERVENOR SELIGMAN:

22 Q What was your interpretation or what
23 interpretation, if any, did your staff make or you
24 make, you in particular, to the intent of the
25 contents of the letter of Mr. Hulse which was

1 dated September 18th, 2001?

2 A The County provided responses to the
3 items that we had asked them to address.

4 Q All right. Now, were those items in the
5 context -- Was it your understanding that those
6 items were in the context of what the County would
7 require if it was going to be doing a site
8 approval of this particular project?

9 A I can't speak to the site approval.

10 Q Did you have any knowledge of what
11 process the County goes through in deciding what
12 type of approval would be necessary for this type
13 of a project, if it was under the County
14 jurisdiction?

15 STAFF COUNSEL WILLIS: And I'm going to
16 object again; that question was asked earlier, and
17 they did answer that they are not aware of that,
18 the County's site approval process.

19 BY INTERVENOR SELIGMAN:

20 Q Did you make any inquiries to find that
21 out?

22 A In order to determine consistency with
23 local LORS, we asked the County to make the
24 findings that it normally would when considering a
25 conditional use permit application.

1 Q Do you believe that that letter answers
2 that question?

3 A Yes, I do.

4 Q And is it your opinion, your conclusion
5 that that letter is all that the County would
6 require for issuance of a conditional use permit?

7 A We're not County staff, we can't --

8 Q No, but is that your understanding, that
9 that's all that would be required to issue a
10 conditional use permit by the County? Who is
11 answering the question? Is it counsel or are you
12 answering this question?

13 A (Allen) I am answering the question.

14 Q Okay, thank you.

15 A I stated that I felt like this was a
16 sufficient response to the items that I had
17 requested from the County.

18 Q All right. But you did make mention of
19 the fact that it was based on the issuance by the
20 County of a conditional use permit, so my question
21 to you -- Go ahead, I'm sorry.

22 A The concept of the Commission being the
23 lead agency is relevant here. I asked them to
24 come up with the conclusions that they would, if
25 they had been in the position of issuing a

1 conditional use permit, but for the Commission's
2 lead agency status. So I believe that they did.

3 Q To summarize your answer, I'm just
4 trying to clear this up. Is it your conclusion
5 that the contents of that letter indicated to you,
6 as a CEC staff member, what was required by -- if
7 the San Joaquin County were to issue a conditional
8 use permit for this project?

9 A Underscoring that I am not at all
10 getting into the requirements of --

11 Q No, I'm not asking that.

12 A -- the site approval process, I regarded
13 this as sufficient.

14 Q Thank you.

15 INTERVENOR SELIGMAN: I'm sorry, I'm
16 saving some time, I'm trying to take into account
17 the admonishment and not ask some of the questions
18 that have already been asked and answered.

19 PRESIDING COMMISSIONER PERNELL: We
20 appreciate that, the committee does.

21 INTERVENOR SELIGMAN: Thank you. I
22 think I do too.

23 (Laughter.)

24 BY INTERVENOR SELIGMAN:

25 Q Other than getting the response that you

1 did from San Joaquin County, in connection with
2 your meetings or prior letters of communication,
3 did you ask for any additional comments from San
4 Joaquin County as it relates to this particular
5 project?

6 A I did request a meeting with them, which
7 they agreed to, and I met with them on
8 December 21st.

9 Q In connection with the first notice that
10 you mentioned that was sent to San Joaquin County,
11 among others, to comment on the application, do
12 you know whether or not, other than the letter
13 that was written, the County chose not to because
14 it didn't have jurisdiction?

15 A The County's letter is the only
16 communication, the only written communication that
17 we have received. I did a record of conversation
18 regarding my meeting with them on December 21st.

19 Q During the course of your conversation
20 with Kerry Sullivan and/or Chandler Martin, did
21 any of them indicate to you that since they didn't
22 have any jurisdiction over this subject matter
23 that other than responding to your questions,
24 that's all that they felt was appropriate?

25 A I'm going to have to refer to my notes

1 here regarding the record of conversation. As I
2 previously testified, we discussed the statement
3 regarding the power plant needing to be located in
4 an agricultural zone. They clarified their
5 rationale which led to that statement. And then
6 we briefly discussed the County's general plan
7 concepts found in CODPP 25 regarding existing
8 infrastructure being maintained and upgraded when
9 feasible to reduce the need for new facilities.

10 That was the extent of our conversation,
11 the substance of our meeting.

12 Q All right. In view of the fact that
13 within your assessment you concluded that this
14 particular area is within a rapidly increasing
15 residential development, and that was on 3.4-7, I
16 believe, and then four other areas where you
17 mentioned that, given that observation did you
18 feel that there was any reason, from a CEQA
19 standpoint or from your own regulations, to have
20 further discussions of the impact of this
21 particular project to the -- using your language,
22 the rapidly increasing residential development in
23 the area?

24 A I think consistent with CEQA in that
25 vein we did consider it under cumulative impacts.

1 Q And what conclusions did you reach?

2 A That the proposed project would have a
3 cumulative impact in the area of loss of open
4 space and ag land and was mitigated with condition
5 of certification land too.

6 Q Did you make any consideration of the
7 cumulative impacts in connection with the impact
8 of the increasing residential development that's
9 going on in that area?

10 A We didn't address that specifically in
11 the cumulative impacts text on page 3.4-24, in
12 part because we had heard repeatedly from the City
13 staff that there was not a time line for
14 development for South Schulte and Tracy Hills.

15 Q I'm not referring to South Schulte at
16 this point. Your comment that you made on 3.4-7
17 doesn't limit itself to South Schulte. It
18 recognizes what us in the area realize as the
19 obvious, and that is that this particular area has
20 a rapidly increasing residential development
21 within the existing city limits of Tracy.

22 And so the question is to what extent
23 was that -- did you have any discussion in your
24 analysis of the CEQA -- the impact of this
25 particular project in connection with that issue?

1 A Again, under CEQA we did acknowledge
2 that the proposed project is cumulatively
3 considerable as far as impacts related to loss of
4 open space and ag. In the context of residential
5 development, taking over a lot of open space and
6 losing open space, this project taking 10.3 acres
7 up would contribute minimally to that loss of open
8 space.

9 Q And were any alternatives considered in
10 connection with that comment that you just made?

11 A Again, analysis of alternatives was not
12 within the scope of the study.

13 Q Okay. Is there a reason that you
14 mentioned the Biomass facility in your testimony
15 earlier in connection with your discussions with
16 Kerry Sullivan and Chandler Martin?

17 A We concluded that it was relevant to the
18 County's general plan policy.

19 Q To what extent did you conclude that
20 there was some relevance to that?

21 A The Tracy Biomass plant could be
22 considered existing infrastructure.

23 Q Was that raised within the context of
24 the potential of having sufficient area within
25 that facility to contain this particular project?

1 A Yes, I said that I thought it would be
2 possible.

3 Q Okay. Time for lunch?

4 (Laughter.)

5 INTERVENOR SELIGMAN: I hope not, since
6 we're going to conclude at 2:00, but I have no
7 further questions.

8 PRESIDING COMMISSIONER PERNELL: Thank
9 you.

10 HEARING OFFICER TOMPKIN: Let me note
11 for the record that the intervenor Mr. Sarvey has
12 arrived.

13 STAFF COUNSEL WILLIS: And staff
14 requests about two minutes to let my witness have
15 some water.

16 PRESIDING COMMISSIONER PERNELL: Yes,
17 let's go off the record.

18 (Thereupon, a recess was held
19 off the record.)

20 PRESIDING COMMISSIONER PERNELL: We will
21 continue. Ms. Tompkins.

22 HEARING OFFICER TOMPKIN: All right. We
23 will allow Mr. Sarvey to question the witnesses.

24 You may proceed.

25 INTERVENOR SARVEY: Thank you.

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q How many power plants were you
4 processing in 2001? I believe you stated it was
5 20?

6 A At least 20.

7 Q Okay. What is your typical number of
8 plants that you process in a year, say in the
9 average of the last five years? Just roughly.

10 A Four to six.

11 Q Okay, and you processed 20 in 2001. How
12 many of these plants of the 20 that you were
13 processing were on the four-month expedited
14 review?15 A I'd have to refer to the Commission's
16 records for that. I can't answer.17 Q Okay. Any just general number, just
18 four or five --19 STAFF COUNSEL WILLIS: I'm going to ask
20 my witness not to speculate.

21 INTERVENOR SARVEY: Okay.

22 STAFF COUNSEL WILLIS: If she knows,
23 that's fine.

24 INTERVENOR SARVEY: Okay. No problem.

25 BY INTERVENOR SARVEY:

1 Q You worked 12 hours yesterday; is that
2 unusual in your position?

3 A (Laughing.) No.

4 Q Okay, thank you. Did your findings in
5 the Land Use area provide information that's
6 necessary for other topic areas to make their
7 cumulative analysis and make their studies
8 accurate?

9 A No.

10 Q Well, let's say if Dr. Greenberg was
11 trying to provide a route for aqueous ammonia
12 trucks that was safe, would he depend on your
13 analysis to provide him locations such as schools
14 and such so he could avoid that particular route?

15 A I'd be happy to work with Dr. Greenberg
16 in sharing the information that I have. There is
17 information in the AFC. I have a street map of
18 the City of Tracy, San Joaquin County map. I
19 would be happy to share that information with
20 Dr. Greenberg and it's the kind of thing I do
21 routinely on an informal basis with my colleagues.

22 Q So Dr. Greenberg would rely on you,
23 then, to get an accurate route.

24 A Again, we're each doing our independent
25 analysis of the issue area in which we're

1 specialists in --

2 Q Correct.

3 A -- so --

4 Q Oh, all I'll --

5 A -- we do talk to each other.

6 Q All I'm trying to establish is that if

7 you don't identify, say, a school and

8 Dr. Greenberg brings the route by the school,

9 then, you know --

10 A He does his own investigation, as do we.

11 Q But he has to --

12 A Relevant to our issue area.

13 Q He has to rely on your --

14 A (Vahidi) He does not rely on our issue
15 area.

16 Q Not at all?

17 A (Allen) I would be willing to give him
18 information, similar to the information that he
19 could get from a local library or other sources
20 like that.

21 Q Okay. So if Dr. Greenberg developed a
22 route and you hadn't identified a school and he
23 hadn't noticed it in the local library, then it
24 would go unnoticed.

25 HEARING OFFICER TOMPKIN: I think the

1 testimony simply is that they share information,
2 that each one uses that information for their
3 particular area, and that's our understanding.

4 STAFF COUNSEL WILLIS: And just to
5 clarify also, I believe the testimony was that
6 they each get a copy of the AFC, and use that
7 information as well. So they don't necessarily
8 have to give it to each other; it's present to
9 all.

10 INTERVENOR SARVEY: Thank you.

11 BY INTERVENOR SARVEY:

12 Q You stated that you did not consult the
13 Board of Supervisors on this project?

14 A I don't know that I stated that, but I
15 have not contacted the Board of Supervisors.

16 Q Is any local jurisdiction required to
17 issue permits to allow the CEC to cite TPP in its
18 current location?

19 A No. With regard to Land Use, no.

20 Q If the County findings had found a LORS
21 violation would you have had to respond or what
22 would your duties be under CEQA to address that
23 LORS violation?

24 A Well, that's speculating. They did not
25 find a LORS violation. I would have to take their

1 conclusions into account, in the context of
2 performing an independent analysis.

3 Q You stated earlier that you consulted
4 the County recorder in assessing the lot line
5 adjustment. What date was that?

6 A I never said I contacted the County
7 recorder regarding the lot line adjustment, and I
8 don't believe staff did either.

9 PRESIDING COMMISSIONER PERNELL: Perhaps
10 you could just ask the question.

11 BY INTERVENOR SARVEY:

12 Q Did anyone consult the County recorder
13 in terms of this lot line adjustment for the Land
14 Use?

15 A Anyone on the Land Use staff?

16 Q Yes.

17 A CEC Commission Land Use staff?

18 Q Right.

19 A No.

20 Q Okay. Have you seen the County
21 recorder's map on the area?

22 A No.

23 INTERVENOR SARVEY: Can I present it to
24 her so I can ask a few general questions about it?

25 HEARING OFFICER TOMPKIN: How is it

1 relevant?

2 INTERVENOR SARVEY: Just in terms of the
3 lot line adjustment.

4 HEARING OFFICER TOMPKIN: Why is it
5 relevant? Why does she need to see the map? Why
6 don't you just ask your question?

7 INTERVENOR SARVEY: Because I think
8 she'll need to refer to the map to answer the
9 question. That's okay, I'll do it later.

10 BY INTERVENOR SARVEY:

11 Q Did the City of Tracy respond to your
12 request for LORS conformance?

13 A We didn't ask the City of Tracy for LORS
14 conformance.

15 Q Did you consult the City in any
16 capacity?

17 A Yes. I stated in my testimony we
18 contacted the City on many occasions. I'm happy
19 to go through those again, if you'd like, the
20 dates and the times. An August 22nd letter that
21 Eileen Allen mentioned.

22 Q Initially Mr. Hulse's September 18th
23 letter had an attachment, I believe it was called
24 Statement of Findings, and staff initially
25 referred to it as a Statement of Findings, and now

1 you refer to it as a statement of --

2 A Again, it's a matter of semantics.

3 Findings, conclusions, determinations --

4 Q So now, is the staff referring to it as
5 conclusions, then?

6 A In our testimony we have referred to it
7 as findings.

8 Q As findings?

9 A Because it's titled Findings by the
10 County.

11 Q Okay.

12 A But again, they don't have permitting
13 jurisdiction, so it's irrelevant.

14 Q Okay. In your telephone conversation,
15 and this would be addressed to Eileen Allen, of
16 12/21/01, time 9:30 a.m. --

17 A That was an in-person meeting where I
18 went to Stockton and met with Ms. Sullivan and
19 Mr. Martin.

20 Q Okay. So I'll quote this, it says, "We
21 briefly discussed the County's general plan
22 concepts found in Community Organization and
23 Development Pattern CODPP 25 which states that the
24 existing infrastructure should be maintained and
25 upgraded when feasible to reduce the need for new

1 facilities." And then she responded that that
2 wasn't her area, that that was the Commission's
3 area.

4 Did you respond to that, the County's
5 general plan, CODPP 25?

6 A Not beyond what I have written there in
7 the record of conversation.

8 Q So you did not comply with this County
9 general plan concept, Community Organization
10 Development Pattern 25; is that correct?

11 A A policy consistency analysis was done
12 in our testimony.

13 Q And did you comply with their general
14 plan concept?

15 A I don't understand what you mean by
16 comply.

17 Q Did you comply with it?

18 STAFF COUNSEL WILLIS: I'll have to
19 object; the staff doesn't comply, they analyze.
20 So they were analyzing the local policies and laws
21 and ordinances of the County.

22 BY INTERVENOR SARVEY:

23 Q Well, in the area of Land Use, do you
24 feel that the staff has satisfied its requirement
25 of -- that I've mentioned?

1 STAFF COUNSEL WILLIS: I'm sorry, I'm
2 going to have to object again; staff isn't
3 satisfying the requirement, they're analyzing it.

4 INTERVENOR SARVEY: Right, right.

5 BY INTERVENOR SARVEY:

6 Q And how did staff reconcile the fact
7 that this general time concept existed? Did they
8 follow it? Did they follow a LORS here in this
9 case?

10 STAFF COUNSEL WILLIS: I'm sorry, a
11 LORS --

12 HEARING OFFICER TOMPKIN: I'm going to
13 ask you to start over. I'll sustain the
14 objection. It's confusing. Why don't you just
15 restate the question.

16 INTERVENOR SARVEY: Okay.

17 BY INTERVENOR SARVEY:

18 Q In this conversation it says, "We
19 briefly discussed the County's general plan
20 concepts found in Community Organization and
21 Development Pattern CODPP 25 which states that the
22 existing infrastructure should be maintained and
23 upgraded when feasible to reduce the need for new
24 facilities."

25 Did the CEC and the Land Use comply with

1 that LORS?

2 A Ms. --

3 STAFF COUNSEL WILLIS: No, I'm objecting
4 to the question. The CEC staff does not comply;
5 they analyze. If you're asking the question was
6 this --

7 INTERVENOR SARVEY: Okay, in your --

8 STAFF COUNSEL WILLIS: I'm sorry, may
9 I -- If you're asking the question did the staff
10 analyze this, this section, that has been asked
11 and answered, but the staff could respond again,
12 if you'd like.

13 BY INTERVENOR SARVEY:

14 Q Well, in your analysis, how did you
15 comply with this condition?

16 HEARING OFFICER TOMPKIN: I'll sustain
17 the objection. Why don't you ask your next
18 question. Or you can ask if they analyzed that
19 provision.

20 INTERVENOR SARVEY: I thought I just
21 did.

22 BY INTERVENOR SARVEY:

23 Q Did you analyze that provision, and what
24 was the -- what was your analysis to conclude that
25 the CEC had responded to that LORS, condition of

1 LORS?

2 A We're not responding to a condition of
3 LORS, we're doing analysis of the policy.

4 PRESIDING COMMISSIONER PERNELL: Why
5 don't we answer the first part of the question.

6 THE WITNESS: Which is yes, we did do a
7 policy analysis of that particular one that you're
8 referencing.

9 BY INTERVENOR SARVEY:

10 Q And do you comply with LORS?

11 STAFF COUNSEL WILLIS: Are you asking if
12 the project complies with LORS?

13 INTERVENOR SARVEY: Yes.

14 STAFF COUNSEL WILLIS: Okay. That's a
15 different question.

16 THE WITNESS: We did determine that the
17 project, in our staff testimony we concluded the
18 project is in compliance with County LORS.

19 BY INTERVENOR SARVEY:

20 Q And how did you satisfy, or how -- in
21 your analysis, how did you reconcile the fact that
22 you had not satisfied this County LORS?

23 HEARING OFFICER TOMPKIN: That
24 mischaracterizes the testimony.

25 INTERVENOR SARVEY: Oh, I'm sorry. I

1 think it's pretty clear what I'm asking, so maybe
2 I'm asking it the wrong way.

3 THE WITNESS: It's not clear to me, I'm
4 sorry. If you could --

5 INTERVENOR SARVEY: Maybe I'm asking it
6 the wrong way.

7 BY INTERVENOR SARVEY:

8 Q I see this as a violation of the LORS
9 because the CEC did not respond to it. Can you
10 comment on what, in your analysis why this issue
11 wasn't addressed?

12 STAFF COUNSEL WILLIS: I'm going to
13 object again; if you refer to the testimony, maybe
14 I can get a page for you.

15 THE WITNESS: It's page 3.4-15.

16 THE WITNESS: 3.4-15. Do you have a
17 page number you can refer us to, or --

18 INTERVENOR SARVEY: I'm referring to
19 this discussion with Eileen Allen.

20 THE WITNESS: Okay. 3.4-15 actually
21 states the --

22 STAFF COUNSEL WILLIS: 3.14-15 and 3.4-
23 16 of the staff assessment supplement, that
24 addresses.

25 THE WITNESS: Also, 3.4-17. What you're

1 referring to is a record of conversation. It is
2 not the staff's analysis. It was the staff's
3 discovery period of trying to talk with the local
4 agency to gather their input and to get more
5 information.

6 Staff does not have an obligation at
7 that point in time to respond to the agency in any
8 way; they are just trying to gather information
9 from the agency. That's what this record of
10 conversation is attempting to report, is a general
11 memorialization of that conversation.

12 BY INTERVENOR SARVEY:

13 Q So would you agree with the statement
14 that this general plan concept and Community
15 Organization Development Pattern and Policy 25 is
16 a LORS of the County?

17 A We have stated as such in our testimony.

18 Q And have you identified in any way how
19 you have dealt with the obvious, or I shouldn't
20 say -- Have you dealt with -- Can you identify how
21 you dealt with this LORS? You know, I don't see
22 that it would satisfy --

23 A When I talked with Ms. Sullivan about
24 this policy and my premise that it would be
25 possible to place the proposed project within the

1 confines of the existing Tracy Biomass project, I
2 was just presenting her with my interpretation of
3 the policy when applied to this project. And I
4 would emphasize possible.

5 So she stated that that was not the
6 scope of what we had asked them to address. I had
7 to agree with her response. As far as the concern
8 that I think I have heard from you, this is a non-
9 conformity with one of their LORS, I emphasized
10 possible, that I thought it was possible that the
11 project could be placed there.

12 Q Okay.

13 A We'd have to do a lot more research
14 that's beyond the scope of what we're doing here
15 to determine the feasibility of doing that.

16 So I didn't conclude that there was a
17 non-conformity. It was just more like a concept
18 that we were discussing. That's reflected in our
19 testimony.

20 Q The County's general plan and Community
21 Development Pattern would be more than a concept,
22 that would be an actual LORS; wouldn't it?

23 A Certainly. It's one of their LORS, but
24 when I referred to concept it was the tenor of our
25 discussion.

1 INTERVENOR SARVEY: Can you help me out
2 here, Mr. Laurie? I seem to be struggling.

3 BY INTERVENOR SARVEY:

4 Q Mr. Hawkins, you had a discussion with
5 Vickie Lombardo on 1/29/02 at 2:30, and the
6 discussion was over the City of Tracy and the
7 South Schulte plan?

8 A That's correct.

9 Q Do you recall that conversation?

10 A Yes, I do.

11 Q Okay. Was it at this point that you
12 determined that the South Schulte specific plan
13 was a reasonably foreseeable project?

14 A No.

15 Q And at what time did you make that
16 determination?

17 A This goes into the discussion of whether
18 it was reasonably foreseeable or whether it was
19 speculative. At this time I did not decide, I was
20 merely trying to find out information on the
21 project. It was not my decision whether it was
22 reasonably foreseeable or speculative.

23 Q And at what time did staff identify it
24 as reasonably foreseeable?

25 A (Allen) In the normal course of

1 preparation of such land use assessments, we
2 talked to a lot of jurisdictions to get a list of
3 cumulative projects. We compiled a list, and then
4 when we start our analysis, we conduct the
5 analysis. And South Schulte specific plan was
6 considered a cumulative project; that was included
7 in our analysis of cumulative impacts, cumulative
8 land use impacts.

9 Q You identified this in your January 31st
10 staff assessment, but in your previous assessment
11 you had not identified South Schulte specific plan
12 as a reasonably foreseeable project, so the
13 question I'm asking is when did that occur?

14 A It occurred as a result of comments that
15 had come out on the staff assessment.

16 Q And can you give me a general time
17 frame?

18 A It would have been between when the
19 staff assessment was issued in January.

20 Q Okay. Did you begin your cumulative
21 analysis at the point when you identified South
22 Schulte as reasonably foreseeable?

23 A The entirety of it, or -- It's worth
24 noting that the original staff assessment had a
25 cumulative projects list.

1 Q Yeah, but it did not include the
2 reasonably foreseeable development projects that
3 were included in the January 31st --

4 A It had some few additions.

5 Q Can you identify which additions that
6 was?

7 A I'd have to go through my notes.

8 Q Okay. I'll ask another question and you
9 can do that, and we'll come back to that, if
10 that's okay.

11 If your analysis missed a major project,
12 would your analysis be incomplete?

13 A I'm sorry, I didn't catch your question.

14 Q If your analysis misses a major project,
15 would your analysis be considered incomplete?

16 A If we missed a major problem --

17 A (Allen) If indeed we missed a major
18 project.

19 A (Vahidi) But we didn't.

20 Q Would that --

21 A (Hawkins) I would say that such a
22 project would need to be reasonably foreseeable
23 and not of a speculative nature.

24 Q Have you identified in your analysis the
25 Plan C project of 5,000 homes that will increase

1 the City of Tracy's population by approximately 20
2 percent?

3 A (Vahidi) No.

4 A (Allen) The Plan C project?

5 STAFF COUNSEL WILLIS: I'm going to
6 object; that assumes facts not in evidence.

7 HEARING OFFICER TOMPKIN: Sustained.

8 INTERVENOR SARVEY: We have maps by the
9 City of Tracy that Plan C is in current
10 development right now. It's going on right now.

11 HEARING OFFICER TOMPKIN: I sustained
12 the objection; ask your next question.

13 BY INTERVENOR SARVEY:

14 Q The current development that's going on
15 in the City of Tracy is referred to as Plan C; did
16 you include that in your cumulative analysis?

17 STAFF COUNSEL WILLIS: Once again, can
18 you refer to something other than Plan C? I've
19 already objected to that.

20 INTERVENOR SARVEY: The gentlemen over
21 here have all the maps on Plan C. I don't have
22 the maps. If we could possibly --

23 PRESIDING COMMISSIONER PERNELL: She's
24 already objected to that question. Do you have
25 another question?

1 HEARING OFFICER TOMPKIN: Maybe you can
2 just ask are they aware of such a development?

3 BY INTERVENOR SARVEY:

4 Q Are you aware of such a development?

5 A What's the name of it again?

6 Q The Plan C development.

7 A Plan C, I am not aware of such a
8 development.

9 Q Okay. Red Bridge is part of Plan C; are
10 you aware of that?

11 A I am aware of Red Bridge.

12 Q Okay. Do you know what the address of
13 this project is?

14 A What project?

15 Q The street address of this project is?

16 A What project?

17 Q The GWF.

18 A The proposed project?

19 Q Peaker plant, yes. Do you know the
20 street address?

21 A I don't know the exact street address.
22 I can look it up for you.

23 Q Okay.

24 A Okay.

25 COMMISSIONER LAURIE: Commissioner

1 Pernell, if I may.

2 Mr. Sarvey, do you know the street
3 address?

4 INTERVENOR SARVEY: Do I know the street
5 address?

6 COMMISSIONER LAURIE: Yes.

7 INTERVENOR SARVEY: Yeah, I do.

8 COMMISSIONER LAURIE: Then what's the
9 relevancy of asking if they know the street
10 address?

11 INTERVENOR SARVEY: The relevancy is I
12 would like to introduce some evidence concerning
13 that street address.

14 COMMISSIONER LAURIE: Well, then offer
15 in --

16 STAFF COUNSEL WILLIS: And I'd just like
17 to ask for clarification from the committee. My
18 witnesses are the ones testifying. Mr. Sarvey,
19 I'm not sure it's the appropriate time for him to
20 be offering evidence.

21 PRESIDING COMMISSIONER PERNELL: Why is
22 this relevant, Mr. Sarvey?

23 INTERVENOR SARVEY: Could you read the
24 red writing in the top right-hand corner of the --

25 HEARING OFFICER TOMPKIN: Mr. Sarvey?

1 APPLICANT COUNSEL GRATTAN: Objection,
2 objection.

3 HEARING OFFICER TOMPKIN: There is an
4 inquiry why this is relevant to this case.

5 INTERVENOR SARVEY: The site address is
6 listed as 26088 South Lammers, and according to
7 the County recorder, that address does not exist.

8 HEARING OFFICER TOMPKIN: So why is that
9 relevant? Why is that important?

10 INTERVENOR SARVEY: Because the County
11 recorder has to be consulted to approve, to look
12 at this plan and provide maps, and if he can't
13 provide you with the address, then, you know -- I
14 think it's very important. It goes to show that
15 the County doesn't even know what address this
16 project is.

17 HEARING OFFICER TOMPKIN: Well, the
18 issue here is compliance with LORS, and this
19 really does not, has no probative value on that
20 issue. So I'm going to sustain the relevancy
21 objection and ask you to move on.

22 BY INTERVENOR SARVEY:

23 Q Have you identified that address?

24 HEARING OFFICER TOMPKIN: No, we're not
25 going to discuss this address. It's not relevant,

1 so I'm going to ask you to move on to another
2 subject area.

3 BY INTERVENOR SARVEY:

4 Q In your Land Use analysis of the
5 conformance to LORS, do you consider a 30-year
6 time period temporary?

7 A (Vahidi) With regard to -- I don't think
8 I understand your question. I'm sorry, I don't
9 understand what --

10 A (Hawkins) Is there a place in the staff
11 assessment that you're --

12 Q It's not in the staff assessment, it's
13 in the findings under the Community Development
14 Department, which I neglected to bring up here
15 with me, but it's concerning the three conditions
16 that need to be satisfied.

17 HEARING OFFICER TOMPKIN: Mr. Sarvey, I
18 would just inquire why is that relevant to a
19 determination of compliance with LORS?

20 INTERVENOR SARVEY: Because if staff
21 doesn't consider a 30-year period temporary, then
22 there is no conformance with LORS.

23 STAFF COUNSEL WILLIS: We would object;
24 the staff has testified in their written testimony
25 and today and under cross examination, they do

1 believe there is conformance with LORS. They have
2 reviewed these documents, it was part of their
3 Land Use analysis. I don't know why we're delving
4 into what the County thought.

5 These are Energy Commission staff
6 witnesses.

7 HEARING OFFICER TOMPKIN: I'll sustain
8 the objection as not relevant.

9 BY INTERVENOR SARVEY:

10 Q Why did you only require 10.3 acres to
11 be seceded to the American Farmland Trust? Why
12 did you not require the full 40 acres?

13 A (Vahidi) Because 10.3 acres is where, is
14 the part of the site, 40-acre site that's being
15 developed with the power plant project.

16 Q Were you aware that the applicant owns
17 the entire 40 acres?

18 A Yes. That's why part of the Land Two
19 mitigation calls for plans for the remaining 29.7
20 acres to remain in agricultural operation.

21 Q Were you aware that this land has been
22 fallow for three years?

23 A I'm sorry, I didn't hear your question.

24 Q Were you aware that this land has been
25 fallow for three years?

1 A I was not aware of that particular fact.

2 Q Have you studied the crop history of
3 this site?

4 A The what?

5 A (Hawkins) We have included that in our
6 testimony.

7 A (Vahidi) Yes, that's in our testimony.

8 Q Okay. Do you intend to monitor the
9 agricultural use at this site and require
10 additional land be donated to the Farmland Trust
11 if the land is actually not farmed?

12 A Well, they would need to follow the
13 condition of certification Land Two, and there is
14 a mitigation agreement that's in place, and if the
15 project is approved, the conditions of
16 certification would have to be complied with, and
17 the compliance project manager from the CEC would
18 take a look at what's going on and monitor the
19 conditions of certification.

20 Q So there is a mechanism in place to
21 monitor that this is -- that the farmer is
22 actually farming this land.

23 A Yes.

24 Q And what is that procedure?

25 A It's the condition of certification. I

1 can read it over for you, if you like.

2 HEARING OFFICER TOMPKIN: That's not
3 necessary.

4 INTERVENOR SARVEY: Okay.

5 HEARING OFFICER TOMPKIN: I mean, we're
6 really trying to focus on LORS.

7 BY INTERVENOR SARVEY:

8 Q Have you reviewed the conditional use
9 requirements on this property of the County?

10 A Again, as has been exhaustively
11 responded to, we consulted with the County of San
12 Joaquin to give us their view of and conclusions
13 on three issues, and I can go over those issues if
14 you'd like.

15 HEARING OFFICER TOMPKIN: This is --

16 INTERVENOR SARVEY: No, no, that's not
17 necessary.

18 BY INTERVENOR SARVEY:

19 Q I just wanted to -- you know, it says
20 that the site of the use can be rehabilitated for
21 agricultural production or permitted use in an ag
22 zone if the power source is temporary. That's
23 power generation --

24 A That's in the County's findings.

25 Q Right. Do you consider 30 years

1 temporary?

2 HEARING OFFICER TOMPKIN: Mr. Sarvey,
3 you've already gone there, so I'm going to cut you
4 off.

5 INTERVENOR SARVEY: Okay.

6 HEARING OFFICER TOMPKIN: Is there
7 anything that we haven't covered that specifically
8 relates to compliance with LORS?

9 INTERVENOR SARVEY: No, ma'am, I'm
10 actually done, and I want to thank you for your
11 patience.

12 HEARING OFFICER TOMPKIN: Thank you,
13 Mr. Sarvey.

14 PRESIDING COMMISSIONER PERNELL: Thank
15 you.

16 APPLICANT COUNSEL GRATTAN: I have just
17 a few questions, and I'm going to make those very
18 brief. I'll try to get them questions that can be
19 answered by yes or no.

20 CROSS EXAMINATION

21 BY APPLICANT COUNSEL GRATTAN:

22 Q First, with respect -- and hopefully
23 this will clarify things -- First, with respect to
24 the Commission's process of review of applicable
25 LORS ordinances and standards, the Warren Alquist

1 Act grants the Commission exclusive jurisdiction
2 over the siting of power plants over 50 megawatts;
3 is that correct?

4 A Yes, it is.

5 Q It also grants the Commission, or not
6 grants, but the Commission has acquired a
7 certification of functional equivalency from the
8 resources agency, and that functional equivalency
9 means that the Commission's process is the
10 functional equivalent of a full EIR under CEQA.

11 A Yes. That is correct.

12 Q And your process for reviewing
13 consistency with local laws, ordinances,
14 regulations, and standards, as I understand it,
15 and correct me if I'm wrong, is that the finding
16 of consistency is a finding that is made
17 ultimately by the Commission.

18 A Yes.

19 Q And that in recommending to the
20 Commission, the staff acts as an independent party
21 to the proceedings and recommends to the
22 Commission whether a particular project is
23 consistent with the local applicable laws,
24 ordinances, and standards.

25 A Yes.

1 STAFF COUNSEL WILLIS: And may I clarify
2 that when you refer to the Commission, you're
3 referring to the Commissioners.

4 APPLICANT COUNSEL GRATTAN: Correct,
5 thank you.

6 BY APPLICANT COUNSEL GRATTAN:

7 Q And the staff's common practice is to
8 give great weight to the local agency's
9 conclusions regarding consistency, if there's a
10 reasonable basis for those conclusions.

11 A Yes.

12 Q And you found so in this case.

13 A Yes.

14 Q Or the staff report says.

15 A Yes.

16 Q Okay. Got to be careful of using
17 findings.

18 In your consistency review, what you do,
19 and again, shout me down if I'm wrong, but it
20 seems what you do is you review the local
21 jurisdiction's general plan to see if the project
22 is consistent with the general plan, and you
23 review zoning, and you review the, let's say the
24 basic land use statutes, to see whether they're
25 consistent.

1 A Yes.

2 Q You do not review -- Well, you are not
3 bound by the ultimate findings, what were called
4 last night the policy findings that a local
5 government would make if it had jurisdiction.

6 A Yes, we are certainly not bound by their
7 policy conclusions.

8 Q Those are the responsibility of the
9 Commission, the Commissioners in its decision.

10 A The Energy Commissioners, yes, are
11 responsible for the policy decisions.

12 Q So, therefore, the form of the local
13 government's approval, whether it's a conditional
14 use permit or a site approval, is not terribly
15 relevant to your consistency analysis; is that
16 correct? The form of the heading?

17 A The form, yes.

18 Q Thank you. Now, I have just a couple
19 other questions. To your knowledge, having
20 knowledge of the application and knowledge of the
21 process, was the applicant in this case required
22 to file for a certificate of convenience and
23 necessity from the Public Utilities Commission?

24 A No, it was not.

25 Q Therefore, you did not request a

1 determination from the Public Utilities Commission
2 under 714 of your regulations.

3 A That's correct.

4 Q Next, in your practice of consistency
5 review, staff review, is it common and is it
6 sufficient for your review for the conclusions
7 regarding consistency from the local government to
8 be done by the Planning Department or the Planning
9 and Community Development as opposed to its
10 elected board, the City Council or the County
11 Board of Supervisors?

12 A It is common that the local jurisdiction
13 staff will prepare these conclusions.

14 Q Thank you. I'm not quite through, but
15 I'm almost.

16 I guess we can't talk about
17 Alternatives.

18 With respect to the issue of cumulative
19 impacts, which staff has been cross examined on,
20 has any of the panel had the opportunity to read
21 the applicant's testimony with respect to
22 cumulative impacts?

23 A Yes. Are you referring just to Land
24 Use?

25 Q Referring, yes. Yes, referring -- It

1 was the -- That was submitted as part of the
2 applicant's testimony on February 13th, yes.

3 A Yes.

4 Q And do you basically agree with those
5 conclusions, that there are no significant
6 cumulative impacts?

7 A It's worth noting that there is, it says
8 supplemental cumulative impact summary other than
9 air quality, public health and land use, and
10 because land use isn't covered I can't agree or
11 disagree, because it doesn't apply to my area of
12 expertise.

13 Q Okay.

14 A Because they're all issue areas that I
15 did not prepare analysis for.

16 Q Is there one of you, based upon your
17 general experience in --

18 STAFF COUNSEL WILLIS: I'm going to
19 object --

20 APPLICANT COUNSEL GRATTAN: Fine,
21 Counsel.

22 STAFF COUNSEL WILLIS: -- they can't
23 answer that.

24 APPLICANT COUNSEL GRATTAN: Fine,
25 Counsel. All right.

1 BY APPLICANT COUNSEL GRATTAN:

2 Q With respect to staff's statement in the
3 staff report about the fact that the TPP could be
4 made compatible with the build-out of the South
5 Schulte area if reasonable, if additional buffers
6 were added, and that was feasible, and the
7 conclusion that it was feasible to add additional
8 buffers, have you concluded, then, that there is
9 no significant impact which results from the
10 Commission's siting of the TPP with respect to
11 land use, that this is not a deferral of
12 mitigation?

13 A With respect to land use with
14 mitigation, there is no significant impacts under
15 CEQA.

16 Q And that the decision of additional
17 buffers is appropriate to be made at the time that
18 there is an actual application for a specific
19 parcel?

20 A If the City of Tracy so chooses; I can't
21 make that decision. It's just based on --

22 Q I'm talking about the ripeness, the time
23 for the ripeness of the situation.

24 A Right, I mean, that's when it usually
25 occurs.

1 A (Allen) Mr. Grattan, as I understand
2 your question relating to buffers as an
3 appropriate mitigation measure, the Commission
4 would not be addressing that. Our charge is to
5 deal with the power plant, so --

6 Q I understand that, I understand that.

7 A -- we would not be addressing the
8 buffers as a mitigation measure specifically for
9 us. I brought that up in the context of
10 responding to the concerns cited by the City of
11 Tracy staff.

12 Q My question was if the City of Tracy --
13 Is the City of Tracy right now in a position to
14 make a decision on buffering, or must that await a
15 specific project, a specific residential project?

16 A Counsel has advised me that that's
17 outside the scope of testimony.

18 Q Okay. Oh, yes, one further question. I
19 believe that your testimony was that you did
20 transmit a copy of the AFC to the County of San
21 Joaquin and to the City of Tracy back when the
22 application was first received and before it was
23 even complete; is that correct?

24 A Yes, that is what our records indicate.

25 Q And, given your discussion in the staff

1 report, with respect to the County's ordinance or
2 policy with respect to forwarding applications
3 that take place -- if the County were the lead
4 agency -- that take place in the City's sphere of
5 influence, is it your opinion that staff's
6 transmitting a copy of that application to the
7 City of Tracy, in fact, substantially complies
8 with that requirement which the County has?

9 A Yes, that is my opinion.

10 Q Thank you.

11 A Coupled with our subsequent
12 communications with the City of Tracy staff.

13 APPLICANT COUNSEL GRATTAN: That's all I
14 have.

15 PRESIDING COMMISSIONER PERNELL:
16 Commissioner Laurie?

17 COMMISSIONER LAURIE: Thank you,
18 Mr. Chairman.

19 Thank you, Mr. Grattan. I am now
20 confused.

21 (Laughter.)

22 APPLICANT COUNSEL GRATTAN: That
23 certainly wasn't my intent.

24 COMMISSIONER LAURIE: There has been an
25 issue put on the table regarding the CEC's

1 obligation, in order to make a finding of LORS, to
2 make those findings as set forth in either the
3 special use permit or site approval chapters of
4 the County's ordinance, whichever is applicable.

5 I think it's the intervenors' position
6 that we cannot make a LORS finding unless we
7 specifically made the findings under those
8 applicable sections. I just need clarification of
9 what your recommendation is in that regard.

10 EXAMINATION BY COMMITTEE

11 BY COMMISSIONER LAURIE:

12 Q Is it your understanding that the Energy
13 Commission certification is a substitute for all
14 other local and state permits?

15 A It's my understanding that the Energy
16 Commission's certification is in lieu of all other
17 state permits -- Excuse me, of -- I need you to
18 restate that. It's my understanding that the
19 Energy Commission's certification is in lieu of
20 all local permits, certainly. At the state level
21 there are some permits such as an encroachment
22 permit with Caltrans, something like that, that
23 are often obtained independently or in conjunction
24 with our process.

25 Q And some air quality permits, for

1 example.

2 A Yes. Well, given that recommendation,
3 if a local agency has an ordinance, whether it's a
4 special use permit ordinance or a variance
5 ordinance, that lists necessary findings that they
6 would have to make in order to approve -- and I
7 wouldn't classify those as policy questions, I
8 would classify them as factual questions because
9 you cannot make those findings unless you have
10 facts in the record to support those findings --
11 is it your testimony that we, the Commissioners,
12 cannot find LORS unless we make those factual
13 findings as set forth in San Joaquin County's
14 special use permit/site approval ordinance?

15 Because I thought I heard you testify,
16 in response to Mr. Grattan's question, that we,
17 the Commissioners, in our decision in order to
18 find LORS, would have to make those same findings
19 that the County would have to make?

20 A If I stated that, I misspoke or I was
21 misleading. We take the local jurisdiction's
22 conclusions into account. We review them, we
23 often communicate with them if we need
24 clarification, and then we come to our own
25 independent conclusions regarding consistency with

1 local LORS.

2 We then make a recommendation based on
3 our conclusions to the Commissioners.

4 Q Do you make a -- Do you solicit from the
5 local agency what conditions they would attach to
6 such approvals, if they were to grant such
7 approvals, such as putting up a stop sign --

8 A Yes. Yes, we do.

9 Q And in this case, was such information
10 provided by the County?

11 A Yes, it was.

12 Q And were those proposed conditions
13 included as mitigation measures in this project?

14 A The only condition that I'm aware of
15 associated with the County's September 18th letter
16 relates to the loss of agricultural land, and we
17 have carried over their conditions into Land Two.

18 Q Okay.

19 COMMISSIONER LAURIE: Thank you,
20 Mr. Chairman.

21 PRESIDING COMMISSIONER PERNELL: Thank
22 you, Commissioner Laurie.

23 Ms. Tompkins.

24 HEARING OFFICER TOMPKIN: Anything
25 further, Ms. Willis?

1 STAFF COUNSEL WILLIS: I would like to
2 ask Ms. Allen just one redirect question.

3 REDIRECT EXAMINATION

4 BY STAFF COUNSEL WILLIS:

5 Q There has been a lot of discussion about
6 the County's input into the process, and you
7 testified earlier that the County even sent a
8 letter, or a letter was sent from the Energy
9 Commission, agency letter requesting comments
10 early on in August and you've also had meetings
11 with County staff.

12 Assuming that those things had taken
13 place, if by chance the County had chosen not to
14 respond to you in any way, in your professional
15 opinion do you believe you would still be able to
16 perform a Land Use analysis of the local LORS In
17 this case?

18 A Yes. That does occur from time to time,
19 that we do not get a response from the local
20 jurisdiction. When that occurs, we have looked at
21 the information that we had and arrived at our
22 conclusions.

23 STAFF COUNSEL WILLIS: Thank you, that's
24 all I have. Staff would like to move in the
25 section Land Use --

1 INTERVENOR SELIGMAN: I have a followup,
2 just a -- Commissioner Laurie has confused me more
3 than I was before.

4 STAFF COUNSEL WILLIS: I just asked one
5 redirect question.

6 INTERVENOR SELIGMAN: No, but
7 Commissioner Laurie asked a question. Do you mean
8 we cannot ask questions that are in evidence,
9 based on the questions that are asked by
10 Commissioners?

11 APPLICANT COUNSEL GRATTAN: I'm going to
12 object --

13 STAFF COUNSEL WILLIS: I'm going to
14 object, yeah.

15 APPLICANT COUNSEL GRATTAN: -- we both
16 had our turn.

17 HEARING OFFICER TOMPKIN: Yeah, and
18 we're running short of time. We'll go off the
19 record for a second.

20 PRESIDING COMMISSIONER PERNELL: Off the
21 record, please.

22 (Thereupon, a recess was held
23 off the record.)

24 HEARING OFFICER TOMPKIN: We're back on
25 the record, and the opportunity for questioning --

1 We'll sustain the objection to additional
2 questions.

3 Ms. Willis?

4 STAFF COUNSEL WILLIS: Thank you. At
5 this time staff would like to move into evidence
6 the section entitled Land Use from the staff
7 supplement.

8 APPLICANT COUNSEL GRATTAN: No
9 objection.

10 INTERVENOR BAKKER: Just one
11 clarification. Two agency or request for agency
12 participation letters were referred to in the
13 testimony. I'm not sure if those are exhibits
14 currently but I would hope that they would be
15 introduced into evidence.

16 STAFF COUNSEL WILLIS: They've been --

17 INTERVENOR BAKKER: And one further
18 point of clarification. I got a copy of the, I
19 guess it was the August 22nd letter from the
20 docket office, but it did not contain the agency
21 distribution list, and I want to make sure that
22 the exhibit that's introduced in the evidence
23 contains the distribution list as well.

24 STAFF COUNSEL WILLIS: I would only be
25 able to put in what has been docketed. I don't

1 have that, unless maybe our Public Adviser or
2 project manager has that list.

3 INTERVENOR BAKKER: Okay.

4 THE WITNESS: (Allen) I have the agency
5 distribution list here.

6 STAFF COUNSEL WILLIS: Oh, I'm sorry,
7 Eileen Allen has the distribution list.

8 INTERVENOR BAKKER: Okay.

9 STAFF COUNSEL WILLIS: We will be happy
10 to make copies of it and provide that.

11 INTERVENOR BAKKER: Great. And were
12 there separate distribution lists between August
13 and the second letter in October?

14 HEARING OFFICER TOMPKIN: Well,
15 actually, why don't we -- you can discuss that
16 with counsel later --

17 INTERVENOR BAKKER: Okay.

18 HEARING OFFICER TOMPKIN: -- because
19 it's not being offered as an exhibit. The only
20 thing that I heard being offered is the Land Use
21 section of the staff assessment; is that correct?

22 STAFF COUNSEL WILLIS: That's correct.
23 We'd be willing to offer that. We would have to
24 get copies, though, made. The only copy we have
25 right now has notes on it.

1 INTERVENOR BAKKER: Thank you, Counsel,
2 I appreciate it.

3 HEARING OFFICER TOMPKIN: So let's deal
4 with the staff assessment and then we'll come back
5 to the letter if you want to offer that as a
6 separate exhibit.

7 Is there any objection to the admission
8 of the Land Use section of the supplemental staff
9 assessment? Hearing no objection, that will be
10 admitted in evidence.

11 And, Ms. Willis, you indicated you
12 wished to offer this letter as a separate exhibit?

13 STAFF COUNSEL WILLIS: We can.

14 INTERVENOR SARVEY: Could I ask a brief
15 procedural question? I have three exhibits that I
16 wanted to introduce into testimony under Land Use,
17 and I was wondering what was the appropriate time
18 to do that.

19 HEARING OFFICER TOMPKIN: Well, let me
20 finish with Ms. Willis, and then we'll deal with
21 your exhibits.

22 INTERVENOR SARVEY: Okay, sorry.

23 HEARING OFFICER TOMPKIN: What is the
24 title of the letter?

25 STAFF COUNSEL WILLIS: The letter is

1 entitled To Agency Distribution List, Request for
2 Agency Participation in the Review of the Tracy
3 Peaker Project Application for Certification.

4 HEARING OFFICER TOMPKIN: And the date
5 of the letter?

6 STAFF COUNSEL WILLIS: The letter I have
7 is dated August 22nd, 2001, and accompanying that
8 would be a service list.

9 HEARING OFFICER TOMPKIN: Okay. The
10 letter with service list will be marked as
11 Exhibit 63 for identification.

12 (Thereupon, the above-referenced
13 document was marked as Staff's
14 Exhibit 63 for identification.)

15 HEARING OFFICER TOMPKIN: Is there any
16 objection to Exhibit 63?

17 APPLICANT COUNSEL GRATTAN: No
18 objection.

19 HEARING OFFICER TOMPKIN: Exhibit 63
20 will be admitted in evidence.

21 (Thereupon, the above-referenced document,
22 marked as Staff's Exhibit 63 for
23 identification, was received into evidence.)

24 HEARING OFFICER TOMPKIN: Is there
25 anything further, Ms. Willis?

1 STAFF COUNSEL WILLIS: No, we do not.

2 INTERVENOR BAKKER: Commissioner
3 Pernell, if I may, there was a second agency, a
4 request for agency participation in October as
5 well, and I would hope that counsel would
6 introduce that letter as an exhibit as well.

7 THE WITNESS: (Allen) We're going to
8 refer to Ms. Davis.

9 INTERVENOR BAKKER: Okay. The letter
10 has been docketed, and perhaps the Commission
11 could take official notice of the letter, or --

12 PRESIDING COMMISSIONER PERNELL: Do we
13 have a copy of the letter?

14 HEARING OFFICER TOMPKIN: I don't have a
15 copy of the October letter, but --

16 STAFF COUNSEL WILLIS: We do have a
17 faxed copy of the docketed October 19th, 2001
18 letter and it was also, had the same title.

19 INTERVENOR BAKKER: And, just for
20 clarification, do we have a copy of the agency
21 distribution list for that letter?

22 STAFF COUNSEL WILLIS: I don't have it
23 with me right now. We also, if the committee
24 pleases, we also have a third letter that was sent
25 on December 14th, 2001, and it has the same title.

1 HEARING OFFICER TOMPKIN: And do you
2 wish to put that in as well?

3 STAFF COUNSEL WILLIS: Yes. We can just
4 put that all in one packet.

5 INTERVENOR BAKKER: Thank you. And,
6 just for clarification, those all include the
7 distribution lists that went out with each of
8 those letters?

9 STAFF COUNSEL WILLIS: To the extent
10 that that can be provided, yes.

11 INTERVENOR BAKKER: Great, thank you
12 very much.

13 HEARING OFFICER TOMPKIN: Now, just for
14 clarification, Ms. Willis, when you say put that
15 all in one package, do you mean you want all three
16 letters to be Exhibit 63?

17 STAFF COUNSEL WILLIS: That's correct.

18 HEARING OFFICER TOMPKIN: All right. Is
19 there any objection to any of those letters?
20 Hearing no objection --

21 PROJECT MANAGER DAVIS: I think I have
22 to make a statement of clarification about the
23 mailing list that will be attached to the notices.

24 PRESIDING COMMISSIONER PERNELL:
25 Ms. Davis, would you just state your name for the

1 record.

2 PROJECT MANAGER DAVIS: My name is Cheri
3 Davis.

4 PRESIDING COMMISSIONER PERNELL: We know
5 who you are, but --

6 PROJECT MANAGER DAVIS: Thank you.

7 We have just now instituted a policy of
8 attaching a copy of the actual mailing list to
9 everything that is sent out. When this project
10 first began, we did not have that policy;
11 therefore, we do not have copies of the individual
12 mailing labels to which each letter was sent;
13 however, I do have a copy of my original list that
14 I developed with help of the appropriate technical
15 staff, that would establish what the mailing list
16 was at the very beginning of the process.

17 And then we also have a copy of the
18 mailing list from January and then we have a
19 current mailing list. So, unfortunately, we would
20 not be able to attach a copy of the exact mailing
21 list to which each of these individual letters was
22 sent.

23 INTERVENOR BAKKER: If I may, would it
24 be appropriate to take Ms. Davis's testimony at
25 this point on this issue, because we don't have

1 any record of to whom the letters were sent. And
2 I'd like to make sure that that is part of the
3 evidentiary record because the issue did arise to
4 whom the letters, the requests for agency
5 participation letters were sent. And I think
6 that's an important issue in the case and we need
7 to make sure that's in the record.

8 HEARING OFFICER TOMPKIN: I think what
9 the committee had discussed and what we'll do at
10 this point is we'll make a request to staff to put
11 together a declaration of contacts with the City
12 and County -- I think that's the primary concern
13 here right -- regarding the process with this
14 application.

15 And maybe you can provide that within a
16 couple of weeks.

17 And then you'd have the information
18 and --

19 INTERVENOR BAKKER: However, we wouldn't
20 have an opportunity to cross examine on that
21 information, so that would be my only concern.

22 HEARING OFFICER TOMPKIN: Well, we'll
23 start with just having them do the declaration,
24 and then you can argue from there the import of
25 the contact or lack of contact.

1 INTERVENOR BAKKER: I think my key issue
2 here is just being clear that the agency
3 participation letters went to the City of Tracy
4 and the County of San Joaquin and to whom those
5 letters were sent.

6 HEARING OFFICER TOMPKIN: And that would
7 be indicated in the declaration.

8 INTERVENOR BAKKER: Okay. So Ms. Davis
9 will prepare that.

10 Thank you very much, Ms. Davis.

11 HEARING OFFICER TOMPKIN: And is two
12 weeks sufficient time for you to get that to all
13 parties?

14 PROJECT MANAGER DAVIS: Yes, it is.

15 HEARING OFFICER TOMPKIN: Thank you.

16 Mr. Sarvey, you said you had something
17 that you needed the committee to address?

18 INTERVENOR SARVEY: I just had several
19 exhibits that I had wanted to get in and had never
20 been -- didn't know the procedure or what
21 opportunity I had to introduce them.

22 HEARING OFFICER TOMPKIN: Well, what
23 exhibits are they?

24 INTERVENOR SARVEY: An exhibit of the
25 Board of Supervisors' resolution opposing the

1 plan. I have another exhibit of the City of
2 Tracy's, another exhibit of the School Board's
3 opposition to the plan, and --

4 HEARING OFFICER TOMPKIN: We have the
5 resolution of the Board and City opposing and
6 that's already been offered.

7 INTERVENOR SARVEY: As evidence or just
8 public comment?

9 HEARING OFFICER TOMPKIN: I believe it's
10 before us, yes.

11 INTERVENOR SARVEY: As evidence.

12 HEARING OFFICER TOMPKIN: It's in the
13 record, I can't say it's evidence.

14 INTERVENOR SARVEY: Well, I'd like to
15 submit it as evidence if I could, please.

16 INTERVENOR BAKKER: If I might, it's my
17 understanding the Commission could take official
18 notice of the resolutions and that would serve the
19 same purposes.

20 PRESIDING COMMISSIONER PERNELL: I think
21 we've done that.

22 INTERVENOR BAKKER: I wasn't here, so I
23 can't say.

24 INTERVENOR SARVEY: Yeah, but I don't
25 believe it's ever been submitted as evidence.

1 PRESIDING COMMISSIONER PERNELL: We have
2 copies of the resolutions. Matter of fact, I have
3 three copies of the resolutions.

4 INTERVENOR SARVEY: Four now.

5 PRESIDING COMMISSIONER PERNELL: But we
6 don't need four.

7 COMMISSIONER LAURIE: Mr. Sarvey, as to
8 this resolution, there is no legal consequence,
9 there is no legal differentiation in our review
10 whether we consider a public document as part of
11 the record or as evidence. We're obligated to
12 consider the entirety of the evidence.

13 The question becomes more clearly
14 defined when you're talking about testimony,
15 rather than documents. As part of the record,
16 we're obligated to consider it.

17 INTERVENOR SARVEY: All right. Thank
18 you, Mr. Laurie.

19 PRESIDING COMMISSIONER PERNELL: Okay.
20 Is there anything else? Do you have anything?

21 HEARING OFFICER TOMPKIN: I think with
22 that we're finished with these witnesses.

23 (Thereupon, the witnesses were
24 excused from the stand.)

25 HEARING OFFICER TOMPKIN: Commissioner

1 Pernell?

2 PRESIDING COMMISSIONER PERNELL: Okay.

3 At this time we're going to conclude this portion
4 of the hearing on land use, and because this is --
5 we took an extra day and we thought we would
6 conclude all of the evidentiary hearing on this
7 day and that's not possible, so we have to go and
8 notice again.

9 So the remainder of this hearing will be
10 noticed, everyone will get noticed that's on the
11 list, and we will begin with -- I'd like to begin,
12 the committee would like to begin with Mr. Hulse
13 from the San Joaquin County.

14 So at this time we don't have a date or
15 time for you, and we have policies that say we
16 have to notice. And so we'll do that. This will
17 be a continuation of Land Use, and we will notice
18 all interested parties. As a matter of fact,
19 we'll notice the list that we have, not only
20 agencies but individuals who have signed up to be
21 noticed.

22 On that, are there any questions?

23 INTERVENOR SELIGMAN: Will we have any
24 response or input into making sure that there is
25 no conflict with the witnesses on that noticed

1 date, or is that just going to be something that
2 you're going to be doing without any input from
3 any of the rest of us?

4 PRESIDING COMMISSIONER PERNELL: Well, I
5 think it's going to be difficult for our list, as
6 large as it is, to get everybody's schedule down.

7 I think what we'll do is give enough
8 time for everybody to enter it on their calendar,
9 so you have time to move some things around.

10 APPLICANT COUNSEL GRATTAN: Commissioner
11 Pernell, if I might interject here on behalf of
12 the applicant with the Department of Water
13 Resources contract, you just stated that it's
14 impossible to finish today.

15 PRESIDING COMMISSIONER PERNELL: That's
16 correct.

17 APPLICANT COUNSEL GRATTAN: How have you
18 reached that conclusion and can I request that we
19 plow through and attempt to finish today, and if
20 we cannot finish today, then we schedule at the
21 nearest, the closest time that is available within
22 the notice. Further extensions to this process
23 act to the extreme prejudice of the applicant.

24 PRESIDING COMMISSIONER PERNELL:
25 Mr. Grattan, I understand that. The reasons for

1 not finishing today are we have other obligations,
2 we being the committee. And in terms of when
3 we'll reconvene, certainly we will notice as soon
4 as possible.

5 APPLICANT COUNSEL GRATTAN: Could I
6 request that the notice take place either today or
7 tomorrow and that it be set ten days next?

8 PRESIDING COMMISSIONER PERNELL: Well,
9 you can request that, yes.

10 Anyone have any other comments on the
11 procedure that we're going to follow here? And
12 one thing that -- Let me just state for the
13 record, Mr. Grattan, and that is that the reason
14 we're in this situation is the committee has
15 allowed testimony, redundant questions, etc. That
16 takes time. And so, you know, I think that we
17 have been certainly lenient in applicant, staff as
18 well as intervenors' questioning.

19 But we want to get all of the facts out
20 and we want to give everyone a fair chance to
21 express themselves, and that's what this is about.
22 I understand that you want these procedures to
23 conclude as soon as possible, and I think we all
24 do. But in the interest of fairness, you know, we
25 sit and listen, and that's what this committee is

1 trying to do, to gather facts on the record.

2 APPLICANT COUNSEL GRATTAN: A point of
3 clarification: When this -- When another hearing
4 is set, my understanding is that the remaining
5 witnesses are one witness from the City of Tracy,
6 and one witness from the County but on behalf of
7 Mr. Tusó; is that correct? They are the only
8 witnesses that have prefiled testimony.

9 HEARING OFFICER TOMPKIN: For the City
10 would that be Mr. Dean or Mr. Reeds? Sorry, I
11 don't have my list in front of me.

12 INTERVENOR BAKKER: Mr. Reeds for the
13 committee's information.

14 HEARING OFFICER TOMPKIN: Mr. Reeds. So
15 that would be the one witness you will be offering
16 when we reconvene?

17 INTERVENOR BAKKER: That's correct.

18 HEARING OFFICER TOMPKIN: And Mr. Hulse
19 will be the only witness you'll be offering,
20 Mr. Seligman?

21 INTERVENOR SELIGMAN: Right.

22 HEARING OFFICER TOMPKIN: And I
23 understand there is an objection to the witnesses
24 that were identified but no testimony prefiled
25 for --

1 INTERVENOR SELIGMAN: I'm not going to
2 be offering anyone other than Mr. Hulse; he's the
3 only one.

4 HEARING OFFICER TOMPKIN: All right. So
5 I don't hear any other intervenors speaking up, so
6 I'm assuming that they have no objection or
7 response to objections to the rest of the
8 witnesses that were listed.

9 PRESIDING COMMISSIONER PERNELL: All
10 right. So that's correct. We have two witnesses
11 left, and then we have closing statements.

12 APPLICANT COUNSEL GRATTAN: And I would
13 request that the committee rule that no witnesses
14 may be added between now and our next session.

15 PRESIDING COMMISSIONER PERNELL: Well,
16 if they're not on the witness list, they can't be
17 added.

18 APPLICANT COUNSEL GRATTAN: Thank you.

19 HEARING OFFICER TOMPKIN: Or if they
20 haven't prefiled.

21 APPLICANT COUNSEL GRATTAN: If they
22 haven't prefiled.

23 PRESIDING COMMISSIONER PERNELL: Okay.
24 Any other questions?

25 INTERVENOR BAKKER: Excuse me, I think

1 you already answered my question. Is it typical
2 for, at the conclusion of hearings, to have each
3 of the intervenors and the applicant and staff to
4 provide closing statements?

5 APPLICANT COUNSEL GRATTAN: Applicant
6 will waive closing statement if the intervenors
7 will do likewise.

8 INTERVENOR BAKKER: I think the
9 applicant would like to tie up a few loose ends,
10 as far as our theory of the case, so I would
11 request that we have available five or ten minutes
12 to make a closing statement.

13 PRESIDING COMMISSIONER PERNELL: Yes,
14 and I think it's -- and, Commissioner, correct me
15 if I'm wrong, but I think it's a discretion that
16 the committee has, and we would -- we're certainly
17 not opposed to closing statements, and we want to
18 hear from everyone.

19 So Commissioner?

20 COMMISSIONER LAURIE: Thank you,
21 Commissioner Pernel. It is up to the committee.
22 What the Chairman has determined to do is to
23 permit that, primarily for those who have not been
24 represented by counsel and have had to sit through
25 this process and have felt so terribly frustrated.

1 It will give them an opportunity to fully express
2 themselves.

3 If that opportunity is going to be given
4 to not only members of the public but intervenors
5 not represented by counsel, well, certainly those
6 who are represented by counsel have to be given
7 the same opportunity.

8 PRESIDING COMMISSIONER PERNELL: Any
9 other questions? Hearing none, seeing none, this
10 committee is adjourned. Thank you.

11 (Thereupon, the hearing was
12 adjourned at 1:42 p.m.)

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CERTIFICATE OF REPORTER

I, DUNCAN FANKBONER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission public hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of April, 2002.