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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Application for Certification for)
THE PUENTE POWER PROJECT) Docket No. 15-AFC-01
_____)

EVIDENTIARY HEARING

PUENTE POWER PROJECT

OXNARD PERFORMING ARTS CENTER

800 HOBSON WAY

OXNARD, CA 93030

THURSDAY, FEBRUARY 9, 2017

9:29 A.M.

Reported by:

Martha Nelson

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Alicia Roessler, Environmental Defense Center
Ellison Folk, Shute, Mihaly & Weinberger LLP, City of Oxnard
Lisa Belenky, Center for Biological Diversity
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Gladys Limón, California Environmental Justice Alliance (CEJA)

FEDERAL OR STATE GOVERNMENT OR TRIBAL NATION

State Senator Hannah-Beth Jackson
Tim Flynn, Oxnard City Mayor
Carmen Ramirez, Mayor Pro Tem City of Oxnard
Dolores Mondragon, a leader of the local Native American community
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ALSO PRESENT

Senator Hannah-Beth Jackson, California
Amanda Fagan, Ventura County
Joe Street, California Coastal Commission
Louise Warren, California Coastal Commission
Robert Sarvey

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1 Project.

2 Thank you.

3 COMMISSIONER SCOTT: Thank you.

4 And now the Energy Commission staff.

5 Good morning.

6 MS. WILLIS: Good morning. My name is Kerry

7 Willis. I'm Assistant Chief Counsel for the Energy

8 Commission representing staff today.

9 And with me is Project Manager, Shawn Pittard.

10 Also with staff, Michelle Chester, Staff Counsel.

11 COMMISSIONER SCOTT: Good morning.

12 I'll now turn to the Interveners.

13 City of Oxnard.

14 MS. FOLK: Good morning. Ellison Folk with Shute,

15 Mihaly & Weinberger, outside Counsel to the City of Oxnard.

16 COMMISSIONER SCOTT: Great. Good morning.

17 And Environmental Coalition.

18 MS. ROESSLER: Good morning. Alicia Roessler, and

19 my colleague, Matt Smith, from Environmental Defense Center.

20 COMMISSIONER SCOTT: Good morning.

21 Let me check to see whether or not we have our

22 Intervener, Bob Sarvey, on our phone lines, on the WebEx.

23 If you're there, Mr. Sarvey, please say hello and

24 introduce yourself.

25 (No audible response.)

1 COMMISSIONER SCOTT: Okay. Hearing nothing, I will
2 now turn to say, Hi, Good morning.

3 MS. BELENKY: (Unintelligible.) Hey --

4 COMMISSIONER SCOTT: Mr. Sarvey, is that you trying
5 to introduce yourself?

6 MS. BELENKY: Actually, it's Lisa Belenky with the
7 Center for Biological Diversity. I will stay on mute. I'm
8 going to be on the phone today. Thank you.

9 COMMISSIONER SCOTT: Okay. Good morning, Lisa,
10 welcome.

11 And I will now turn to the Environmental -- I'm
12 sorry -- to CEJA.

13 Good morning.

14 MS. LAZEROW: Good morning. Shana Lazerow, Staff
15 Attorney at Communities for a Better Environment representing
16 the California Environmental Justice Alliance.

17 COMMISSIONER SCOTT: Morning.

18 And I don't see Dr. Grace Chang here yet.

19 Dr. Chang, are you on the phone as well? If so,
20 please feel free to say good morning and introduce yourself.

21 (No audible response.)

22 COMMISSIONER SCOTT: Okay. Do I have any others from
23 the California Coastal Commission here this morning or on our
24 phone line?

25 (No audible response.)

1 COMMISSIONER SCOTT: Okay. And is there anyone from
2 the federal government, state government, local government,
3 or a tribal nation that would like to introduce themselves
4 this morning?

5 Please come on up to the microphone.

6 MS. RAMIREZ: Carmen Ramirez, Mayor Pro Tem City of
7 Oxnard. I'm just here for the duration and backing up our
8 Interveners.

9 COMMISSIONER SCOTT: Good morning.

10 Any others?

11 (No audible response.)

12 COMMISSIONER SCOTT: Okay. And, with that, I will
13 turn the conduct of this proceeding over to our hearing
14 officer, Paul Kramer.

15 HEARING OFFICER KRAMER: Okay. Well, let's
16 immediately pick up where we left off yesterday before Public
17 Comment, and that would be finishing up the topic of
18 Socioeconomics and Environmental Justice.

19 Just going down my witness list. We have finished
20 with staff and the Applicant, so next would be City of
21 Oxnard.

22 And your witness is Mayor Pro Tem Ramirez.

23 And Dr. Chang has just joined us.

24 MS. RAMIREZ: Good morning. Buenos Dias.

25 HEARING OFFICER KRAMER: Good morning.

1 If you could raise your hand to be sworn.

2 Do you swear or affirm that the testimony you are
3 about to give in this proceeding is the truth to the best of
4 your ability?

5 MS. RAMIREZ: I do.

6 HEARING OFFICER KRAMER: Thank you.

7 MS. FOLK: Good morning, Ms. Ramirez.

8 MS. RAMIREZ: Good morning, Ms. Folk.

9 MS. FOLK: Can you state your name for the record?

10 MS. RAMIREZ: My name is actually Maria Carmen
11 Ramirez.

12 MS. FOLK: And what is your position with the City
13 of Oxnard?

14 MS. RAMIREZ: I am a council member and I've been
15 appointed Mayor Pro Tem by our Mayor, Tim Flynn.

16 MS. FOLK: And did you prepare the testimony that
17 was submitted as your testimony in this proceeding?

18 MS. RAMIREZ: I did.

19 MS. FOLK: And was that testimony submitted under
20 the penalty of perjury?

21 MS. RAMIREZ: It was.

22 MS. FOLK: And do you sponsor that testimony here
23 today?

24 MS. RAMIREZ: I do.

25 MS. FOLK: So I'm going to ask you some questions

1 about your testimony, and walk you through it. And I'd like
2 to start with the issue of Environmental Justice.

3 And the final staff assessment prepared by the
4 Commission evaluated the Environmental Justice impacts of the
5 project and found no impact because all of the potentially
6 significant impacts to things like air quality or public
7 health could be mitigated.

8 And, so, I would like you to talk a little bit
9 about some of the less tangible affects that result from
10 being in a community where there are so many industrial
11 facilities. And start by just talking about the power plants
12 themselves.

13 MS. RAMIREZ: I would like to preface it by saying
14 what my experience is beyond being on City Council.

15 I'm an attorney. I've been an attorney since 1975.
16 My entire career has been devoted to legal services for the
17 poor of our community, and that includes farmworkers,
18 Spanish-speaking people, disabled people, seniors, single
19 moms.

20 So, I always have felt that I am in tune with our
21 community, which is 75 percent Latino, more than 35 percent
22 immigrant, mostly from Mexico and other Latin-American
23 countries, and a very disadvantaged community with a lot of
24 challenges.

25 And one of the challenges that we have in Oxnard is

1 three power plants, a superfund site. Every year I go to
2 Washington during my tenure on counsel and speak to the
3 superfund people and say please help us **clean** up this mess a
4 company, an irresponsible company, left on our beautiful
5 beach.

6 So, we do have beaches, but we don't get to enjoy
7 them the way that other cities enjoy their beaches to the
8 north and the south of us. And I have always found it very
9 disappointing, demoralizing, aggravating, especially because
10 we have to continually challenge further industrial uses and
11 excuses for using Oxnard as a sacrifice zone.

12 So, we have do have Ormond Beach Generating Station
13 owned by NRG, and we have the Mandalay Plant, we have the
14 McGrath Peaker. And we were looking for the opportunity to
15 see them go away with the order of the State Water Board. It
16 did not happen. We were initially told they were going to go
17 away with the decommissioning, but now we see we've been in
18 the struggle for a couple of years to fight it.

19 So, we want our beaches back.

20 MS. FOLK: And, in your testimony, you talk about
21 how these facilities physically define the city. Can you tell
22 us a little bit about --

23 MS. RAMIREZ: Yes. Now, sitting here at the
24 Performing Arts Center on the flatlands, the plains of
25 Oxnard, you can't see it because of our low altitude. But if

1 you get anywhere higher, such as the City of Ventura, you can
2 see both power plants from many places.

3 When you're say on Foothill or Poli or at city hall
4 in Ventura, you can see both of them. So, you know exactly
5 where the coast of Oxnard starts and pretty much ends.

6 I also mentioned in my written testimony that I go
7 back and forth frequently to Sacramento, and I look out the
8 window. I always want to see our Channel Islands. I also see
9 our power plants. You can see them from the air when you're
10 flying north to south.

11 So, if you want to know where Oxnard is, just look
12 for the power plants. And I think that's very unfortunate.

13 MS. FOLK: And can you talk a little bit about how
14 having the power plants on your beach affects people's use of
15 the beach in Oxnard?

16 MS. RAMIREZ: Despite the fact that we do have very
17 wide beaches, generally uncluttered in between the two power
18 plants, we have -- people, I think, avoid the area of the
19 power plants, particularly the NRG Mandalay Station because,
20 honestly, I was trying to -- it came to me what it looked
21 like, and to me it looks like a huge hulking -- and I do know
22 I've been there, it's rusted -- and it reminds me of kind of
23 the Lord of the Rings scene with very unpleasant industrial
24 use right on the beach where, generally, you would like to
25 see people walking.

1 I know people don't approach it. They might come
2 close. If you look up, you see it, you would go the other
3 way. And I think it makes people a lot of times think there's
4 no access to the beach because it is so huge and industrial
5 looking; it also makes people want to go elsewhere. And I
6 know that from talking to people, residents of our city,
7 people come to visit, it's not attractive, it's unpleasant,
8 it makes Oxnard beaches look industrial.

9 MS. FOLK: And is it your testimony that, even
10 though there's a public beach in front of the Mandalay
11 facility, people do not use it because of the presence of the
12 facility itself?

13 MS. RAMIREZ: When you go out there you can actually
14 see where people stop walking. And, of course, there's the
15 outfall, which is, I think, very dangerous for people to walk
16 near. And people don't generally approach it.

17 MS. FOLK: Can you tell me a little bit about the
18 efforts of the city to reclaim some of its public space?

19 MS. RAMIREZ: The city has opposed by unanimous vote
20 the construction of power plants and energy-producing
21 facilities that are not dependent on seawater.

22 We have -- we initiated a moratorium, several years
23 ago, it was extended. It was two years in the making.

24 And now we have a Local Coastal Plan Update
25 Amendment to our General Plan, which also was approved

1 unanimously.

2 And we're trying to restore our beaches and take
3 them back.

4 Additionally, we are engaged in a very vibrant
5 process with -- the Nature Conservancy and the Navy to
6 restore the Ormond Beach Wetlands, which is the most
7 significant coastal wetlands left in Southern California. And
8 it's an amazing opportunity for our city.

9 But, again, we have industrial uses, past and
10 present, which are complicating and a challenge.

11 MS. FOLK: And, to your knowledge, has the Energy
12 Commission staff ever consulted with the city about how the
13 NRG project could be modified to address the city's concerns?

14 MS. RAMIREZ: To my knowledge, no. I've not been
15 involved, I've not heard of any formal required consultation.
16 I've just understood it's been, "It can't be changed, so
17 there's nothing to talk about."

18 MS. FOLK: And are you familiar with the document
19 marked as Exhibit 3055 by the city which is its statement
20 regarding consultation?

21 MS. RAMIREZ: Yes.

22 MS. FOLK: And are you able to sponsor that document
23 as an exhibit today along with the attachments?

24 MS. RAMIREZ: Yes, I do sponsor it.

25 HEARING OFFICER KRAMER: What was the exhibit number

1 again?

2 MS. FOLK: It's 3055.

3 HEARING OFFICER KRAMER: Okay. And I'll just note
4 for the record that Ms. Ramirez's testimony appears to be
5 3017. I don't think we said that before.

6 MS. FOLK: Yes.

7 So, that would be 3055, 3056, and 3057, which is
8 the Statement of Consultation and its exhibits.

9 And I have nothing further.

10 MS. RAMIREZ: Could I just add one last thing --

11 MS. FOLK: Sure.

12 MS. RAMIREZ: -- if I could? Indulge me, please.

13 When, you know, the city was very active at the PUC
14 proceedings, I went several times to speak at Public Comment,
15 obviously, our Counsel and the other Interveners made a very
16 vigorous protest, and I recall being there and in Public
17 Comment and President Picker actually spoke to me during the
18 public session and said we would get a full environmental
19 review, including Environmental Justice, in this proceeding,
20 and that's what I am hoping for.

21 Thank you.

22 HEARING OFFICER KRAMER: Okay. Cross-examination
23 beginning with the Applicant.

24 MR. CARROLL: No questions. Thank you.

25 HEARING OFFICER KRAMER: Staff?

1 MS. WILLIS: No questions.

2 HEARING OFFICER KRAMER: CEJA?

3 MS. LAZEROW: No questions. Thank you.

4 HEARING OFFICER KRAMER: And FFIERCE did not ask
5 to -- did you have any questions, though, Dr. Chang?

6 DR. CHANG: No, thank you.

7 HEARING OFFICER KRAMER: Okay. Thank you.

8 She said no for the record.

9 Okay. That seems to be everyone.

10 MS. FOLK: Thank you.

11 HEARING OFFICER KRAMER: Thank you.

12 So, I think the last witness is Dr. Chang.

13 You can stay where you are, but we need to get you
14 sworn in first. So, raise your right hand.

15 Do you solemnly swear or affirm that the testimony
16 you are about to give in this proceeding is the truth to the
17 best of your ability?

18 DR. CHANG: Yes, I do.

19 HEARING OFFICER KRAMER: Thank you.

20 So, go ahead and state your name. I think the court
21 reporter already has your spelling. And then proceed with
22 your testimony.

23 If somebody does object, please just pause so we
24 can discuss the objection.

25 DR. CHANG: My name is Grace Chang. It's spelled

1 G-R-A-C-E C-H-A-N-G.

2 Okay. I'm sorry, I just wanted to let the
3 Commission know that I've been having a lot of visual
4 impairments in the last two years, so it's not something that
5 I seem to be able to correct with -- address with corrective
6 lenses, so I may actually be sort of fumbling between glasses
7 and that sort of thing. It's a rather inconvenient disability
8 in my profession, but so it is.

9 THE REPORTER: Could you move closer to the
10 microphone, please?

11 DR. CHANG: Sure.

12 Is that better?

13 HEARING OFFICER KRAMER: If you could pull it even
14 closer, I think it would be even better. You were doing
15 pretty well towards the end of yesterday.

16 DR. CHANG: Actually, here it is. Right? The angle
17 helps? Does that help?

18 THE REPORTER: No, it doesn't.

19 HEARING OFFICER KRAMER: It's when you turn your
20 head away from the mic, that seems to cause the most trouble.

21 DR. CHANG: Okay.

22 HEARING OFFICER KRAMER: And you step away from it a
23 little bit?

24 DR. CHANG: Sure.

25 I've been here before this Commission. The earliest

1 time I was here at this Commission was for one of the
2 hearings in which I testified in the Public Comment period.

3 And one of the things that I had said was that I am
4 a Professor of Social Justice Movements. I teach about Social
5 Justice Movements, including environmental justice, economic
6 justice, racial justice, reproductive justice movements. And
7 all of these things are intricately woven together.

8 In particular, this case has struck me from the
9 beginning. In the last -- in the proceedings of the last few
10 years and clearly from Mayor Pro Tem Ramirez's commentary,
11 testimony, clearly this is an ongoing issue.

12 During that testimony of Public Comment that I gave
13 a number of months back, I said that was prepared to teach
14 about this as a case study and that I thought that it
15 represented a case study of environmental racism and, as well
16 as, a case study of environmental justice movements. And,
17 hopefully, a successful one.

18 I said at that time that I was also very much
19 hoping that this would not go the way of many movements that
20 I do address in the books and lectures that I present. Often,
21 too often, I would say, environmental justice movements end
22 in -- they follow a particular pattern, and that is that
23 there is a public process, such as this, often there is
24 protest action and concerted efforts by organizations to
25 oppose something like this, which represents an environmental

1 assault on their communities, and, too often, a proceeding
2 like this happens, and it's sort of by the book and people do
3 say their piece and it's listened to, presumably, but often
4 it appears, at least to the public, that it may -- the
5 testimony may fall on deaf ears or they feel this in the end,
6 and it appears that it's a sort of rubber stamp of a forgone
7 conclusion and the facility or whatever it is that's being
8 proposed is indeed approved.

9 What I said a number of months ago is that I really
10 hope that in this case things will not follow that pattern. I
11 have faith, I have confidence in this Commission that after
12 careful deliberation with a very compassionate and informed
13 decision-making process that this Commission will find that
14 this is not a just project, and that, in the interest of
15 environmental justice and economic justice and racial
16 justice, that this Commission will find that this project is
17 not suitable or appropriate for any community.

18 So, I don't want to belabor many of the points that
19 I've addressed in the testimony. I think I would like to
20 focus on just a few. I will say that I represent a collective
21 of current and former UCSB faculty and students, as well as,
22 community members, homeowners, property owners in the Ventura
23 County region and all the way extending up until -- up to the
24 Goleta area, which, of course, is part of the area that's
25 serviced by this plant, or the potential plant.

1 That statement was signed and submitted in October,
2 I believe, and there is an updated one with quite a few more
3 signatures that will be submitted at the end of this four-day
4 hearing process.

5 Okay. So, I guess I'll begin in the portion of my
6 testimony addressing the CalEnviroScreen 3, since that is a
7 much more recent development in this proceeding.

8 So, we note that, according to the most recently
9 updated CalEnviroScreen 3.0, the census tract of the Mandalay
10 Power Plants is now in the 86th to 90th percentile range of
11 the most environmentally burdened disadvantaged communities
12 in the state. With a population of over 5,000 people, of whom
13 56 percent are Latino and 75 percent are people of color, it
14 is readily identified as an environmental justice community
15 when it is simultaneously in the 94th percentile in the state
16 for pollution burden, the 100th percentile for pesticides,
17 the 92nd percentile for cleanup sites, 92nd percentile for
18 groundwater threats, 78th percentile for hazardous waste,
19 91st percentile for impaired water bodies, 79th percentile
20 for solid waste, 92nd percentile for asthma, 89th percentile
21 for low birth weight, and 92nd percentile for cardiovascular
22 rate.

23 The term "environmental justice communities" has
24 been popularized recently because it softens things through
25 this language. Indeed, it has become a euphemism for

1 communities who are victims and targets of toxic racism, and
2 let's polluting corporations off the hook too easily for all
3 of the suffering they cause knowingly and profit from
4 handsomely.

5 So, while the CEC has been forced to adopt this
6 term and acknowledge that Oxnard is an EJ community, it
7 appears to accept NRG's claims that the threat of health and
8 environmental impact of the plants will be low or negligible
9 and the risk of disaster, such as tsunami and flooding from
10 natural disasters and sea-level rise that is clearly
11 happening is negligible.

12 In other words, if the Commission approves NRG's
13 application, it will allow NRG to risk the lives, health, and
14 safety of the people of these communities, while it is not
15 their own families or communities who will be at the
16 epicenter of these so-called low risks. Yet the young
17 residents of these targeted areas dubbed EJ communities have
18 bravely and astutely called this reality of their lives what
19 it is, environmental racism.

20 For the last two years, CAUSE Youth and local
21 students have shown up repeatedly at public hearings before
22 the CEC to seek justice, to ask the CEC to fulfill its public
23 duty to protect vulnerable populations from identifiable and
24 avoidable environmental threats to hold NRG accountable to
25 existing standards and requirements and to name the real

1 experiences that they have had and seen as these living
2 targets.

3 Their lives cannot be brushed aside by corporate or
4 bureaucratic doublespeak that seeks to minimize their
5 experiences of genuine health hazards of all kinds. Indeed,
6 the Puente Power Project, dubbed P3, could easily be renamed
7 parasitic, predatory, and poisonous.

8 So, I have just several points here in the
9 testimony, but I would like to just focus on the first four.

10 So, the first point is that the decommissioning and
11 removal of the existing Mandalay Generating Station, or MGS,
12 units should not have been included in the project
13 description. This is merely a continuation of a game of
14 deception and blackmail that NRG has played from the outset.
15 At first, NRG kept asserting that it intended to leave these
16 MGS units where they are, implying, or perhaps threatening,
17 that their removal would happen -- would only happen if the
18 construction of the new power plant goes forward. Yet, in
19 fact, these units are already mandated to be decommissioned
20 by 2020 regardless of whether the Puente Power Project is
21 approved or not.

22 At that time, the City of Oxnard may mandate their
23 demolition, but the burden of this should not be left to be
24 shouldered by that community, once again, for the cleanup of
25 this mess.

1 Including the termination of the existing units in
2 the project description reinforces misinformation or a
3 perception that NRG perhaps creates deliberately, that is
4 precisely what NRG wants the public to believe, that the
5 removal of the existing units is contingent on their getting
6 what they want. It also allows NRG to subtract the emissions
7 from the old MGS from the new emissions generated by P3,
8 counting this all as part of the same project despite the
9 fact that the decommissioning of MGS is required by the state
10 whether the new project is approved or not.

11 While they may claim that the physical demolition
12 of the old MGS units is part of their proposed project, the
13 decommissioning of them and the resulting reduction in
14 emissions is not. This is foul play, and the CEC should not
15 allow NRG to play this way with its flawed arithmetic.

16 The second point is that NRG should not be allowed
17 to buy credits to offset their pollution impacts from
18 projects run by another company elsewhere, or in the past, as
19 we learned yesterday, instead of actually having to clean up
20 or reduce emissions of their own local projects.

21 As CEJA explains, theoretically, these projects
22 reduce greenhouse gases and buyers get to include the saved
23 GHGs as part of their legal requirement to reduce. This is,
24 of course, very cost effective for the corporations buying
25 the credits, but offer no benefits to the local residents who

1 are still suffering the toxic impact of the offending
2 company's emissions.

3 NRG is among the top ten large emitters, or
4 polluting companies, in the country to use these offsets,
5 who, coincidentally, accounted for about 36 percent of the
6 total emissions and 65 percent of the offsets used. This
7 maneuver, essentially, enables companies like NRG to be
8 parasites and predators of the worse kind to vulnerable
9 communities, like the people of Oxnard simply because they
10 can afford to evade responsibility by buying their way out.

11 Oxnard residents, on the other hand, can't simply
12 buy or move their way out of the dangers and health hazards
13 that they face every day.

14 The third point is that all feasible alternatives
15 or feasible mitigation measures must be explored through a
16 legitimate public process. The only alternatives considered
17 by the CEC were other locations to site gas-fired power
18 plants in the majority Latino communities of Ventura County,
19 including other parts of Oxnard and Santa Paula.

20 So, here, I want to break from script for a moment
21 and offer an analogy. Yesterday, we heard from Mr. Caldwell
22 about "the old girl" power plant. And I'd like to invoke
23 another rather gendered analogy that's offered in the spirit
24 of humor. I would say that when we are faced with many
25 options that are quite undesirable, I would say a perfect

1 analogy here might be that we have 12 sacrificial virgins
2 lined up surrounding a volcano pit and we're trying to
3 decide, "Okay, well, which virgin are we going to throw into
4 the pit? Is it going to be Santa Paula? Is it going to be
5 Oxnard? Where is it -- what brown, Latino community can we
6 throw into the sacrifice zone?" And I would urge that, truly,
7 the solution to this quandary would be to step back and say,
8 "Well, why don't we question whether there needs to be anyone
9 sacrificed at this point. And, if there is, then what kind of
10 world are we living in that someone apparently needs to be
11 sacrificed for the profits of a giant Fortune 200 corporation
12 that just sponsored a mega sports event in their mega sports
13 arena?"

14 Going back on script. Under the California CEQA,
15 a -- under the California Environmental Quality Act, a
16 proposed activity should not be approved, quote, "If there
17 are feasible alternatives or feasible mitigation measures
18 available that would substantially lessen a significant
19 adverse environmental affect."

20 To date, NRG has been able to get away with a
21 charade, shamefully, with the assistance of the Public
22 Utilities Commission, that all possible alternatives have
23 already been explored. Yet, instead of fulfilling the duty to
24 seek and analyze alternatives, the CEC instead relied on the
25 PUC's prior questionable decision that all such options were

1 explored and deemed not viable.

2 In other words, when the PUC approved the contract
3 with NRG/SCE for the Puente Power, they asserted that they
4 found no feasible cost effective alternatives and the CEC
5 merely accepted the PUC's flawed assumptions and assertion
6 instead of relying on its own assessment.

7 In fact, CEJA notes, quote, "It is undisputed in
8 the PUC's record that SCE did not in either its solicitation
9 or procurement efforts express any preferences for renewables
10 in Oxnard or at any location other than Goleta, an area that
11 has not been recognized as having environmental justice
12 communities," end quote.

13 We, FFIERCE, as the public demand that CEC directs
14 the issuance and conduct of a new RFO, or Request for Offer,
15 for companies to bid to provide renewable energy and storage
16 options, facilitating a legitimate process to explore
17 alternative options. Alternatives, of course, that are not
18 one of sacrificial virgins.

19 Fourth point, the CEC should recognize that many
20 recent initiatives for alternative energy solutions have been
21 legislated and are already underway in California and in the
22 region and allow for these to be developed.

23 SB-32 was recently enacted requiring greater
24 greenhouse gas emission reduction measures so that direct
25 emissions reductions should be achieved after the year 2020.

1 Its companion legislation AB-197 requires the Air
2 Resources Board to prioritize direct emission reductions to
3 achieve these reductions beyond the 2020 limit.

4 These measures have been instituted to reduce
5 existing and potential toxic impacts of dirty energy
6 companies like NRG. We, the public, FFIERCE submit that we
7 need to give these initiatives a chance to take effect
8 instead of blindly accepting that there are no alternatives
9 and letting greedy corporations continue to pollute and
10 plunder poor communities for another generation.

11 Okay. I close with this language taken directly
12 from NRG's website, quote, "In addition, we actively
13 contribute to the local communities where NRG employees live
14 and work. Since 2004, our positive NRG program has provided
15 millions of dollars to organizations and charities that have
16 a direct impact on the lives of the people in our
17 communities, including food banks and those that foster
18 self-sufficiency, improve housing, and provide supplemental
19 education to people in need. NRG has also organized special
20 responses for victims of extreme catastrophes, such as the
21 Haitian earthquake and the Japanese tsunami in 2010. Employee
22 donations were tripled to maximize the contributions," end
23 quote.

24 The stunning irony cannot be missed here. While NRG
25 proudly boasts that they contribute so many benefits to the

1 communities where they live and work, i.e., corporate
2 headquarters in New York, in New Jersey, and in Texas, the
3 reality for those people who live and work, study and play
4 near NRG's toxic power plants is vastly different. The people
5 of Oxnard live under the looming threat of catastrophe, such
6 as earthquake, tsunami, and sea-level rise, as well as
7 perpetual pollution, all potentially exacerbated by these
8 power plants.

9 While there are, of course, many unknowns in this
10 situation, as we all face the realities of global warming,
11 climate change, or whatever euphemism we might use, one thing
12 is clear, Oxnard residents, children, youth, parents, and
13 elders are people who are already overburdened and continue
14 to be vulnerable as targets of environmental racism. That
15 they have been the first victims of past and ongoing toxic
16 racism is certainly well known. In the future, too, they will
17 likely be the first victims of whatever disasters, natural or
18 manmade, are yet to come and/or will be exacerbated by these
19 ill-advised power plants. We have a responsibility to prevent
20 these harms that are indeed avoidable.

21 We call upon the California Energy Commission to
22 fulfill its public duty to protect vulnerable communities
23 from these documented and foreseeable harms and to facilitate
24 what has already been mandated in the State of California,
25 that is, the search for alternative clean and sustainable

1 energy and storage for the future health of our people and
2 planet.

3 Respectfully submitted, FFIERCE.

4 HEARING OFFICER KRAMER: Is that it?

5 DR. CHANG: Yes, that is.

6 HEARING OFFICER KRAMER: Thank you.

7 Cross-examination, Mr. Carroll?

8 MR. CARROLL: No questions. Thank you.

9 HEARING OFFICER KRAMER: Okay. To be even quicker,
10 does any other party wish to cross-examine Dr. Chang?

11 MS. WILLIS: No, we don't. Thank you.

12 MS. FOLK: No.

13 HEARING OFFICER KRAMER: Okay. Seeing shaking heads
14 no and nobody is speaking up.

15 Thank you, Dr. Chang.

16 DR. CHANG: Thank you.

17 HEARING OFFICER KRAMER: So --

18 MR. CARROLL: Mr. Kramer, just a point of order.

19 Ms. Chang is wearing, in some respects, multiple hats during
20 these proceedings as both the representative of an Intervener
21 who is permitted to cross-examine witnesses and also as a
22 witness who was just sworn.

23 Ms. Chang has a tendency in her questioning to
24 lapse into testimony. And we've been not aggressive about
25 objecting to that. We understand that she's not accustomed to

1 participating in these proceedings and we want to give her
2 every reasonable opportunity to do that, but I think it's
3 important for us to clarify that at this point Ms. Chang is
4 putting her other hat on and will no longer be under oath on
5 a going forward basis so that we don't end up in a situation
6 where there's some question about whether statements made in
7 the context of a question was somehow testimony under oath.

8 HEARING OFFICER KRAMER: Okay. And, actually, that
9 goes for all the advocates. When you're not testifying in
10 your questions and we're not going to rely on something that
11 you've said in your questions to support our findings.

12 If you get a witness to agree with you, of course,
13 that's a whole different matter. But we've seen how that
14 works sometimes.

15 DR. CHANG: I recognize -- thank you Mr. -- I'm
16 sorry your name is?

17 MR. CARROLL: Carroll. And I'm sure you do. I just
18 wanted it to be clear for the record. Thank you.

19 DR. CHANG: Sure. I recognize that. And I would like
20 to say that I appreciate -- this is directed to the
21 Commissioners as well as everyone in the room, that I do
22 appreciate allowances have been made for me as I try to do a
23 very quick study about how this process works. So, I
24 appreciate your patience. Thank you.

25 Oh, I'm sorry, and I also, I think I neglected to

1 sponsor my own two exhibits into the record. Is that the
2 terminology? So, my exhibits are 8000 and 8001. Thank you.

3 HEARING OFFICER KRAMER: Okay. And, again, we'll
4 talk about which ones come in and if there are any objections
5 to any of them during our housekeeping segment at close to
6 the end of tomorrow.

7 Okay. So, that's it for Socioeconomics and
8 Environmental Justice Part 2. So, let's then return back to
9 the top of the list of things that are left over from
10 yesterday. And I believe that to be, because we're going to
11 combine Mr. Theaker's cross-examination by the City of Oxnard
12 on overrides with Alternatives Part 2, and that Alternatives
13 Part 2 is going to come in a few minutes after we talk about
14 Project Description.

15 So, Mr. Carroll, do you want -- would you prefer
16 that that's a panel, or would you prefer just to go
17 individually?

18 MR. CARROLL: I'm flexible on that. Ms. Willis and I
19 did discuss that. I think we're both amenable to taking these
20 witnesses as a panel. There may be some crossover in terms of
21 specific questions related to the project description, the
22 FSA that Mr. Pittard is sponsoring, but upon which Mr.
23 Piantka may be able to answer questions. So, it may make
24 sense to take them as a panel.

25 HEARING OFFICER KRAMER: Okay. Is Ms. Change, or

1 Dr. Chang, is --

2 Is Mr. Murphy available? You had --

3 MR. CARROLL: Oh, a point of clarification. So,

4 Mr. Murphy is an Applicant --

5 HEARING OFFICER KRAMER: Oh that's Right. Cross.

6 Okay, yeah.

7 MR. CARROLL: -- witness. And --

8 HEARING OFFICER KRAMER: Never mind.

9 And he's here.

10 MR. CARROLL: He is, but there was an exchange of
11 docketed e-mails between myself and Dr. Chang in which she
12 agreed to question Mr. Murphy, who is actually our land use
13 expert, as opposed to a project description witness. And he
14 will be on the Alternatives Panel for land use, and she
15 agreed that she would pose her questions to him during the
16 Alternatives Panel as opposed to bringing him on for both
17 topics.

18 HEARING OFFICER KRAMER: Okay. So, he gets a roughly
19 30-minute break then.

20 DR. CHANG: And, Mr. Kramer --

21 MR. CARROLL: Did I mischaracterize?

22 DR. CHANG: I'm sorry. Are we going -- are we going
23 to do that now, or is that reserved for a later time?

24 HEARING OFFICER KRAMER: It would be right after
25 Project Description when we get to the Site Alternatives

1 portion of Alternatives.

2 DR. CHANG: Got it. And, in fact, I would like to
3 have a quick conversation with someone after we break, and I
4 may not -- I may not pursue that questioning after all.

5 HEARING OFFICER KRAMER: Okay.

6 DR. CHANG: It saves more time.

7 HEARING OFFICER KRAMER: Okay. Let's then start with
8 Project Description.

9 MS. WILLIS: And, Mr. Kramer, this is Kerry Willis,
10 Staff Counsel. Just as a reminder, Mr. Pittard was also up
11 for cross-examination under Environmental Justice for Public
12 Outreach if there were any questions that they did -- nobody
13 was able to get to that point yesterday.

14 HEARING OFFICER KRAMER: Okay. So, what you're
15 saying is if anybody has questions about Public Outreach they
16 should ask them now?

17 MS. WILLIS: Yes. This is the opportunity.

18 HEARING OFFICER KRAMER: Okay.

19 DR. CHANG: Oh, okay.

20 HEARING OFFICER KRAMER: So does everyone got that?

21 DR. CHANG: So that would be me.

22 HEARING OFFICER KRAMER: Okay. All right. Well,
23 let's start with Mr. Carroll, if you wanted to just get
24 Mr. Piantka going.

25 MR. CARROLL: Yes.

1 HEARING OFFICER KRAMER: And then Ms. Willis will do
2 the same for Mr. -- actually, Mr. Pittard is only in here for
3 cross-examination, so --

4 MS. CHESTER: This is Michelle Chester with staff.
5 We would like to ask just a couple of questions to introduce
6 him.

7 HEARING OFFICER KRAMER: Okay. Mr. Carroll, go
8 ahead.

9 MR. CARROLL: Yes. Applicant calls George --

10 HEARING OFFICER KRAMER: Actually, we do need to
11 swear them in. Mr. Pittard is sworn, but Mr. Piantka wasn't.

12 Do you solemnly swear or affirm that the testimony
13 you are about to give in this proceeding is the truth to the
14 best of your ability?

15 MR. PIANTKA: This is George Piantka for the
16 Applicant. I do.

17 HEARING OFFICER KRAMER: Thank you.

18 MR. CARROLL: Could you please restate and spell
19 your name for the record, identify your employer and your
20 current position?

21 MR. PIANTKA: Yes. I'm George Piantka. That's
22 G-E-O-R-G-E, last name Piantka, P, as in "Paul," I-A-N-T-K-A.
23 And I'm the Senior Director for Environmental for NRG. I've
24 been an employee for NRG since 2007. I have 28 years of
25 experience in environmental permitting and compliance, of

1 which 20 years have been focused in the energy sector, and
2 currently have about 4,000 megawatts of experience,
3 experience with projects that are under the California Energy
4 Commission's jurisdiction.

5 MR. CARROLL: Thank you.

6 Do you have in front of you the documents marked
7 for identification as Applicant's Exhibit Number 1118, as
8 marked originally, and now marked as Applicant's
9 Exhibit 1101, entitled, "Expert Declaration of George Piantka
10 Regarding the Puente Power Project" and the exhibits
11 identified therein, and also Applicant's Exhibit Number 1130
12 as originally marked, now marked as Applicant's Exhibit 1121,
13 entitled, "Expert Declaration of George Piantka Regarding
14 Project Alternatives"?

15 MR. PIANTKA: Yes.

16 MR. CARROLL: Was the prepared testimony in these
17 declarations prepared by you or under your supervision?

18 MR. PIANTKA: Yes.

19 MR. CARROLL: Do you have any changes or corrections
20 to your prepared testimony?

21 MR. PIANTKA: I do. In Paragraph 4 of my
22 declaration, that's Exhibit Number 1118, the first two bullet
23 points should read, "California Energy Commission, CEC, Staff
24 Final Staff Assessment, FSA." That's CEC TN Number 214712.
25 "California Energy Commission, CEC, Staff Final Staff

1 Assessment, FSA, Part 2." That's CEC TN Number 214713.

2 MR. CARROLL: And are those merely corrections to
3 references and not substantive changes to your declaration?

4 MR. PIANTKA: That's correct.

5 MR. CARROLL: Thank you.

6 Well, I believe at this point, well into the third
7 day and now just getting to Project Description, everyone is
8 generally familiar with the project. There was some
9 discussion at the Prehearing Conference about changes made to
10 the project following submission of the AFC. And, so, what
11 I'd like to focus on today are some questions about those
12 changes.

13 Can you please identify the major changes that were
14 made to the project subsequent to submission of the AFC?

15 MR. PIANTKA: Yes, I will.

16 Since the beginning of the Project Review process,
17 we've received a lot of input from the city, other agencies,
18 the parties in this proceeding. And, with that, we made two
19 very significant changes.

20 In November 2015, we enhanced the project by
21 including the demolition of Mandalay Generating Station Units
22 1 and 2. And then, also, in September 2015, we further
23 enhanced the project by including the removal of the outfall
24 structure that serves for plant discharge at Mandalay.

25 MR. CARROLL: And, with respect to the first change,

1 what was the impetus for including the demolition of MGS
2 Units 1 and 2 within the scope of the project?

3 MR. PIANTKA: The city in their comments on
4 August 31st, 2015, in response to the CEC's Issues
5 Identification Report, they had noted that with the Puente
6 Project there could be cumulative impacts, visual impacts,
7 with the continuation of Mandalay Generating Station Units 1
8 and 2. So, that was, you know, a comment received and, you
9 know, the impetus for us was to, you know, proceed and
10 include the removal of Units 1 and 2 as part of our project.

11 MR. CARROLL: And MGS Units 1 and 2 are subject to
12 the California State Water Resource -- State Water Resources
13 Control Board's once-through cooling, or OTC, policy with a
14 compliance deadline of December 31st, 2020; correct?

15 MR. PIANTKA: Correct.

16 MR. CARROLL: And what is the identified strategy
17 for complying with the OTC policy with respect to MGS Units 1
18 and 2?

19 MR. PIANTKA: The strategy is to, with the Puente
20 Project, remove Units 1 and 2 and therefore eliminate ocean
21 discharge from that facility.

22 MR. CARROLL: Does the OTC policy require demolition
23 of MGS Units 1 and 2?

24 MR. PIANTKA: No, they don't.

25 MR. CARROLL: Prior to submitting the project

1 enhancement that you referred to in November of 2015 related
2 to the demolition of Units 1 and 2, was there ever any stated
3 or written commitment on the part of the Applicant to
4 demolish MGS Units 1 and 2?

5 MR. PIANTKA: No, there was not.

6 MR. CARROLL: Are you aware of other coastal power
7 plants that have been decommissioned as a means of complying
8 with the OTC policy but have not been demolished or removed?

9 MR. PIANTKA: Yes. I mean, one example comes to mind
10 is the Morro Bay Power Plant, which my understanding ceased
11 operations in 2014.

12 MR. CARROLL: The initial design for the Puente
13 Project was to use the existing MGS ocean outfall for
14 discharge of stormwater and processed wastewater; is that
15 correct?

16 MR. PIANTKA: Yes, that's correct.

17 MR. CARROLL: So, in the initial Project
18 Application, you did not propose to demolish and remove the
19 outfall as part of the project?

20 MR. PIANTKA: No. It was not included. The
21 wastewater from Unit 3, also the stormwater for the facility,
22 Mandalay Generating Station, is currently managed through the
23 outfall with existing NPDES permit, and so that would
24 continue with or without Puente.

25 MR. CARROLL: Then what was the impetus for

1 discontinuing the use of and removing the existing ocean
2 outfall?

3 MR. PIANTKA: Also further comments. When you're,
4 again, looking at the August 31, 2015, Issues Identification
5 Report, that was something, a comment specifically by the
6 city. And, so, that agreement to remove that is in response.

7 I'll add, also, I received comments from other
8 agencies, that being the Coastal Commission, as part of the
9 30413(d) report, and then also U.S. Fish and Wildlife.

10 MR. CARROLL: And what, specifically, did the
11 Applicant do in response to those comments to allow you to
12 remove the existing outfall?

13 MR. PIANTKA: We redesigned the project, basically,
14 to handle the storm water from the Puente, handle the
15 wastewater from Puente, handle the wastewaters from existing
16 Mandalay Generating Station, and storm water from the whole
17 facility. And, you know, incorporated that, you know, into
18 the project. And, specifically, what that does is directed to
19 Edison Canal and eliminates, you know, all ocean water
20 discharge from the existing outfall structure.

21 MR. CARROLL: And what are the benefits associated
22 with this particular change to the project?

23 MR. PIANTKA: Well, we see this as significant
24 public benefit. First, improves the aesthetics along the
25 beach, improves access, improves recreational use of the

1 beach. And, also, with the removal of the outfall structure,
2 we would, in turn, restore that part of the beach, including
3 the dunes in that area, that allows an opportunity to enhance
4 critical habitat use in that particular area. And, again, as
5 I mentioned, improves the recreational uses.

6 MR. CARROLL: And would these benefits result if the
7 project was not developed at the currently proposed site, at
8 the MGS property?

9 MR. PIANTKA: No. The Puente Project, it's
10 development is the only way to ensure these benefits.

11 MR. CARROLL: Wouldn't it be possible to remove MGS
12 Units 1 and 2 and the ocean outfall even if Puente was
13 developed at an alternative site?

14 MR. PIANTKA: Yes, I mean, it would be possible. I
15 don't want to speculate, you know, when that could happen.
16 You know, that's uncertain.

17 MR. CARROLL: What is it about development of Puente
18 at the proposed site that makes implementation of these
19 changes more certain?

20 MR. PIANTKA: You know, these enhancements come with
21 significant cost. And, so, the Puente Project, having the
22 work force there, having the equipment there, putting it all
23 into a single project ensures that it is done economically
24 and timely. And, otherwise, you're looking at a process
25 that -- that wouldn't happen within the CEC process. And, so,

1 this ensures that it's done timely and economically.

2 MR. CARROLL: In your opinion, is this one of the
3 reasons that development of the project at the proposed site
4 is environmentally superior to the alternative sites analyzed
5 in the FSA?

6 MR. PIANTKA: Yes, certainly.

7 MR. CARROLL: Does this complete your testimony on
8 direct examination today?

9 MR. PIANTKA: Yes, it does.

10 MR. CARROLL: Thank you.

11 Mr. Piantka is available for cross-examination.

12 HEARING OFFICER KRAMER: Actually, how about if we
13 let staff --

14 MR. CARROLL: Oh, I'm sorry.

15 HEARING OFFICER KRAMER: -- speak to Mr. Pittard
16 first and then we can do both.

17 MS. CHESTER: Mr. Pittard, could you please state
18 your name for the record?

19 MR. PITTARD: Shawn Pittard.

20 MS. CHESTER: Could you please spell it.

21 MR. PITTARD: S-H-A-W-N, P-I-T-T-A-R-D.

22 MS. CHESTER: Was a statement of your qualifications
23 attached to the Final Staff Assessment?

24 MR. PITTARD: Yes, it was.

25 MS. CHESTER: Are you sponsoring the section

1 entitled, "Project Description" in the Final Staff Assessment
2 marked as Exhibit 2000?

3 MR. PITTARD: Yes, I am.

4 MS. CHESTER: Do you have any changes to this
5 section?

6 MR. PITTARD: No.

7 MS. CHESTER: Could you please describe the purpose
8 of the Project Description in the Final Staff Assessment?

9 MR. PITTARD: To basically provide a description of
10 the project in our FSA. This -- the Project Description is
11 prepared using the Applicant's language to the maximum extent
12 possible. So, this information is taken from the AFC, as well
13 as the supplemental filings that were made.

14 MS. CHESTER: Does this conclude your testimony?

15 MR. PITTARD: Yes, it does.

16 MS. CHESTER: He is now available for
17 cross-examination.

18 HEARING OFFICER KRAMER: Okay. Since you're one of
19 the proponents, we'll let you cross. Did you have any cross
20 for Mr. Piantka?

21 Okay. None.

22 City of Oxnard?

23 MS. FOLK: Yes, good morning. I have just a few
24 questions.

25 So, Mr. Piantka, you testified that the removal of

1 Units 1 and 2 was a change made to the project in response to
2 the city's comments in 2015. Did you ever discuss this change
3 with anyone at the city before it was proposed?

4 MR. PIANTKA: I did not.

5 MS. FOLK: The city raised a number of issues with
6 respect to the project and its concerns about the impacts on
7 the city. Did NRG ever discuss any of those issues with the
8 city?

9 MR. PIANTKA: I did not address those directly with
10 the city.

11 MS. FOLK: And is it NRG's position that Units 1 and
12 2 could be left on the beach at the NRG site after they are
13 decommissioned?

14 MR. PIANTKA: Yes, they could.

15 MS. FOLK: And does NRG intend to remove Units 1 and
16 2 if the Puente Project is not approved?

17 MR. PIANTKA: I currently don't have any commitments
18 to that.

19 MS. FOLK: And I have a few questions regarding the
20 outfall.

21 Is it your understanding that once Units 1 and 2
22 are retired, the outfall will not be necessary to serve the
23 facility?

24 MR. PIANTKA: The outfall is a -- is permitted. It's
25 the NPDES permit that is effective through 2020. And, as I

1 testified earlier, the outfalls is used for discharge from
2 storm water discharge for the whole Mandalay Generating
3 Facility also supports wastewater discharge for the other
4 unit on site.

5 MS. FOLK: For the once-through cooling?

6 MR. PIANTKA: No. Once-through cooling is for Units
7 1 and 2. And, with the policy, the once-through cooling
8 policy, the compliance date being December 31, 2020, we would
9 cease once-through cooling flows that support Units 1 and 2.
10 So, the discharges after that point would be storm water and
11 other plant waste that are part of our current NPDES permit.

12 MS. FOLK: And, again, is it necessary to serve the
13 facility once the once-through cooling facilities go offline?

14 MR. PIANTKA: I'm sorry? Can you repeat that?

15 MS. FOLK: I asked if it was necessary to serve the
16 facility, the Mandalay site, once the units, 1 and 2, go
17 offline.

18 MR. PIANTKA: It is necessary currently because it
19 manages the storm water and it manages waste streams that are
20 already on site. So, the Puente Project allows us to redesign
21 that and incorporate it into the project --

22 MS. FOLK: Did you --

23 MR. PIANTKA: -- discharge location --

24 MS. FOLK: I'm sorry.

25 Do you know whether the outfall crosses state

1 tidelands?

2 MR. PIANTKA: It's not -- it's not in a -- there
3 isn't any state lands lease, if you will, so --

4 MS. FOLK: That was not my question. My question was
5 does it cross state tidelands?

6 MR. PIANTKA: My understanding is since there isn't
7 a state lands lease it does not.

8 MS. FOLK: Do you know that -- do you know what
9 state tidelands are?

10 MR. PIANTKA: My understanding would be lands under
11 the jurisdiction of the state.

12 MS. FOLK: And would you understand them to be lands
13 below the mean high water mark?

14 MR. CARROLL: I'm going to object on the basis that
15 the question calls for a legal conclusion that Mr. Piantka is
16 not qualified to answer.

17 MS. FOLK: I'm asking about his knowledge. Because
18 he testified --

19 MR. CARROLL: I have a problem with him --

20 MS. FOLK: Well, just to be clear, he testified that
21 since a lease did not exist that it must not cross state
22 tidelands, and I'm trying to clarify his understanding.

23 MR. PIANTKA: Yeah, I can answer. I understand that.
24 I mean, we're speaking about high tide being high tide. It's
25 a -- different areas. So, my understanding is it would

1 cross - understand it would cross high lines.

2 MS. FOLK: And, again, you testified NRG does not
3 have a lease from the State Lands Commission for the outfall?

4 MR. PIANTKA: Correct.

5 MS. FOLK: I have nothing further.

6 HEARING OFFICER KRAMER: Okay. Thank you.

7 Mr. Piantka, you mentioned, I believe, it was the
8 N-P-D-E-S permit by its fancy acronym name; was that correct?

9 MR. PIANTKA: Yes. Do you need me to --

10 HEARING OFFICER KRAMER: No. I was just trying to --

11 MR. PIANTKA: -- state the full permit?

12 HEARING OFFICER KRAMER: -- help court reporter out.

13 Okay.

14 MS. FOLK: I'm sorry. I did have a question for
15 Mr. Pittard. I'm not sure if he's the right -- I'm sorry.

16 HEARING OFFICER KRAMER: Yes. Let's ask questions of
17 both witnesses at the same time.

18 MS. FOLK: Okay. Good morning, Mr. Pittard.

19 MR. PITTARD: Good morning.

20 MS. FOLK: I just have a couple of questions about
21 the Notice on Public Outreach for the project. Did -- was the
22 State Coastal Conservancy one of the agencies that the Energy
23 Commission consulted with about the AFC?

24 MR. PITTARD: They are on our mailing list.

25 MS. FOLK: They are. Okay.

1 HEARING OFFICER KRAMER: Okay. The Environmental
2 Center.

3 MR. SMITH: I just have a couple of quick follow-up
4 questions.

5 Mr. Piantka, fair to say that, in your view, the
6 demolition of the outfall structure and the attendant
7 discharges into the Edison Canal is a significant change to
8 the project in comparison to how it was proposed originally?

9 MR. PIANTKA: In terms of difficulty, I wouldn't say
10 it's significant in that manner. It is a change, and, you
11 know, it's a significant public benefit was how I testified.

12 MR. SMITH: But would you say that in terms of the
13 comparison of the project as it existed when you proposed it
14 initially to how it exists when you submitted your project
15 proposal as to the outfall removal those changes were
16 significant for NRG?

17 MR. PIANTKA: I think it's -- it's an important
18 benefit. I think it's an important change, and more so, as I
19 mentioned, the recreational access, that part of the public
20 benefit. I did mention we're demolishing as part of the
21 project if approved, and it does allow for that to be
22 efficiently done once the Station Units 1 and 2 are
23 demolished and move forward into the outfall. So, it is an
24 efficient --

25 MR. SMITH: So you think it's an important change.

1 Am I correct?

2 MR. PIANTKA: It's important.

3 MR. SMITH: Okay. And is it fair to say that the
4 effects of the project on the beach and on the Edison Canal
5 that come about as a result of that important change, that
6 there are effects on the beach and the adjacent Edison
7 Canal --

8 MR. CARROLL: I'm going to object on the basis that
9 the -- excuse me -- the question assumes facts not in
10 evidence. I don't believe there has been any evidence
11 suggesting that this change has any significant affects or
12 any effects on the canal.

13 MR. SMITH: Well, he just testified a moment ago to
14 the fact that he thinks it's an important change. So, I was
15 just using his own word. Okay?

16 MR. CARROLL: He testified that it was an important
17 change. That's not the same as testifying that it results in
18 significant --

19 MR. SMITH: Okay. I'll --

20 MR. CARROLL: -- effects on the canal.

21 MR. SMITH: -- rephrase the question, Mr. Carroll.

22 MR. CARROLL: Thank you.

23 MR. SMITH: Is it fair to say that the important
24 change that you just described to the project out -- to the
25 Project Description will cause affects to the beach and the

1 Edison Canal that would not be affected in the same way as
2 under the original project?

3 MR. CARROLL: I'm going to object to the question.
4 It's a compound question.

5 I don't object to the question per se, but you have
6 combined the canal and the beach into the question. So, I
7 think it would be preferable if you broke it up.

8 MR. SMITH: Did you understand the question as I
9 asked it, Mr. Piantka?

10 MR. PIANTKA: Could you repeat that?

11 MR. SMITH: Okay. So, the question is, is it fair to
12 say that the project is changed as a result of the outfall
13 removal will affect the beach in the surrounding area in ways
14 that would not occur under the project as it was initially
15 proposed?

16 MR. PIANTKA: That's correct. The removal of the
17 outfall in the project description is a change. The absence
18 of the removal, that that means the current conditions would
19 continue.

20 MR. SMITH: Okay. Thank you.

21 **And**, also, fair to say that the change to the
22 project will affect the Edison Canal in ways that the project
23 as initially proposed would not have done?

24 MR. PIANTKA: The changed Edison Canal is directing
25 the Puente discharge, that's the original -- the Puente

1 discharge would be directed to Edison Canal in the absence of
2 the outfall means that the facility discharge would be
3 directed to Edison Canal.

4 MR. SMITH: And so that means the project as changed
5 will affect the canal in ways that the original project would
6 not have done; correct?

7 MR. PIANTKA: In contributing what is overall a very
8 small flow to the Edison Canal is, you know, is the now in
9 the Project Description, so --

10 MR. SMITH: And that's an affect that would not have
11 occurred under the original project but will occur under the
12 changed project; is that right?

13 MR. PIANTKA: That's correct.

14 MR. SMITH: Thank you.

15 No further questions.

16 HEARING OFFICER KRAMER: CEJA, you didn't indicate
17 any time, but do you have any brief questions?

18 MS. LAZEROW: In fact, we did indicate, I believe,
19 ten minutes. And we'll --

20 HEARING OFFICER KRAMER: You're right. I'm sorry.

21 MS. LAZEROW: And we have holdover questions from
22 yesterday' Environmental Justice.

23 HEARING OFFICER KRAMER: I was wrong about that.
24 You're right.

25 MS. LAZEROW: Thank you.

1 MS. LAZEROW: Good morning.

2 MR. PITTARD: Good morning.

3 MS. LAZEROW: Shana Lazerow for the California
4 Environmental Justice Alliance, CEJA.

5 Mr. Pittard, first, if I heard you correctly, you
6 just testified that the FSA Project Description stayed as
7 true to the NRG AFC and its corrections as possible. Is that
8 your testimony?

9 MR. PITTARD: Yes.

10 MS. LAZEROW: Do you view it as within your
11 authority as CEC staff to alter the Applicant's Project
12 Description?

13 MR. PITTARD: I want to answer your question
14 directly, but are you -- let me answer it this way: We
15 provide the Project Description in our FSA so that the
16 Committee and the other parties can see what we evaluated,
17 the project that we analyzed. Does that answer your question?

18 MS. LAZEROW: Not exactly. I think you may be
19 answering my next question.

20 My first question is, if you receive an application
21 or you receive information from an Applicant, such as NRG in
22 this case, that describes different aspects of anticipated
23 work, do you view your role as staff as including assessing
24 whether the project as described is, in fact, the project
25 that the agency will be analyzing under CEQA and under the

1 CEC's authority?

2 MR. PITTARD: Yes. So, for purposes of the Project
3 Description in the FSA, we describe the project that the
4 Applicant has proposed. So, I do not change it.

5 MS. LAZEROW: Thank you.

6 That was my only question for you.

7 MR. PITTARD: Okay.

8 MS. LAZEROW: Turning to Mr. Piantka, good morning.

9 So, you testified that the once-through cooling
10 policy does not require demolition of Units 1 and 2; that's
11 correct?

12 MR. PIANTKA: That's correct.

13 MS. LAZEROW: Is NRG including a plan for removal of
14 the Puente unit in -- at the end of its lifetime in this
15 project?

16 MR. PIANTKA: One of the conditions of certification
17 as proposed has closure provisions in there, and those would
18 include removal of Puente.

19 MS. LAZEROW: And have you submitted a plan for
20 removal of MGS, Mandalay Generating Unit 3?

21 MR. PIANTKA: We included -- I'm sorry. Can you
22 repeat the question?

23 MS. LAZEROW: Do you have a removal plan for Unit 3?

24 MR. PIANTKA: We do not.

25 MS. LAZEROW: Is McGrath Peaker an NRG facility?

1 MR. PIANTKA: No, it's not.

2 MS. LAZEROW: Do you have a removal plan for the
3 Ormond Beach units?

4 MR. PIANTKA: No, we do not.

5 MS. LAZEROW: And so I'm hoping that you can just
6 reiterate testimony that you gave. Units 1 and 2 are going to
7 be decommissioned pursuant to the once-through cooling
8 policy; correct?

9 MR. PIANTKA: Pursuant to the once-through cooling
10 policy is a cease flow, cease once-through cooling flow.

11 MS. LAZEROW: So does NRG anticipate continuing the
12 operating life of Units 1 or 2?

13 MR. PIANTKA: I'm not sure if you've completed your
14 question.

15 MR. CARROLL: Under what -- just if I may ask for
16 clarification, under what circumstances?

17 MS. LAZEROW: Are there circumstances under which
18 NRG anticipates continuing the operating life of Units 1 or 2
19 after December 31st, 2020?

20 MR. PIANTKA: No, there's not.

21 MS. LAZEROW: Mr. Piantka, are you familiar with the
22 Public Utilities Commission proceeding that led to approval
23 of the Puente contract?

24 MR. PIANTKA: That is not the focus of my
25 responsibilities at NRG, but I'm, you know, generally

1 familiar.

2 MS. LAZEROW: Based on your general familiarity,
3 were you aware of any requirement that new generation be
4 sited in Oxnard?

5 MR. PIANTKA: I am aware of a need determination,
6 250 to 290 megawatts, to support the Moorpark subarea,
7 generally it's part of the Creek Ventura, so I'm aware of the
8 response.

9 MS. LAZEROW: Were you aware of any preference
10 expressed in the request for offers by
11 Southern California Edison for specific locations for new
12 generation within the Moorpark subarea?

13 MR. PIANTKA: I'm not aware of specific locations.

14 MS. LAZEROW: Those are all my questions for these
15 witnesses. Thank you.

16 HEARING OFFICER KRAMER: Okay. Thank you.

17 Dr. Chang, you just listed the gentleman that
18 you're going to speak to in the next topic, did you have any
19 questions for these witnesses?

20 DR. CHANG: I do. Thank you. I have some questions
21 for Mr. Pittard.

22 DR. CHANG: Mr. Pittard, I understand that you are
23 the author of the Executive Summary of the FSA.

24 MR. PITTARD: Yes.

25 DR. CHANG: Okay. I wanted to ask you just about

1 three specific parts because I would like to clarify for any
2 reader of the Executive Summary, which I also want to add as
3 point of information, that the two portions of the Executive
4 Summary that were translated into Spanish were -- what were
5 they?

6 MR. PITTARD: The two sections of the FSA that were
7 translated into Spanish are the Executive Summary and the
8 Environmental Justice section.

9 DR. CHANG: Great. Okay. Thank you.

10 So, any reader of the Executive Summary, either in
11 Spanish or English, would have come upon these three
12 statements.

13 The first statement is on Page 1-1 of the
14 Introduction of -- within the Executive Summary, and it says,
15 "If Puente is approved and developed, the existing MGS Units
16 1 and 2 would be decommissioned."

17 Should I give you a moment to --

18 MR. PITTARD: Yes, there we are. First paragraph.

19 DR. CHANG: So a reader of that statement, could
20 they -- how would they interpret -- is it possible that a
21 reader of that statement might interpret that to mean that
22 the existing MGS Units 1 and 2 would only be decommissioned
23 if Puente were approved and --

24 MS. WILLIS: Objection. Calls for speculation as to
25 what a reader might interpret this to be.

1 HEARING OFFICER KRAMER: Sustained.

2 I think she could ask him what is meant by that
3 sentence.

4 DR. CHANG: Okay. Could you clarify, how would
5 you -- is it the case -- I guess I should start, I should
6 back up a little bit.

7 Is it the case that the decommissioning of MGS
8 Units 1 and 2 is contingent upon the approval of Puente?

9 MR. PITTARD: I've -- the decommissioning?

10 DR. CHANG: Yes.

11 MR. PITTARD: I'll say that it's my understanding,
12 not as someone who has testimony to this in this proceeding,
13 it's my understanding that the -- and I'm really just
14 reiterating what Mr. Piantka said, that the once-through
15 cooling discharge, as I understand it, would discontinue in
16 2020 because of OTC policy. And that that would be -- and
17 whether or not that means it is a formal decommissioning, I
18 don't know.

19 DR. CHANG: Okay. But I'm actually asking about the
20 MGS Units 1 and 2 in this statement. Is it the case that
21 their decommissioning is contingent upon approval of Puente?

22 MR. PITTARD: Well, in the Introduction section of
23 this Executive Summary, we're saying -- we're describing the
24 project that the Applicant has proposed to the Commission in
25 its AFC. And we're saying that the project as proposed would

1 include the decommissioning of that project. It's not a -- In
2 the Executive Summary section, I don't describe whether or
3 not if this -- so this goes, I think I'm getting to your
4 question now, I do not state in here that if this project
5 were not developed it would not be decommissioned. I don't
6 say one way or the other. I just say what will -- the project
7 as proposed to us is as such.

8 Does that make sense?

9 DR. CHANG: It goes to -- I'm sorry, is it Ms.
10 Willis?

11 MS. WILLIS: Yes.

12 DR. CHANG: -- Ms. Willis's point that perhaps it's
13 speculation how any given person might read this. But I, as
14 an English reader, I would read when a statement says
15 "if" -- "if" -- "If Puente is approved and developed,"
16 usually the phrase following an "if" clause means that the
17 second clause is contingent upon the first. "If Puente is
18 approved and developed, the existing MGS Units 1 and 2 would
19 be decommissioned."

20 And, so, this is -- I'll read three statements
21 where this sort of turn of logic appears. And I would note
22 that these are the only -- potentially the only places where
23 a Spanish reader would gain a description of the project.

24 And I believe you just testified that you did not
25 alter -- I won't go there. Okay.

1 The second place that this appears is on Page
2 1.2B -- I'm sorry, 1-2, at the bottom, also in the Executive
3 Summary. "If Puente is approved and developed, MGS Units 1
4 and 2 would be retired by the completion of commissioning of
5 Puente."

6 MR. PITTARD: That is the proposed project, yes.

7 MS. WILLIS: I'm sorry. Ms. -- Dr. Chang, is there a
8 question? If you could phrase things in a question --

9 DR. CHANG: Sure. I'll phrase --

10 MS. WILLIS: -- as opposed to making statements, it
11 would be a lot easier for him to answer that question.

12 DR. CHANG: Sure. I will ask.

13 Were you the author of this statement?

14 MR. PITTARD: Yes.

15 DR. CHANG: And you are suggesting to us that this
16 is what you have translated from the Applicant's proposal?

17 MR. PITTARD: That's the -- I think we're mixing up
18 the Project Description and the Executive Summary.

19 So, in the Project Description, the Project
20 Description is described as closely as possible in the words
21 of the Applicant as -- as presented in the AFC and the
22 supplemental documents.

23 In the Executive, the purpose of the Executive
24 Summary is to -- I compile a summary that's provided to me
25 from each of the subject areas into this document.

1 So, I don't author any of the summaries of any of
2 the subject areas. I get those from the technical staff.

3 And in this, the portion that we're looking at
4 right now, these are paragraphs that I've written that have
5 also appeared and to help summarize the project in Notices of
6 Availability and such. So, this is taking the Applicant's
7 information and summarizing it --

8 DR. CHANG: Okay.

9 MR. PITTARD: -- and compressing it.

10 DR. CHANG: So you're taking the Applicant's
11 information, you are summarizing it, and then you said that
12 that also often goes into other Notices?

13 MR. PITTARD: Correct.

14 DR. CHANG: So --

15 MR. PITTARD: These types of summary paragraphs.

16 DR. CHANG: Right. I understand.

17 So, this language is also inserted into other types
18 of Notices?

19 MR. PITTARD: Correct.

20 DR. CHANG: So this statement, or something thereof,
21 is reproduced in other Notices to the public?

22 MR. PITTARD: Yes, it may be.

23 DR. CHANG: So just as a point of information, the
24 first statement that I read was in the Introduction section
25 of the Executive Summary authored by Mr. Pittard, and the

1 second statement I read is in the Project Background section
2 of the Executive Summary.

3 And the third statement is on Page 1-4, and it
4 says, "Assumptions for the off-site alternatives do not
5 necessarily include removing MGS Units 1 and 2, which is
6 considered a benefit of the proposed project."

7 MS. WILLIS: Is there a question, Dr. Chang?

8 MR. PITTARD: That's what it says, yes.

9 DR. CHANG: Yes.

10 So, someone reading this, when you say, "...do not
11 necessarily include removing MGS Units 1 and 2..." and then
12 you say, "...which is considered a benefit of the proposed
13 project..." the implication is that there's no requirement to
14 remove MGS Units 1 and 2?

15 MS. WILLIS: I'm going to object. That section I
16 believe is under Alternatives.

17 DR. CHANG: Uh-huh.

18 MS. WILLIS: And, as Mr. Pittard just testified, he
19 took the other authors of those sections contributed to the
20 Executive Summary, that the proper panel for this would have
21 been the Alternatives Panel. But this is just a summary of
22 other technical authors' work and other analysts' work.

23 DR. CHANG: I understand that.

24 MS. WILLIS: And he's just compiled it. He did not
25 actually author it, as you keep saying. He's compiled it

1 Executive Summary.

2 DR. CHANG: I understand. Okay.

3 I will just ask one more question, which is when I
4 first came onto understanding of these proceedings, I believe
5 you were in an alternate role; is that right? You were in
6 the --

7 MR. PITTARD: Yes. At the beginning of this
8 proceeding, I was the Assistant Public Adviser.

9 DR. CHANG: Assistant Public Adviser. And now you
10 are the Project Manager --

11 MR. PITTARD: Correct.

12 DR. CHANG: -- is that right?

13 And the Executive Summary was indeed -- it says,
14 "Executive Summary Testimony of Shawn Pittard." And, so, you
15 are the overriding author of this section, entire section; is
16 that correct?

17 MR. PITTARD: Yes, I am the -- yes, I am of the
18 compiler and the author.

19 DR. CHANG: Compiler and author. Yes. All of us who
20 write --

21 MR. PITTARD: Uh-huh.

22 DR. CHANG: -- understand that we are responsible
23 for anything that we put our name --

24 MR. PITTARD: Correct.

25 DR. CHANG: -- under.

1 Okay. Great. Thank you very much.

2 MR. PITTARD: Uh-huh. Thank you.

3 HEARING OFFICER KRAMER: Okay. Let me see where we
4 are. I think we've been through everyone.

5 Redirect, Mr. -- well, actually, in case it
6 generates some more questions, a couple of questions from the
7 Committee first.

8 Mr. Piantka, I think you may have -- I heard you
9 say that the outfall removal was put into the project in
10 September 2015. Was that the right year, or was it 2016?

11 MR. PIANTKA: That was put in in September of 2016.
12 It was -- the Units 1 and 2 removal was November of 2015.

13 HEARING OFFICER KRAMER: Okay. Got it.

14 And what does decommissioning entail when you use
15 that term?

16 MR. PIANTKA: You know, the Executive Summary
17 actually covers that pretty well, what the decommissioning
18 activities would be. You know, essentially what it is, is
19 we're going to deenergize the facility. We're going to
20 permanently retire the air permit. We're going to drain the
21 liquids, including, you know, oils, the boiler, the boilers.
22 So, it's, essentially, putting it into a layup, a safe layup,
23 mode.

24 HEARING OFFICER KRAMER: So it doesn't include
25 removal of all the equipment and the structures?

1 MR. PIANTKA: Correct, it does include that.

2 HEARING OFFICER KRAMER: Okay. Thank you.

3 Mr. Carroll?

4 MR. CARROLL: Thank you.

5 Mr. Piantka, Mr. Smith asked if you had engaged in
6 discussions with the city about the changes to the project,
7 to which you responded "no." Can you clarify? Did you mean by
8 that that you personally had not engaged in private meetings
9 with the city related to the proposed changes?

10 MR. SMITH: Object to foundation. I don't think that
11 was my question. I think that was Ms. Ellison's question.

12 MR. CARROLL: Oh, I apologize.

13 Ms. Ellison from the city asked you whether you had
14 engaged in discussions with the city about the changes to the
15 project, to which you responded "no." By that, did you mean
16 that you personally had not engaged in private meetings with
17 the city related to the changes?

18 MR. PIANTKA: Yeah, that's correct.

19 MR. CARROLL: Do you know if others at NRG have had
20 meetings with the city related to the project and potential
21 changes to the project?

22 MR. PIANTKA: Yes. I mean, NRG has had meetings, in
23 fact, public meetings in the form of council meetings
24 discussing the project overall.

25 MR. CARROLL: And do you know approximately when

1 those meetings and discussions commenced?

2 MR. PIANTKA: Approximately, maybe in that 2011 to
3 2013 timing before filing our application.

4 MR. CARROLL: And do you know whether those
5 discussions included discussion related to alternative sites
6 other than the MGS property for the project?

7 MR. PIANTKA: Correct, there's been a number of
8 alternative sites that were discussed.

9 MR. CARROLL: And turning back to you, personally,
10 have you had discussions -- you've testified not in private
11 meetings, but have you had discussions in public settings,
12 such as CEC proceedings, workshops, with the city related to
13 changes to the project?

14 MR. PIANTKA: Yes, we have. And I have.

15 MR. CARROLL: And did the CEC staff also engage in
16 discussions with the city related to those changes to the
17 project?

18 MS. FOLK: I'm going to object as to foundation for
19 that question.

20 He's testifying as to his experience, not what
21 Energy Commission staff may have done.

22 MR. CARROLL: I'm asking you based on your
23 experience having been in those public settings with the city
24 and the other parties and the staff, did you observe that the
25 CEC staff was engaging with the city with respect to

1 potential changes to the project?

2 MR. PIANTKA: Yes, I observed.

3 MR. CARROLL: Thank you.

4 You testified that the outfall -- I'm sorry. Let me
5 back up. And this time I believe it was Mr. Smith who asked
6 you some questions related to the outfall. And I want to get
7 some clarification because my interpretation of the exchange
8 was that it went back and forth a little bit between what I
9 would characterize as legal jurisdictional questions and more
10 physical descriptions of the area.

11 MR. SMITH: Objection. I think the seeding of the
12 question is highly argumentative.

13 MR. CARROLL: I stated at the outset my
14 interpretation of the questioning, and I'll explain for a
15 moment why that was my interpretation.

16 MR. SMITH: Was there a question? I mean, this seems
17 like it's just your interpretation of someone else's
18 questioning and you're not qualified to testify on your
19 interpretation of the questioning.

20 MR. CARROLL: I'm not interpreting. Yes, there is a
21 question, I'm about to get to it, but I'm laying the
22 foundation.

23 HEARING OFFICER KRAMER: Okay. I think Mr. Carroll
24 is trying to respond to your objection before he rules, so go
25 ahead, Mr. Carroll.

1 MR. CARROLL: Do you recall the exchange that you
2 had with Mr. Smith about what I believe to be his initial
3 question was whether the outfall crossed state lands. Do you
4 recall that exchange?

5 MR. PIANTKA: I recall that exchange.

6 MR. CARROLL: And you -- do you recall that there
7 was a follow-up question to the effect, at least my
8 interpretation of the follow-up question, related more to
9 whether or not the outfall crossed, and I don't recall
10 exactly what it was, but the mean high tide line or the high
11 tide line.

12 MR. PIANTKA: I recall. The outfall itself doesn't
13 cross the mean high tide, the outfall structure that is along
14 the beach area. I was referring to the discharge, the
15 physical water that leaves the plant that crosses the high
16 tide as it connects with its point of discharge, which is the
17 ocean.

18 MR. CARROLL: Okay. So, your testimony is that the
19 water discharge as distinct from the physical outfall crosses
20 the -- and, I'm sorry, what did you say? The mean high tide
21 line?

22 MR. PIANTKA: Correct.

23 MR. CARROLL: And do you understand the mean high
24 tide line to be equivalent to State Lands Commission
25 jurisdictional lands, or are you just testifying as to the

1 physical description of that?

2 MR. PIANTKA: It's part of the state lands -- the
3 tidelands. It's the discharge itself that crosses mean high
4 tide and low tide, I mean, different demarcations of the
5 tidal area.

6 MR. CARROLL: Thank you.

7 MR. PIANTKA: It's the liquid discharge I'm
8 referring to.

9 MR. CARROLL: Thank you.

10 You also testified that removal of the
11 outfall -- or I'm sorry, let me ask you. Was the removal of
12 the outfall a recommendation of the Coastal Commission in the
13 report that it submitted to the Energy Commission?

14 MR. PIANTKA: Yes, it was.

15 MR. CARROLL: And were the potential impacts
16 associated with that change, and for that matter with both
17 the changes, the demolition of MGS Unit 1 and 2 and the
18 removal of the outfall, were those project changes described
19 and the effects thereof analyzed in documents that were
20 submitted to the CEC for review?

21 MR. PIANTKA: Yes.

22 MR. CARROLL: And those documents were docketed and
23 are available for public review, as any other document would
24 be?

25 MR. PIANTKA: Yes, they were.

1 MR. CARROLL: You testified that the change, and I'm
2 now referring to the removal of the outfall, would result in
3 effects on the area surrounding the outfall in response to a
4 question from Mr. Smith. In your view, are those effects
5 detrimental or beneficial?

6 MR. PIANTKA: I'm sorry. Repeat that again.

7 MR. CARROLL: Yes. In response to a question from
8 Mr. Smith, you testified that the removal of the outfall
9 would result in effects on the beach and dune area where
10 their outfall is currently located. In your view, are those
11 affects detrimental or beneficial?

12 MR. PIANTKA: Beneficial.

13 MR. CARROLL: And you also testified that there
14 could be impacts on the canal associated with the proposed
15 discharge from Puente. Based on the analysis that was
16 completed which you've referred to in one of my prior
17 questions, would those impacts be significant?

18 MR. PIANTKA: It would be de minimis. We would not
19 modify the canal. We'd be discharging from the top of the
20 canal area into the canal. But these are de minimis changes.

21 MR. CARROLL: Okay. Thank you.

22 No further questions.

23 HEARING OFFICER KRAMER: Staff?

24 UNIDENTIFIED SPEAKER: Staff does have one question
25 for clarification for the panel.

1 Are Ormond Beach, McGrath, and Mandalay Generating
2 Station Unit 3 licensed under the Energy Commission?

3 MR. PIANTKA: This is George Piantka for the
4 Applicant. No, they are not.

5 UNIDENTIFIED SPEAKER: Thank you.

6 MS. FOLK: I have a few follow-up questions, if I
7 may.

8 HEARING OFFICER KRAMER: Go ahead.

9 MS. FOLK: Mr. Piantka, prior to submitting Puente
10 as a bid to Edison in the RFO process, did NRG consult with
11 the city to determine its position on that specific proposal?

12 MR. PIANTKA: I'm not aware of the discussions and
13 the business nature of discussions in response to the RFO.
14 And I personally have not

15 MR. CARROLL: And I would, if I may, just admonish
16 the witness to keep in mind that certain information
17 submitted in connection with the RFO is confidential and to
18 not disclose anything that would be deemed confidential.

19 MS. FOLK: And my question did not go to the
20 confidentiality --

21 MR. CARROLL: I didn't mean to suggest that it
22 would, I just wanted to provide an admonishment.

23 MS. FOLK: And once Edison selected the Puente
24 Project, has NRG ever offered to modify the technology that
25 was selected for the Puente Project?

1 MR. PIANTKA: Our application's pretty clear. It's a
2 response to the RAPA. We've described that term. The Resource
3 Adequacy Procurement Agree.

4 MS. FOLK: Can you answer the question specifically?
5 Has NRG ever offered to modify the technology for the Puente
6 Project?

7 MR. PIANTKA: We have not.

8 MS. FOLK: And once Edison selected the Puente
9 Project, has NRG ever offered to change the site location for
10 the project?

11 MR. PIANTKA: We have not.

12 MS. FOLK: And once Edison selected the Puente
13 Project, has NRG ever offered to modify the size of the
14 project?

15 MR. PIANTKA: We have not.

16 MS. FOLK: Thank you.

17 HEARING OFFICER KRAMER: Okay. Am I correct that
18 that completes this panel?

19 Thank you, gentlemen.

20 DR. CHANG: I'm sorry. Excuse me, Mr. Kramer, is
21 this the appropriate time for questions about Public Outreach
22 and access to Mr. Pittard?

23 HEARING OFFICER KRAMER: Oh, we had said earlier,
24 yes. Yeah, we want you to ask your Public Outreach questions
25 to Mr. Pittard now, so --

1 DR. CHANG: Okay. Thank you.

2 So, Mr. Pittard, in the Environmental Justice
3 section of the FSA, which you and Lisa Worrall are coauthors,
4 on Page 4.5-1, in the middle of the page, it says, "The U.S.
5 Environmental Protection Agency, or EPA, defines
6 Environmental Justice as, quote, 'The fair treatment and
7 meaningful involvement of all people regardless of race,
8 color, national origin, or income with respect to the
9 development, implementation and enforcement of environmental
10 laws, regulations, and policies,'" end quote.

11 Also in that section at Page 4.5-2, it says that
12 quote, "The California Natural Resources Agency recognizes
13 that EJ communities are commonly identified as those where
14 residents have been excluded from the environmental policy
15 setting or decision-making process," end quote.

16 Given these statements regarding Environmental
17 Justice and public access to various types of decision-making
18 processes and proceedings, can you tell me how was outreach
19 and public notice to the residents of Oxnard and the general
20 public on this matter conducted in order to facilitate the
21 legitimate inclusion of the affected communities in this
22 decision-making process?

23 MS. WILLIS: I'm just going to object in general
24 that Mr. Pittard did describe the entire Public Outreach in
25 his direct testimony. Is there a specific issue

1 that -- unless he needs to repeat all of his testimony.

2 DR. CHANG: Sure. Yeah. I appreciate that. Okay.

3 I'll go to my next question then.

4 Is it true that the January 10th, 2017, FSA
5 Workshop, Public Workshop, itself was not listed on the CEC
6 website until December 29th, 2016, after I, Grace Chang,
7 called staff on that date to alert them to this fact?

8 MR. PITTARD: That is correct.

9 DR. CHANG: I'm glad that I did.

10 MR. PITTARD: Me, too.

11 DR. CHANG: And that I spoke to your staff. That was
12 wonderful. Thanks.

13 Is it true that the following were not posted until
14 December 29th, 2016, as well, Notice of Public Workshop in
15 English or Spanish, Notice of the Availability in Spanish,
16 the Puente FSA Environmental Justice section in Spanish, and
17 the Puente FSA Executive Summary in Spanish?

18 MR. PITTARD: I will just assume those dates are
19 correct. I don't have them in front of me. I think
20 what -- yes, I'll just -- I'll agree. Do you want me to --

21 DR. CHANG: No. That's fine.

22 MR. PITTARD: Okay.

23 DR. CHANG: Thank you.

24 MR. PITTARD: Uh-huh.

25 DR. CHANG: Thanks.

1 And then, so, I count those as one, two, three,
2 four -- four documents that were provided in Spanish, and I
3 also had a research assistant look at the docket and plug in
4 every possible search to see if we could determine how many
5 documents had been provided in Spanish in this docket. Do you
6 know -- are you aware of how many there were?

7 MR. PITTARD: I do not know off the top of my head.
8 I would have to count them.

9 DR. CHANG: There were seven, including these four
10 documents. The other three, I believe, were -- and I can
11 submit it if needed by the Commission. But the other three
12 were newspaper ads announcing the initial workshop back in
13 August of 2015, I think.

14 MR. PITTARD: The Informational Hearing?

15 MS. WILLIS: Dr. Chang, could you actually speak up
16 a little bit?

17 DR. CHANG: Sure.

18 MS. WILLIS: I'm having a hard time and they're
19 talking over each other.

20 DR. CHANG: Absolutely. I'm turning my head as I
21 look at my laptop, so that's probably the problem.

22 MS. WILLIS: Thank you.

23 MR. CARROLL: And, if I may, I did miss part of the
24 question. Who was it that you said conducted the searches? I
25 didn't hear that part of the question.

1 DR. CHANG: Oh, I'm sorry. I had a research
2 assistant. And then I verified that the research was correct.
3 We just merely put in the search a few search terms such as
4 "Spanish" or "translation" and found that there were only
5 seven documents in the entire docket, of how many thousands
6 of documents, that were translated in Spanish.

7 MR. CARROLL: Thank you.

8 DR. CHANG: Or even referred to something translated
9 in Spanish.

10 MR. CARROLL: Thank you for clarifying.

11 DR. CHANG: Thank you.

12 So, what are the regulations and requirements
13 requiring advanced time of notice for events such as the FSA
14 Workshop or notice of events such as those?

15 MR. PITTARD: I believe it is ten days. I look to my
16 legal counsel because that's who I look to for questions like
17 this.

18 DR. CHANG: Okay. So, I note that it was quite
19 fortunate as we've -- we seem to agree that I put in that
20 call on December 29th to note that there was no Notice of the
21 Public Workshop as of yet, that date, because --

22 MR. PITTARD: And may I clarify that?

23 DR. CHANG: Yes.

24 MR. PITTARD: That it was that it had not been
25 posted on the Commission web page --

1 DR. CHANG: It had not been --

2 MR. PITTARD: -- as opposed to a Notice --

3 DR. CHANG: Oh, okay. I'm sorry.

4 MR. PITTARD: -- correct?

5 DR. CHANG: That had not been posted to the CEC
6 website, correct?

7 MR. PITTARD: Right, it wasn't on -- yeah.

8 DR. CHANG: So between December 29th and
9 January 10th, that is 11 days prior to the January 10th date.
10 And then of those dates, December 30th, December 31st,
11 January 1st, and January 2nd, many people took Monday,
12 January 2nd, as a public holiday, and then Friday
13 December 31st -- I'm sorry -- Saturday, December 31st. That's
14 four days, and then there was also a weekend the following
15 weekend in the space of that 11 days.

16 So, is the requirement just ten days? Ten working
17 days?

18 MR. PITTARD: Yeah, there's a little formula, and I
19 don't know if I can recall it exactly off the top of my head.
20 But you count the days. And there are things that relate to
21 things falling -- if it falls on a holiday, the end day, you
22 don't count that. Things like that. But there is a formula,
23 and I believe that, as I recall, that we met the noticing
24 requirements --

25 DR. CHANG: I see.

1 MR. PITTARD: -- in that case. And we've noticed
2 that workshop in both English and Spanish concurrently.

3 DR. CHANG: Okay. Thank you.

4 So, you've said that you believe you were in
5 compliance with the requirements, so to the letter of the
6 law, I would understand. And do you believe that it fulfills
7 the spirit or ethic of inclusion, the types of inclusion that
8 are listed in those two -- the California Natural Resources
9 Agency and the U.S. Environmental Protection Agency
10 requirements around Environmental Justice? Do you believe
11 that it satisfies the spirit of inclusion that those
12 documents lay out?

13 MR. PITTARD: I would add that far in advance of
14 that January 10th Workshop, I put -- I sent a memo regarding
15 a save the date to all parties and within it. And we put that
16 into the docket to let people know far, far in advance, so at
17 least a month ahead of time if I recall, that we would be
18 doing it because of the holiday season. And then we met the
19 legal noticing requirements with the Notices themselves.

20 DR. CHANG: Okay. So, that was noticed to all
21 parties. And, certainly, I'm sure that all parties were
22 appreciative of that. But parties do not necessarily include
23 the entire public, do they?

24 MR. PITTARD: No, they do not.

25 DR. CHANG: Are you aware that the surrounding

1 community of Oxnard, the impacted community in question,
2 29 percent of that community lives in linguistic isolation,
3 and 46 percent of the people over 25 years of age have less
4 than a high school education?

5 MR. PITTARD: I am, yes. I am aware of the
6 demographics. And it's because of that that we've been
7 translating documents and that we have provided translation
8 services.

9 DR. CHANG: Okay. And, so, then you have translated
10 which documents?

11 MR. PITTARD: Notices. And, as I noted in my
12 testimony, the Executive Summary of the PSA and the Executive
13 Summary and Environmental Justice section of the FSA.

14 DR. CHANG: Thank you.

15 The FSA report Environmental Justice Section Page
16 4.5-8 states that the CEC regulations require staff to notice
17 at a minimum property owners within 1,000 feet of a project
18 and 500 feet of a linear facility. This was done for the
19 project, and the property owners' list has been augmented to
20 include the surrounding political jurisdictions, school
21 districts, state and federal agencies, and interest groups.

22 At the January 10th Workshop, I asked for this
23 property owners' list, and I thank you very much for
24 providing that.

25 Can you tell me how this Notice was provided or

1 attempted to be provided to farmworkers or beach-goers or
2 anyone else who might potentially be impacted by the project?

3 MR. PITTARD: It is specifically property owners, is
4 the regulatory requirement.

5 DR. CHANG: And then you said you augmented that to
6 include the surrounding political jurisdictions, school
7 districts, state and federal agencies, and interest groups.
8 So, interest groups would be defined as?

9 MR. PITTARD: We have CAUSE, Mixteco, et cetera.

10 MS. WILLIS: Mr. Pittard, could you get a little
11 closer to the microphone?

12 MR. PITTARD: Yes.

13 DR. CHANG: And CAUSE as one particular interest
14 group also is not responsible for every single
15 Spanish-speaking --

16 MR. PITTARD: Correct.

17 DR. CHANG: -- person in the vicinity, right?

18 So, can you tell me how farmworkers, for example,
19 who are not directly represented by CAUSE, that is, CAUSE is
20 not specifically a farmworkers' rights organization,
21 farmworkers, beach-goers and other passersby, anyone who
22 would potentially be impacted by the project --

23 MS. WILLIS: I'm going to object to the question
24 that passerbys [sic] needed to be noticed. I don't think
25 any --

1 DR. CHANG: Okay. That's fine.

2 MS. WILLIS: -- of us would know who that would
3 entail.

4 DR. CHANG: Sure. That's fine.

5 Farmworkers, beach-goers, people potentially
6 impacted.

7 MR. PITTARD: I'll go back to the beginning of how
8 we do our outreach process.

9 DR. CHANG: Okay.

10 MR. PITTARD: Which is the Project Manager works
11 with the Public Adviser's Office to -- we try to identify
12 interest groups that can spread the word to the people that
13 they represent to the maximum extent possible. So, we reach
14 out first to groups like CAUSE, groups like Mixteco, the
15 United Farm Workers, because we know that they have networks
16 of information through their websites, et cetera, that can
17 inform -- they are a direct conduit to those persons. So, we
18 reach out to them first to maximize our communication.

19 And, then, from there, we build our mailing lists,
20 our listservs, et cetera.

21 DR. CHANG: And is it your understanding that the
22 farmworker groups that you mention, including the Mixteco
23 group and UFW, is it your understanding that they have full
24 access to their farmworker -- the farmworkers in the area?

25 MR. PITTARD: I do not know that. I do know that we

1 have their participation, those groups.

2 DR. CHANG: You have their participation. In what
3 sense? I'm sorry.

4 MR. **PITTARD**: That CAUSE and Mixteco both have
5 participated in this process.

6 DR. CHANG: At different times?

7 MR. PITTARD: Uh-huh.

8 DR. CHANG: And the UFW?

9 MR. PITTARD: I do not recall if they participated
10 or not.

11 DR. CHANG: Are you aware of whether they are active
12 in this area at all -- in this--

13 MR. PITTARD: Yes, they are. As the Assistant Public
14 Adviser, I did the outreach to them initially.

15 DR. CHANG: All right. Thank you.

16 As background, I asked at the January 10th Workshop
17 whether the EJ impacts discussed in the FSA accounted for the
18 entire EJ community in question which includes, by
19 definition, those who live, work, and play, including those
20 who attend school in the area. Most often, however, the
21 discussion centered around residents only, as you mentioned
22 earlier, often, for example, the list focuses only on
23 property owners.

24 Property owners not necessarily being -- or I will
25 say it as a question. Are property -- are residents and

1 property owners the same group?

2 MR. PITTARD: Sometimes not, in the case of like an
3 apartment complex or something.

4 DR. CHANG: Great. Okay. Thank you.

5 Or renters of any kind?

6 MR. PITTARD: Uh-huh, correct.

7 DR. CHANG: So most often the discussions centered
8 around residents only in these proceedings and documents. For
9 example, on Page 1-10 of the FSA Executive Summary, it states
10 that there is, quote, "Not an EJ population residing within
11 one mile of the project's land use impact area." Also on Page
12 4.5-1 of the EJ section authored by you, it addresses only,
13 quote, "The EJ population living within a six-mile radius."

14 So, my question is that, in the FSA, what were the
15 assumptions used regarding farmworkers and, for example,
16 students present?

17 MS. WILLIS: Objection. Does this go to Public
18 Outreach because this is what the witness is here for? We've
19 already had our EJ panel testify yesterday that they did
20 include farmworkers in their analysis. But if this is
21 regarding outreach, that would be an appropriate question for
22 this witness. That's why he's here in this panel, because he
23 did not -- he is not the EJ expert; that was yesterday.

24 DR. CHANG: It is actually a follow-up question to
25 my question regarding how outreach was done to farmworkers.

1 MS. WILLIS: I didn't hear an outreach question in
2 that last question.

3 HEARING OFFICER KRAMER: Please try to restate your
4 question.

5 DR. CHANG: Okay.

6 So, in the -- as you were conducting and preparing
7 to do outreach to farmworkers, what were the assumptions
8 about the number of farmworkers that you were anticipated
9 needing to be able to reach? Or that you ideally, in the
10 ideal world, would be able to reach in a successful outreach?

11 MR. PITTARD: I didn't have a quantitative number.
12 As the Assistant Public Adviser, I felt that, our office
13 felt, that reaching out through the groups that help
14 represent farmworkers would be the most effective way to
15 reach them.

16 DR. CHANG: And are you aware of the challenges that
17 even groups such as MICOP (phonetic) and CAUSE face in
18 reaching this particular population of farmworkers who are
19 often undocumented --

20 MR. PITTARD: Yes, I can imagine that.

21 DR. CHANG: -- often monolingual Spanish speaking --

22 MR. PITTARD: Yes. I can imagine that, yes.

23 DR. CHANG: -- often isolated in many other regards?

24 I notice that in the records that you provided me,
25 when I requested the property the augmented property owners'

1 list, thank you again for providing me that list, and I
2 noticed that there was a section where there were several
3 returned Notices. That is -- what does that mean by
4 "returned," that it was returned? Does that mean that it was
5 returned by the U.S. Postal Office?

6 MR. PITTARD: Correct.

7 DR. CHANG: Okay. Great.

8 And I notice that -- hold on. Let me find that. You
9 provided for me a letter dated August 21st of 2015. "Dear
10 Interested Party," and then you noticed people that, "The CEC
11 would like to inform you that the NRG Oxnard NRG Energy
12 Center has submitted an application," and then there was a
13 Public Informational Hearing on the site visit -- at the site
14 visit on Thursday, August 27th.

15 So, that letter is dated August 21st, and the site
16 visit in question is dated August 27th, in about six days. Is
17 that the regular advanced notice time required for such a
18 Notice?

19 MR. PITTARD: Okay. I'm not following you. So, could
20 we start with what --

21 DR. CHANG: Oh, I'm sorry. Okay.

22 MR. PITTARD: -- the first --

23 DR. CHANG: I'm sorry. Yes. Let me back up. So, on
24 August --

25 MS. WILLIS: Yes, just for one moment. What -- I'm

1 sorry, what are you reading from? I kind of got lost, too,
2 along the way.

3 DR. CHANG: Yes. Okay.

4 During the January 10th Workshop, I had requested
5 from -- actually during the -- I was participating --

6 MS. WILLIS: Correct. I was there.

7 DR. CHANG: -- by remote. And I had asked for the
8 augmented -- okay. I was -- I had asked for the CEC -- I'm
9 sorry.

10 So, Mr. Pittard, in the Environmental Justice
11 section of the FSA report said that regulations -- on Page
12 4.5-8, it states that "CEC regulations require staff to
13 notice at a minimum property owners within 1,000 feet of a
14 project and 500 feet of the linear facility. This was done
15 for the project and the property owners' list has been
16 augmented to include the surrounding political jurisdictions,
17 school districts, state and federal agencies, and interest
18 groups."

19 At that time while I was participating
20 telephonically, I asked for this augmented property owners'
21 list, and Mr. Pittard was kind enough to provide that upon a
22 reminder. And, so, what I received from him was dated -- and
23 I just want to note that I did ask that that be provided to
24 the whole -- the entire document and I'm not -- docketed all
25 parties, and I'm not sure whether that was done. I do know

1 that it was sent to me.

2 And the letter is dated August 21st of 2015. "Dear
3 Interested Party..." I don't know if you want me to read the
4 whole --

5 MS. WILLIS: I'm sorry. What letter. I guess what my
6 confusion is, is what letter are you reading from? I --

7 DR. CHANG: Okay.

8 MS. WILLIS: We don't have that in front of us.

9 DR. CHANG: It is from the California Energy
10 Commission. It's dated August 21st --

11 MR. PITTARD: What year? What year?

12 DR. CHANG: It is a Public Notice of -- oh, I'm
13 sorry, of 2015.

14 MR. PITTARD: Okay. Thank you.

15 DR. CHANG: I'm sorry.

16 And it is signed by Alana Matthews, Public Adviser.
17 And there -- it seems to be that there's one Dear Interested
18 Party, one Dear Elected Official, and then there is attached
19 to that a number of individuals and agencies that that was
20 addressed to.

21 MS. WILLIS: Okay. Just a moment, Dr. Chang. So,
22 that was from our Public Adviser's Office. I'm not sure if
23 Mr. Pittard was involved in that. If he was, then he could
24 answer the question.

25 DR. CHANG: Sure.

1 MS. WILLIS: Otherwise it would be a question for a
2 Public Adviser.

3 DR. CHANG: Okay. Great. But this is the document
4 that was provided to me upon my request during the Public --

5 MR. PITTARD: Right.

6 DR. CHANG: What was that? That was the Prehearing
7 Conference? No, it wasn't.

8 MS. WILLIS: I think it was the --

9 DR. CHANG: It was the Public Workshop on
10 January 10th.

11 MS. WILLIS: It was the Final Staff Assessment --

12 MR. PITTARD: Final Staff Assessment?

13 MS. WILLIS: -- Public Workshop.

14 And I'm not disputing that you received it, I'm
15 just disputing whether or not Mr. Pittard can answer any
16 substantive questions about the document. If he provided it
17 to you, he was just compiling information as part of a Public
18 Record Act request.

19 DR. CHANG: Okay. Thank you.

20 And, so, it was dated August 21st, and it was for
21 Notice for a Site Visit on August 27th, Thursday,
22 August 27th. So, I assume that included some weekend as well.

23 Based on your role both as Project Manager and as
24 former Public Adviser in this proceeding and as the person
25 who answered my request, can you tell me is August 21st to

1 August 27th, is that the required time of notice?

2 MR. PITTARD: I'm still confused.

3 MS. WILLIS: Dr. Chang, I'm going to have to --

4 I'm sorry, Mr. Pittard.

5 I'm going to have to object. The site visit and the
6 Informational Hearing was an event put on by the Committee.
7 There would be a separate Notice for that. I'm not sure, once
8 again, what this particular letter is referring to, but a
9 Notice for the actual Informational Hearing and site visit
10 would have gone out ten days prior, at least ten days prior
11 to that.

12 MR. PITTARD: Yeah. What I think you're looking at
13 is an informational letter that the Public Adviser's Office
14 puts out as an opposed to a Notice. It's additional
15 information beyond the Notice that the Public Adviser sends
16 to persons they think may be interested. I'm kind of reverse
17 engineering that that's what you're looking at.

18 DR. CHANG: I see.

19 HEARING OFFICER KRAMER: Do you think that would
20 have been filed in the docket?

21 MR. PITTARD: No, I don't believe that is filed in
22 the docket, just to the best of my recollection.

23 DR. CHANG: I also believe that, and anyone can
24 correct me on this, on that August 27th, I do believe that
25 that was the first time that I appeared in these proceedings.

1 And the August 27th site visit I think was connected to a
2 hearing here or a workshop or something.

3 MR. PITTARD: Uh-huh.

4 DR. CHANG: It was. "Designated Committee and Staff
5 of the Energy Commission will hold a Public Informational
6 Hearing and site visit on Thursday, August 27th."

7 Now, was that -- I believe it was a public event
8 and it was -- was that the time that there were buses
9 provided to the site and all of that? It was connected with
10 an Informational Hearing here.

11 MR. PITTARD: You're talking about August 27, 2016?

12 DR. CHANG: 2015.

13 MS. WILLIS: Once again, Mr. Kramer, I'm going to
14 have to object because the questioning is about an event from
15 the Committee, not from the staff. And the staff -- a Notice
16 from the Committee would be different than the Notice that
17 Mr. Pittard or his predecessor would have issued. So,
18 Mr. Pittard is not the correct witness to noticing of that
19 event.

20 HEARING OFFICER KRAMER: Well, we're not sure what
21 the nature of her question is yet because we -- we can't seem
22 to establish in our minds what the document was.

23 Dr. Chang, I've just pulled up the docket. Let me
24 put it on the screen. And it does appear that both Spanish
25 and English notices of the -- of the Informational Hearing

1 were filed in the docket on July 31st, which is not quite a
2 month ahead of the Informational Hearing. Hold on. Let me put
3 those on the screen.

4 So, this might have been some other additional
5 outreach. But if you're asking about formal notice of those
6 meetings, that was given by the Committee on the date I just
7 mentioned.

8 DR. CHANG: Okay. Great. Thank you. I appreciate
9 that.

10 HEARING OFFICER KRAMER: They're up there now.

11 Could you make it full screen, Ari?

12 So, I'll sustain the objection otherwise because
13 Mr. -- unless we can establish that Mr. Pittard -- Pittard,
14 I'm sorry --

15 MR. PITTARD: I answer to both.

16 HEARING OFFICER KRAMER: You haven't corrected me
17 for quite a while and I've been doing that for a long time.

18 MR. PITTARD: I'm starting to enjoy it.

19 (Laughter.)

20 HEARING OFFICER KRAMER: Okay. Okay.

21 Dr. Chang, go ahead.

22 DR. CHANG: Okay. While we're on that, my name is
23 consistently misspelled and mispronounced as "Change." So --

24 MR. PITTARD: I wasn't going to bring --

25 DR. CHANG: -- I've sort of embraced it.

1 MR. PITTARD: I wasn't going to bring that up. I had
2 noticed.

3 DR. CHANG: I've embraced it as someone who does
4 indeed try to bring about social change. So, yes. Okay.

5 So just to continue on that -- I understand your
6 objections. Just to continue on that, the list that you
7 kindly provided to me included several addresses where the
8 item was returned, including the Ventura College East Campus.
9 And I guess my concern is, or I would like to ask you,
10 what efforts were made to do outreach to students in the
11 area?

12 MR. PITTARD: I'm not aware of anything targeted
13 specifically at students.

14 DR. CHANG: Okay. And what would be your estimate of
15 the number of students who are directly impacted or are in
16 that region in question?

17 MR. PITTARD: I have no idea.

18 DR. CHANG: Okay. Are you aware that it would be
19 over 28,000 students who spend approximately seven to ten
20 hours per day on the campus, five days a week?

21 MR. PITTARD: I am now.

22 DR. CHANG: Okay. Great. Thank you so much. I
23 appreciate your efforts. Thank you.

24 MR. PITTARD: Thank you.

25 HEARING OFFICER KRAMER: Which campus is this again?

1 DR. CHANG: This is -- that was an estimate that was
2 for, just by example, for the Oxnard High School directly
3 adjacent to the fields.

4 HEARING OFFICER KRAMER: 28,000 students?

5 DR. CHANG: Over 28,000 students who spend
6 approximately seven to ten hours a day --

7 HEARING OFFICER KRAMER: At the high school?

8 MS. FOLK: It must be 2,800.

9 HEARING OFFICER KRAMER: That can't be right.

10 MS. FOLK: It must be 2,800.

11 DR. CHANG: Oh, I'm sorry. It must. It must be
12 28 -- oh, I'm sorry. Yes, my comma is misplaced. 28,000 does
13 sound a bit large. So, 2,800. I'm sorry.

14 So approximately 2,800 students. For the record,
15 approximately equal to the number of farmworkers; there's
16 about 3,000 in the area.

17 MS. FOLK: And can I actually ask one last question
18 of Mr. Pittard?

19 HEARING OFFICER KRAMER: I'm sorry, Dr. Chang, you
20 were finished?

21 MS. FOLK: I thought she was --

22 DR. CHANG: Yes, I have, thank you.

23 HEARING OFFICER KRAMER: Ms. Folk, one last.

24 MS. FOLK: So, Mr. Pittard, earlier you testified
25 that the State Coastal Conservancy was on the mailing list

1 for the project?

2 MR. PITTARD: Correct.

3 MS. FOLK: Is there any way to confirm that on the
4 docket?

5 MR. PITTARD: No, there's not.

6 MS. FOLK: Okay. It says -- are they on the list,
7 what's referred to as the Service List 7507?

8 MR. PITTARD: They are not on the Service List, they
9 are on the mailing list.

10 MS. FOLK: Okay.

11 MR. PITTARD: And there are two entire -- as I
12 recall just seeing in my mind, two contacts on that list.

13 MS. FOLK: Okay. Do you remember who they are?

14 MR. PITTARD: I do not.

15 MS. FOLK: Okay. Thank you.

16 DR. CHANG: I'm sorry. I do have one follow-up
17 question to that, which is, it was my understanding during
18 the January 10th Workshop that when I requested those
19 documents that they would be actually posted to the entire
20 list of parties. And I don't -- this is just a question. I
21 don't know whether that occurred or not. I know that I
22 received directly from you in an e-mail these documents.

23 MR. PITTARD: I did not do that. I responded
24 directly to you.

25 DR. CHANG: Okay. Is that something that's -- that

1 can be requested at some point?

2 MR. PITTARD: That can be docketed.

3 HEARING OFFICER KRAMER: The Committee won't do it,
4 but a party can.

5 MS. WILLIS: Dr. Chang's request was considered a
6 Public Record Act request and so we provided her the records.
7 If she would like to docket them, then she's free to do so.

8 DR. CHANG: I see. Okay. All right. With a little
9 bit of technical assistance, I could do that.

10 MR. PITTARD: We can help you with that.

11 DR. CHANG: Thank you.

12 HEARING OFFICER KRAMER: All right.

13 MS. WILLIS: I do have some redirect.

14 HEARING OFFICER KRAMER: Go ahead, Ms. Willis.

15 MS. WILLIS: Just because some of the questions and
16 answers were a little confusing, just to be clear, the Notice
17 for the January 10th Final Staff Assessment Workshop was
18 published in English and Spanish on December 29th; is that
19 correct?

20 MR. PITTARD: That's correct.

21 MS. WILLIS: Okay. And, in your opinion, does that
22 exceed the noticing requirements?

23 MR. PITTARD: Yes, it does.

24 MS. WILLIS: And you were in attendance at the
25 Preliminary Staff Assessment Workshop on July 21st; is that

1 correct?

2 MR. PITTARD: That's correct.

3 MS. WILLIS: And can you estimate, and I know it's
4 been a long time, about how many people were in attendance of
5 that workshop?

6 MR. PITTARD: I asked one of the staff who works
7 with the facility what they estimated, and so their response
8 to me was they stopped estimating their counting at around
9 350.

10 MS. WILLIS: 350 --

11 MR. PITTARD: Correct.

12 MS. WILLIS: -- is that right?

13 And, at that time, were there representatives from
14 farmworkers or CAUSE or other communities such as Dr. Chang
15 was discussing?

16 MR. PITTARD: Yeah, I do recall specifically that
17 CAUSE was in attendance. Whether --

18 MS. WILLIS: I'm sorry. Can you estimate about how
19 many people came or -- I know this is a longtime --

20 MR. PITTARD: Well, they were wearing T-shirts,
21 which helped. So, there were large numbers in, I believe,
22 blue T-shirts. I would say 20 to 30.

23 MS. WILLIS: And, also, the same question for the
24 January 10th Final Staff Assessment Workshop, do you recall
25 that workshop?

1 MR. PITTARD: Yes, vividly.

2 MS. WILLIS: And were there -- how many -- it's hard
3 to estimate how many people were there, but if you can.

4 MR. PITTARD: If that 350 number is a reasonable
5 estimate for July 21st, it was in that same -- in that same
6 range.

7 MS. WILLIS: So about 350 people were in attendance?

8 MR. PITTARD: Yeah, maybe fewer actually than the
9 PSA Workshop.

10 MS. WILLIS: And, to your recollection, were there
11 members of CAUSE or farmworkers in attendance at that
12 meeting?

13 MR. PITTARD: Yeah, both members of CAUSE and
14 Mixteco spoke and -- during the Public Comment period.

15 MS. WILLIS: And during the January 10th Workshop,
16 was there other activity that was precipitated by CAUSE or
17 other workers?

18 MR. PITTARD: If you're asking did the meeting end
19 prematurely, it did.

20 MS. WILLIS: And why was that?

21 MR. PITTARD: There was a protest and the podium was
22 surrounded and cutting off the ability for other persons to
23 speak.

24 MS. WILLIS: In your work as both in the Public
25 Adviser's Office and as a Project Manager, can you describe a

1 little bit how that relationship is for outreach to the
2 public? In other words, is the Project Manager responsible
3 for all outreach to the public on any power plant project?

4 MR. PITTARD: No, it's a cooperative effort.

5 MS. WILLIS: And the Public Adviser is -- and how is
6 she involved in the process?

7 MR. PITTARD: The Public Adviser's Office reaches
8 out to elected officials, reaches out to certain -- in this
9 case, the Public Adviser's Office contacted the City of
10 Oxnard, who is not an intervener at the early stages of this,
11 and we spoke to their principal Planner, Chris Williamson,
12 who provided us with contacts in the community, which saved
13 us a lot of shoe leather.

14 MS. WILLIS: And you mentioned, I believe in your
15 testimony, that there was a Notice of the Application for
16 Certification published in English and Spanish in a newspaper
17 - in newspapers; is that correct?

18 MR. PITTARD: That's correct. The Energy Commission
19 Project Manager at that time published the Notice of Receipt
20 in English and Spanish in the local paper.

21 MS. WILLIS: And one more question is, are school
22 districts on the list of -- the mailing list for this
23 project?

24 MR. PITTARD: Yes. And, also, part of the Public
25 Adviser's Office outreach.

1 MS. WILLIS: Great. Thank you.

2 HEARING OFFICER KRAMER: Okay. I think that takes
3 care of this topic. Thank you all.

4 We're going to take a break. And when we come back
5 in ten minutes, we are going to deal with Project
6 Alternatives Part 2 regarding alternative site locations.

7 And I see that our folks from the Navy have joined
8 us, so we are going to combine Alternatives Part 3, which is
9 actually on today's agenda, with Alternatives Part 2 so we
10 can both, you know, get that discussion completed and also
11 allow them to go back to their other duties.

12 MS. LAZEROW: Excuse me. Mr. Kramer, CEJA was hoping
13 to ask whether staff could make its air quality witness
14 available for Environmental Justice follow-up from yesterday.
15 Available by phone would be fine.

16 MS. WILLIS: This is Kerry Willis, staff counsel. We
17 don't have the Environmental Justice -- the Air Quality Panel
18 here. We do have Mr. Layton that would be willing to answer
19 any questions. However, it is not Mr. Bemis or any of the
20 other panel that testified, nor is the Air District here
21 today.

22 MS. LAZEROW: If he's familiar with the
23 Environmental Justice aspects of staff's Air Quality
24 testimony, that would be acceptable. Thank you.

25 HEARING OFFICER KRAMER: Okay. We'll see. I'm not

1 sure when we'll slot that in. Let me think about that during
2 the break or as the day progresses. It's not going to be our
3 highest priority to fit that in since we had a long EJ
4 session yesterday. And I think one thing we have to do today
5 is try to make sure we get our biological witnesses taken
6 care of.

7 At any rate, let's take a ten-minute break, and
8 we'll be back. It looks like lunch today is probably going to
9 be closer to 1:00 or maybe even slightly after that --

10 (Off the record at 11:39 a.m.)

11 (On the record at 11:54 a.m.)

12 COMMISSIONER SCOTT: Okay. She's ready to go, so we
13 will begin again. I will turn this back over to our Hearing
14 Officer Paul Kramer.

15 HEARING OFFICER KRAMER: Okay. So, we're beginning
16 with Project Alternatives Parts 2 and 3.

17 And just to remind you folks that we are, as we
18 said at the close of -- right before Public Comment
19 yesterday, we're going to try -- our goal today is to get
20 through to the end of everything that's on the topic
21 spreadsheet for Thursday.

22 So, we're expecting to be here well into the
23 evening if necessary. Surprise us, please. But, then, for
24 those of you who might be here to make a public comment, as
25 you know, we said that would come at the end of the topics,

1 just be warned that it might be later than you were thinking.
2 If you were thinking it was probably going to be 5:30, I
3 would not count on that at this point. Much likely to be
4 later.

5 So, let's begin then with the Applicant.

6 MR. CARROLL: Thank you.

7 Applicant has a panel on Alternatives Part 2.

8 Before I call the panel, one of the panelists was
9 Tricia Winterbauer, who has submitted prepared testimony. We
10 had intended to present her for additional live testimony.
11 She is dealing with some personal issues, and she has juggled
12 them as best she could with the trailing schedule. But, at
13 the moment, she is not available. And, so, we would ask, if
14 there are no objections from the Committee or the
15 party -- and she was going to participate by phone -- if
16 there are no objections from the Committee or the other
17 parties we would not present any additional testimony by
18 Tricia and let her testimony stand on her prepared document.
19 And the area of her testimony was Soil and Groundwater
20 Contamination related to alternative sites.

21 HEARING OFFICER KRAMER: Does any party wish to ask
22 any question of Ms. Winterbauer?

23 (No audible response.)

24 HEARING OFFICER KRAMER: Everybody is shaking their
25 heads no. So, okay. Thank you, Mr. Carroll. Go ahead.

1 MR. CARROLL: Okay. At this time, Applicant calls
2 Julie Love, Mark Hale, Jeremy Hollins, Tim Murphy, Gary
3 Rubenstein, and Vincent Menta.

4 MS. FOLK: May I ask a question about the panel?

5 MR. CARROLL: Yes.

6 MS. WILLIS: Do you intend to call Mr. Theaker?

7 MR. CARROLL: Yes. Thank you. And Mr. Theaker.

8 HEARING OFFICER KRAMER: Who should probably bring
9 his own chair.

10 MR. CARROLL: It's funny he didn't jump up.

11 HEARING OFFICER KRAMER: Okay. Almost all of you,
12 with the exception of two, need to be sworn in. So, if you
13 would raise your right hand.

14 Do you swear or affirm that the testimony you are
15 about to give in this proceeding is the truth to the best of
16 your ability?

17 (Collective "I do.")

18 MR. CARROLL: Thank you.

19 We're going to start with Ms. Love.

20 Ms. Love, can you please state your name and spell
21 your name for the reporter, identity your current employer
22 and your current position?

23 MS. LOVE: Hello. My name is Julie love. J-U-L-I-E,
24 L-O-V-E. I work for AECOM as a Senior Restoration Ecologist
25 and Biologist.

1 MR. CARROLL: And what experience do you have that's
2 relevant to today's proceeding?

3 MS. LOVE: I have over 15 years of experience
4 managing projects and working on projects that involve the
5 evaluation of biological resources, specifically conducting
6 wetland delineations and jurisdictional delineations as well
7 as botanical surveys and sensitive wildlife species surveys
8 as well.

9 MR. CARROLL: Thank you.

10 And do you have in front of you documents marked
11 for identification initially as Applicant's Exhibit 1126, now
12 marked as Applicant's Exhibit Number 1121, entitled, "Expert
13 Declaration of Julie Love Regarding Alternative
14 Sites - Biological Resources"?

15 MS. LOVE: Yes.

16 MR. CARROLL: Was that testimony prepared by you or
17 under your supervision?

18 MS. LOVE: Yes.

19 MR. CARROLL: Do you have any changes or corrections
20 to your prepared testimony?

21 MS. LOVE: No, I do not.

22 MR. CARROLL: What is the nature of the analysis
23 addressed in your prepared testimony?

24 MS. LOVE: I conducted a desktop literature review
25 of the biological resources for the Ormond Beach and Del

1 Norte alternative sites.

2 MR. CARROLL: Let's begin with the Ormond Beach Area
3 Off-Site Alternative. Are you familiar with the CEC staff's
4 conclusions set forth in the FSA at page 4.2-6 that this
5 alternative site is environmentally superior to the proposed
6 site based in part on the proposed avoidance of impacts to
7 the California Coastal Commission jurisdictional wetlands?

8 MS. LOVE: Yes.

9 MR. CARROLL: Do you agree with that conclusion?

10 MS. LOVE: No, I do not.

11 MR. CARROLL: Can you please explain why not?

12 MS. LOVE: First, I do not think that the 2.03 acres
13 of Woolly Seablite Scrub and ice plant mats on the project
14 site constitute a One Parameter Coastal Commission wetland. I
15 believe we're going to get into that issue a little bit
16 more --

17 MS. WILLIS: I'm going to object to this line of
18 questioning because this is related to the project site and
19 not alternatives.

20 HEARING OFFICER KRAMER: Well, she just said she was
21 going to get into the details later, so she doesn't sound
22 like she's intending to -- she's simply describing the
23 premise that underlies her opinion about the alternative
24 site.

25 So, overruled.

1 MR. CARROLL: Please continue, Ms. Love. And let's
2 back up, because I lost track of where you were.

3 So, I believe that you indicated that you did not
4 agree with staff's conclusion that the Ormond Beach Off-Site
5 Alternative was superior to the project site with respect to
6 the wetland issue. You indicated that you do not agree with
7 that, and I asked you why not.

8 MS. LOVE: Yes. So, the reason I don't agree with
9 that is because the 2.03 acres of woolly Seablite scrub and
10 ice plant mats on the project site, I do not believe that
11 they constitute a One Parameter Coastal Commission wetland.
12 And, as I mentioned, we're going to talk about that later
13 today.

14 Furthermore, if you apply the One Parameter Coastal
15 Commission definition to the Ormond Beach Alternative Site,
16 there is a possibility of there being a One Parameter wetland
17 there.

18 MR. CARROLL: And can you please explain what you're
19 referring to with respect to the Ormond Beach Alternative
20 Site?

21 MS. LOVE: Yes. So, I conducted a desktop analysis.
22 And, during that, we determined that there are NRCS, or U.S.
23 Department of Agricultural, mapped partially hydric soils
24 present on the Ormond Beach Alternative Site. These specific
25 soils on site are typically associated with tidal flats. So,

1 wetland soils are more likely to be present in soils of these
2 types and with these hydric ratings. So, even though the
3 current use of the site may impede the presence or the
4 persistence of wetland soils, there is a potential for them
5 to be on site.

6 And, then, although, the site is located outside
7 the Coastal Zone, if one were to apply the One Parameter
8 Coastal Commission definition to the Ormond Beach site, there
9 is potential that there may be One Parameter wetlands due to
10 the possibility of hydric soils on the site.

11 MR. CARROLL: What else did your analysis reveal
12 about the Ormond Beach area off-site alternative?

13 MS. LOVE: We also looked at U.S. Fish and Wildlife
14 and U.S. Geological-surveyed mapped wetland features for the
15 Ormond Beach Alternative Site. There are potential wetland
16 features there and other potentially jurisdictional water
17 bodies in the immediate vicinity of the alternative site,
18 specifically they're mapped freshwater emergent wetland and
19 canals and ditches.

20 These features have the potential to be
21 jurisdictional under the U.S. Army Corps. Of Engineers, the
22 California Department of Fish and Wildlife, as well as the
23 Regional Water Quality Control Board.

24 Additionally, we also looked at City of Oxnard Map
25 Environmentally Sensitive Habitat Areas, or ESHAs, in the

1 immediate project vicinity. Those are also located next to
2 the Ormond Beach Alternative Site. Specifically, there is
3 salt marsh/coastal saltwater marsh and flats. And both of
4 those ESHAs are associated with the Ormond Beach wetlands to
5 the southwest of the site.

6 There are also City of Oxnard Resource Protection
7 Zones in the immediate vicinity. Those include the U.S.G.S
8 mapped wetland features I mentioned earlier to the west and
9 also agricultural areas that are located immediately to the
10 south.

11 There's also one California native -- or, I'm
12 sorry -- California Natural Diversity Database occurrence
13 within the immediate project vicinity. That's a Belding's
14 Savannah Sparrow, which is associated with marshes. It is
15 a species that is state listed endangered.

16 And, also, the Ormond Beach site is adjacent to
17 over 500 acres of land that is currently proposed for
18 inclusion in the Ormond Beach Wetlands Restoration Project.

19 MR. CARROLL: Given the information that you just
20 summarized, what's your opinion regarding the superiority of
21 the Ormond Beach off-site alternative relative to the
22 proposed project site with respect to biological resources?

23 MS. LOVE: So my opinion, the Ormond Beach
24 Alternative Site is not environmentally superior to the
25 proposed project site due to the biological resources.

1 So, development of the project site at its present
2 location -- I'm sorry. Development of the project at this
3 site, so the Ormond Beach Alternative Site, presents an equal
4 or even greater likelihood of adverse effects to biological
5 resources in comparison to development at the proposed
6 project site.

7 MR. CARROLL: Thank you.

8 Let's move now to the Del Norte/Fifth Street
9 off-site alternative. What did your analysis reveal about
10 that alternative site?

11 MS. LOVE: So, similarly, with the Del Norte site,
12 there are U.S.D.A. or NRCS mapped partially hydric soils
13 located on the site. These specific soils are typically
14 associated with tidal flatland forms. So, wetland soils are
15 more likely to be present in soils of these types and with
16 these hydric ratings. Although similar to the other site, if
17 the current site conditions there at Del Norte may impede the
18 presence or the persistence of wetland soils at that site.
19 Although it's very unlikely there is potential for wetland
20 vegetation in the southern portion of the Del Norte Site.

21 And, so, one justification that the Energy
22 Commission used for considering alternative sites to avoid
23 the impacts, the 2.03 acres of one parameter coastal wetlands
24 at the proposed project site, they applied this rule
25 to -- I'm sorry -- the project site. But if we were to apply

1 the same rule or definition to the Del Norte site even though
2 it is outside the Coastal Zone, there is potential for one
3 parameter wetlands to be present due the possibility of
4 hydric soils and wetland vegetation.

5 MR. CARROLL: Did your analysis reveal any other
6 findings with respect to the Del Norte/Fifth Street site?

7 MS. LOVE: Yes. So, there is several U.S. Fish and
8 Wildlife and U.S.G.S. mapped wetland features in the
9 immediate project vicinity as well as potentially
10 jurisdictional water bodies. So, those include freshwater
11 emergent wetlands and canals and ditches. And these features
12 also have the potential to be jurisdictional under the Army
13 Corps. Of Engineers, the California Department of Fish and
14 Wildlife, and the Regional Water Quality Control Board. And
15 there's also one occurrence of a CNDDDB-sensitive species,
16 which is the California Horned Lark, which is a CDFW watch
17 list species.

18 MR. CARROLL: Given the information that you've just
19 summarized, what is your opinion regarding the superiority of
20 the Del Norte/Fifth Street Alternative Site relative to the
21 project site with respect to biological resources?

22 MS. LOVE: So it's my opinion that the Del Norte
23 Alternative Site is not environmentally superior to the
24 proposed project site in respect to biological resources.

25 Development of the project at this alternative site

1 presents an equal likelihood of adverse impacts to biological
2 resources as development of the proposed location project
3 site.

4 MR. CARROLL: And does that complete your direct
5 testimony today?

6 MS. LOVE: Yes, it does.

7 MR. CARROLL: Mr. Kramer, do you want to entertain
8 cross for each witness as they complete their direct or wait
9 until the end?

10 HEARING OFFICER KRAMER: I think it would be easier
11 if we just get your group on and then we can go around once
12 or twice, rather than four or five times.

13 MR. CARROLL: Okay. At this point then, we're going
14 to turn to Mr. Hale.

15 Mr. Hale, can you please state and spell your name
16 for the record, identity your current employer and your
17 current position.

18 MR. HALE: Mark Hale, M-A-R-K, H-A-L-E. And I'm a
19 Senior Project Archeologist with AECOM.

20 MR. CARROLL: And what experience do you have
21 relevant to today's proceeding?

22 MR. HALE: I have over 30 years of experience in
23 identifying and evaluating archeological resources.

24 MR. CARROLL: And do you have in front of you what
25 has -- what was initially marked as Applicant's Exhibit

1 Number 1105, now marked as Applicant's Exhibit Number 1101,
2 "Expert Declaration of Mark Hale Regarding Cultural
3 Resources, Archeology," and Applicant's Exhibit
4 Number -- initially marked Applicant's Exhibit Number 1123,
5 now identified as Applicant's Exhibit Number 1121, or a
6 portion thereof, which is the "Expert Declaration of Mark
7 Hale Regarding Alternative Sites - Archeological Resources,"
8 and the exhibits identified in each of those declarations?

9 MR. HALE: Yes.

10 MR. CARROLL: Was that written testimony prepared by
11 you or under your supervision?

12 MR. HALE: Yes.

13 MR. CARROLL: Do you have any changes or corrections
14 to your prepared testimony?

15 MR. HALE: No, I do not.

16 MR. CARROLL: Let's discuss your review and analysis
17 of the two alternative sites.

18 Did your analysis evaluate whether the potential
19 for development of the project at the alternative sites might
20 result in significant impacts to archeological resources?

21 MR. HALE: Yes, I did.

22 MR. CARROLL: And are you familiar with CEC staff's
23 conclusion regarding the Del Norte/Fifth Street site as
24 contained in the FSA?

25 MR. HALE: Yes. I reviewed the FSA, and the findings

1 of the staff was that there was an indeterminate, if any,
2 surficial or buried archeological resources or ethnographic
3 resources could be impacted by implementation of the project
4 at the Del Norte site.

5 MR. CARROLL: And, just to clarify, was that
6 indeterminate conclusion based on lack of available
7 information at the time the FSA was produced? Is that your
8 understanding of staff's conclusion?

9 MR. HALE: Yes, it is.

10 MR. CARROLL: Do you agree with CEC's reasoning
11 underlying that conclusion?

12 MR. HALE: I do not agree with the finding.

13 MR. CARROLL: And could you please explain why you
14 do not agree with the finding?

15 MR. HALE: We reviewed a record search for the Del
16 Norte site at the Information Center for the area, which is
17 the Central Coast Information Center, and we found out that
18 there are 15 previously recorded archeological resources, all
19 prehistoric, within a project area of analysis that we
20 defined following CEC guidelines, and that included the
21 project site and any potential linears that would be required
22 with choice of that site. And the linears were outlined by us
23 to connect to the closest existing linears, whether
24 transmission line or gas line or the water line.

25 And, so, we conducted a record search of that area.

1 And, as I said previously, we identified that there are 15
2 prehistoric archeological resources within that area.

3 Of those, eight are actually archeological sites,
4 seven are isolated finds, six of the identified archeological
5 sites are adjacent or within the actual footprint of the
6 project, inclusive of linears, and the remainder of the
7 resources are within 500 feet of the alignment.

8 But when you take into account construction rows
9 and the CEC-mandated buffers, they would either fall near or
10 within the PAA that the CEC requires us to define.

11 MR. CARROLL: And given the information that you've
12 just summarized, what is your opinion regarding the potential
13 impact on archeological resources of development at the Del
14 Norte/Fifth Street Alternative Site?

15 MR. HALE: Well, in my expert opinion, based on the
16 information that we pulled up from the record search, the use
17 of the Del Norte site would have a greater likelihood of
18 adverse impacts to archeological resources as compared to
19 project implementation at the P3 site.

20 MR. CARROLL: And were there any potential impacts
21 identified in connection with the proposed Puente site?

22 MR. HALE: No, there were no impacts identified.

23 MR. CARROLL: Thank you.

24 Moving to the Ormond Beach Area Off-Site
25 Alternative, are you also familiar with the CEC's staff

1 conclusion with respect to that site with respect to
2 archeological resources as set forth in the FSA?

3 MR. HALE: Yes, I am.

4 MR. CARROLL: And what was the staff's conclusion in
5 the FSA?

6 MR. HALE: Staff determined that the Ormond Beach
7 site would have an indeterminate likelihood of having
8 surficial or buried archeological resources or ethnographic
9 resources based on a record search that they had completed
10 for that particular alternative. And, therefore, it would
11 have a similar potential impact of the proposed project site
12 even though they had indeterminate determination.

13 MR. CARROLL: And do you agree with the CEC staff's
14 conclusion with respect to the Ormond Beach Alternative Site?

15 MR. HALE: No, I do not.

16 MR. CARROLL: And on what did you base your
17 disagreement?

18 MR. HALE: We do not have the record search in hand
19 that was completed by the CEC staff, but it did not include
20 the assessment of any requisite linears and, therefore, it's
21 indeterminate whether or not we have resources along those
22 alignments.

23 MR. CARROLL: Thank you.

24 So, your testimony is that you disagree with
25 staff's conclusion that the potential is equivalent based on

1 the fact that you do not know whether or not there are
2 resources along the linears that are as yet to be determined?

3 MR. HALE: Correct. It's indeterminate whether or
4 not the linears contain resources.

5 MR. CARROLL: Thank you.

6 Given that information, what is your opinion
7 regarding the suitability of the Ormond Beach Area Off-Site
8 Alternative with respect to archeological resources and,
9 again, relative to the proposed project site?

10 MR. HALE: Given that at the proposed project site
11 we have no impact and everything has been surveyed, the
12 indeterminate nature of the Ormond linears, given it's an
13 unknown, presents a greater likelihood of adverse impacts to
14 archeological resources occurring.

15 MR. CARROLL: And does that conclude your testimony
16 on this panel today?

17 MR. HALE: Yes, it does.

18 MR. CARROLL: Thank you.

19 Applicant now calls Mr. Hollins.

20 Mr. Hollins, can you please state and spell your
21 name for the record, identify your current employer and your
22 current position?

23 MR. HOLLINS: My name is Jeremy Hollins.

24 J-E-R-E-M-Y, H-O-L-L-I-N-S. I am employed by AECOM. I am a
25 Senior Architectural Historian and the Architectural History

1 Team Lead.

2 MR. CARROLL: And do you have in front of you the
3 document initially marked as Applicant's Exhibit Number 1106,
4 now marked as 1101, and the document initially marked as
5 Applicant's Exhibit Number 1124, now marked as 1121, both of
6 which are entitled, "Expert Declaration of Jeremy Hollins
7 Regarding Alternative Sites - Historic Architectural
8 Resources"?

9 MR. HOLLINS: Yes.

10 MR. CARROLL: And was that prepared testimony -- I'm
11 sorry. Was that written testimony prepared by you or under
12 your supervision?

13 MR. HOLLINS: Yes.

14 MR. CARROLL: And do you have any changes to your
15 prepared testimony today?

16 MR. HOLLINS: No.

17 MR. CARROLL: Turning first to the Ormond Beach
18 Off-Site Alternative, can you please describe your findings
19 or summarize your findings based on your evaluation of that
20 alternative site?

21 MR. HOLLINS: Yes. The Ormond Beach site alternative
22 has a portion of a spur line, spur railroad line, that is
23 connected to the Ventura County Railway.

24 The Ventura County Railway is a resource that has
25 been determined eligible for listing in the National Register

1 of Historic Places. That was done in 2009 by the Bureau of
2 Reclamation and the State Historic Preservation Office.

3 It is also a listed California Register of
4 Historical Resources. And it is also a listed Ventura County
5 Historical Resource as well.

6 The spur line itself, based on our research as well
7 as research done by CEC staff, may date to 1966 or 1967,
8 associated with a Kaiser Aluminum facility or the Reichhold
9 Chemical Company, both of which had owned property in or near
10 those parcels, and may even date to an even earlier period
11 from the 1920s based on observations made by CEC staff.

12 MR. CARROLL: And what are your conclusions based on
13 the location of the rail spur line with respect to potential
14 historic resource impacts associated with development on the
15 Ormond Beach Area Off-Site Alternative?

16 MR. HOLLINS: As a result of the location of
17 railroad spur line, construction of a power plant at the
18 Ormond site has a greater potential to impact a significant
19 historic architectural resource. And it's my expert opinion
20 that the project, if constructed at the Ormond site, has a
21 greater likelihood to cause direct significant impacts to
22 historic architectural resources when compared to the Puente
23 site.

24 MR. CARROLL: Thank you.

25 And, moving on to the Del Norte Site, can you

1 please describe the process by which you conducted your
2 evaluation of that alternative site?

3 MR. HOLLINS: Yes. Similar to what Mark Hale had
4 just said, a record search was completed at the California
5 Historical Resources Information System Center as well as
6 background research completed consistent with the California
7 Energy Commission guidelines and looked at both the site and
8 linear facilities based on the likely point of, you know,
9 utility connection.

10 MR. CARROLL: And what did your records search
11 reveal about the Del Norte/Fifth Street Alternative Site?

12 MR. HOLLINS: The record search identified ten built
13 environment resources located within the record search area.

14 Two of them have been identified as National
15 Register eligible or listed, and they include the
16 Library/Chamber of Commerce building, as well as the Henry T.
17 Oxnard Historic District. And one of the resources was
18 unevaluated, and the balance of those ten resources then were
19 determined ineligible.

20 MR. CARROLL: And did your records research reveal
21 anything else about the Del Norte/Fifth Street Offsite
22 Alternative?

23 MR. HOLLINS: Yes. Looking at the Historical
24 Resource Inventory Listings, there were a total of 151 built
25 environment resources located within the record search area.

1 Environmental Planner. I have over 20 years as a land-use
2 planner with experience in land-use planning matters.

3 MR. CARROLL: Thank you.

4 And do you have in front of you the documents
5 initially marked for identification as Applicant's Exhibit
6 Number 1129, now marked as Applicant's Exhibit Number 1121,
7 entitled, "Expert Declaration of Tim Murphy Regarding
8 Alternative Sites - Land Use"?

9 MR. MURPHY: Yes.

10 MR. CARROLL: And was that testimony prepared by you
11 or under your supervision?

12 MR. MURPHY: Yes.

13 MR. CARROLL: And what is the purpose of that
14 testimony?

15 MR. MURPHY: This testimony addresses statements
16 made in the CEC staff's Final Staff Assessment, as well as
17 statements in the opening testimony of the City of Oxnard
18 Witness Ashley Golden regarding the suitability from a
19 land-use perspective of the site that we've been discussing,
20 the Ormond Beach Area Off-Site Alternative.

21 MR. CARROLL: And do you have any changes or
22 corrections to your prepared testimony?

23 MR. MURPHY: No.

24 MR. CARROLL: Can you please describe the process by
25 which you evaluated the suitability of the Ormond Beach

1 Off-Site Alternative for development relative to land use?

2 MR. MURPHY: Yes. I first examined the City of
3 Oxnard General Plan, which designates the Ormond Beach site
4 as light industrial.

5 MR. CARROLL: And, generally speaking, is power
6 generation typically considered a light industrial use?

7 MR. MURPHY: Well, different jurisdictions might
8 define the term "light industrial" differently, but as
9 a -- in general, no, power generation is not typically
10 considered a light industrial use.

11 MR. CARROLL: And what specifically does the City of
12 Oxnard's General Plan indicate are appropriate uses for sites
13 designated light industrial?

14 MR. MURPHY: To answer that, I'll read you the
15 definition of the light industrial designation.

16 MS. FOLK: I'm going to object first that the
17 definition speaks for itself. And, second, that Mr. Murphy
18 has not been qualified as an expert on the City of Oxnard's
19 General Plan or land uses zoning ordinances.

20 MR. CARROLL: I'm sorry? I did not hear the first
21 objection, or the first part of the objection.

22 MS. FOLK: The definition in the land-use ordinance
23 speaks for itself.

24 MR. CARROLL: Mr. Murphy, do you happen to have a
25 citation to the provision in the City of Oxnard Municipal

1 Code that contains the definition of the light industrial
2 designation. And if you don't, you don't.

3 MR. MURPHY: I do not have the precise citation with
4 me.

5 MR. CARROLL: Okay. But just to clarify --

6 MS. FOLK: Again, I renew my objection.

7 HEARING OFFICER KRAMER: Overruled.

8 There's been a lot of reading of excerpts from
9 rules and documents. And if it helps us to hear it right
10 before we're going to hear his opinion, I think it would be
11 useful.

12 MS. FOLK: I would also renew my objection as to his
13 expertise to qualify -- to testify as to the meaning of the
14 city's zoning ordinances and General Plan.

15 MR. CARROLL: Well, at this point, he's simply going
16 to read the definition. So --

17 HEARING OFFICER KRAMER: Overruled.

18 MR. CARROLL: Mr. Murphy, please go ahead and read
19 the definition of light industrial as it's set forth in the
20 City of Oxnard's General Plan and as it pertains to the
21 Ormond Beach Off-Site Alternative.

22 MR. MURPHY: Yes. The designation is defined to
23 include, and I will now quote, "Manufacturing uses where the
24 principle activity occurs within a building, but also permits
25 outdoor assembly, fabrication, work live, public services,

1 and storage. Uses must follow high development and
2 performance standards. Wholesale and retail sales and
3 services related to the principle use is permitted," unquote.

4 This light industrial use designation does not
5 explicitly mention electrical generating facilities as an
6 appropriate use, rather this land-use designation appears to
7 promote uses that are predominantly indoors and to discourage
8 significant outdoor activity, with some exceptions for
9 typical manufacturing activities.

10 An electrical generating facility would be a more
11 intensive use than the uses contemplated by the light
12 industrial designation.

13 MR. CARROLL: What else did your review of the
14 city's General Plan reveal about the Ormond Beach Area
15 Off-Site Alternative?

16 MR. MURPHY: In addition to the light industrial
17 designation, the General Plan provides for a separate special
18 designation that specifically permits power plants. And this
19 is referred to as the Public Utility/Energy Facility
20 Designation.

21 The Public Utility/Energy Facility Land-Use
22 Designation is defined as follows, and I'll quote again,
23 "Applies to large electrical generating and transmission
24 facilities. Due to the large --" excuse me -- "Due to the
25 uniqueness of these types of facilities, the development

1 intensity is established on an individual basis renewable
2 energy production facilities do not require this land-use
3 designation if they are considered accessory as an underlying
4 use," unquote.

5 MR. CARROLL: And how does the presence of this
6 additional land-use designation in the Oxnard General Plan
7 affect your evaluation of what types of uses might be
8 considered appropriate on a site designated light industrial,
9 such as the Ormond Beach Alternative Site?

10 MS. FOLK: Again, I'm going to object as to the
11 qualifications of the witness to testify as to the meaning of
12 the General Plan.

13 MR. CARROLL: Okay.

14 HEARING OFFICER KRAMER: So if you want to inquire
15 as to his qualifications, Mr. Carroll?

16 MR. CARROLL: Yes.

17 So, Mr. Murphy's curriculum vitae was attached to
18 his declaration filed in this matter. As he testified at the
19 commencement of his direct testimony, he is an expert in the
20 area of land use.

21 I can ask him to go into his qualifications in
22 additional detail if you would like me to or if one of the
23 parties would like me to, but it is all detailed in his CV,
24 which was attached to his declaration filed a couple of weeks
25 ago.

1 MS. FOLK: And I would respond that the expertise as
2 to interpretation of a land-use ordinance lies with the
3 agency that is charged with applying that ordinance. And I
4 believe that's also consistent with the Energy Commission's
5 regulations. And it's also a matter for the courts. But an
6 outside consultant's view as to the meaning of the city's
7 General Plan and land-use ordinance is not appropriate.

8 MR. CARROLL: Well, you know --

9 HEARING OFFICER KRAMER: If you're suggesting that
10 only the city can speak to the interpretation of its
11 ordinances, I disagree with that. Various people can have
12 opinions. Your thought may go to the weight of the various
13 opinions, but all the Commission's rules say is that the
14 opinion of the agency whose rules we are discussing is given
15 deference, it is not binding upon the Commission.

16 MS. FOLK: I understand that. It goes to his
17 expertise in the area.

18 HEARING OFFICER KRAMER: Well, okay, but that's a
19 different question. So, do you want Mr. Carroll to explain or
20 draw out his qualifications and do you want to -- then should
21 we take a break for you to question him on that?

22 MS. FOLK: No. I understand that he has experience
23 reading zoning and general plans. The point I'm trying to
24 make is that his testimony as to the meaning of this, it
25 should not carry great weight because he is not from the

1 agency charged with applying these ordinances.

2 HEARING OFFICER KRAMER: With that, can he go
3 forward and offer his opinion?

4 UNIDENTIFIED SPEAKER: Sure.

5 HEARING OFFICER KRAMER: Okay. I guess he can.

6 Mr. Carroll?

7 MR. CARROLL: Thank you.

8 Mr. Murphy, I wanted to repeat the question. How
9 does the presence of this additional land-use designation,
10 and by that I mean the Public Utility/Energy Facility
11 designation that you referred to in response to my previous
12 question, affect your evaluation of what types of uses might
13 be considered appropriate on a site designated light
14 industrial?

15 MR. SMITH: I'm sorry. I just have to add the
16 objection which was not clearly made before that I think this
17 line of questioning also calls for a legal conclusion to the
18 extent the witness is being asked to interpret a legal text.

19 MR. CARROLL: I'm simply asking for his opinion as a
20 land use expert what he believes would be the appropriate
21 uses on this site in light of the entire General Plan taken
22 together. And I will point out that we have had direct
23 testimony introduced, or at least I assume it's going to be
24 introduced, during the land use session from the
25 city's -- from city's staff opining to the meanings of this,

1 and it seems to me that what the parties are suggesting is
2 that no other party seated at the table is in a position to
3 offer an alternative interpretation, which I think is not
4 correct.

5 MS. FOLK: May I respond to that? Because the city
6 did not submit direct testimony on that issue with respect to
7 Ormond Beach. And, for that reason, we objected to this
8 testimony to begin with as rebuttal because it was not in
9 rebuttal to our testimony, it was in rebuttal to the Final
10 Staff Assessment.

11 HEARING OFFICER KRAMER: Okay. Well, we --

12 MS. FOLK: This does not respond to the city's
13 testimony.

14 HEARING OFFICER KRAMER: We ruled on that earlier,
15 and the document and the testimony is in.

16 Mr. Smith, a lot of questions that we deal with in
17 our process involve the application of law or standards to
18 facts. And we regularly accept opinions from all the parties.
19 And, frankly, if the Committee is going to have its own
20 opinion at some point, it's going to come out in the proposed
21 decision. So, we are not the sort of people who will not take
22 all those opinions and weigh them and have, you know, our own
23 twist, if you will, on the analysis and come up with our
24 opinion.

25 So, we can't apply a bright line between legal

1 conclusions and facts, so your objection is overruled.

2 MR. CARROLL: So, Mr. Murphy, you are not an
3 attorney, correct?

4 MR. MURPHY: Correct.

5 MR. CARROLL: So I'm not asking you for a legal
6 opinion, which I agree would be inappropriate, but I'm asking
7 you from the perspective of someone with experience in
8 land-use planning, what does the existence of the Public
9 Utility/Energy Facility designation suggest to you about what
10 types of uses would be appropriate in the light industrial
11 designation?

12 MR. MURPHY: Yes. It suggests that because there is
13 this separate category that specifically allows for
14 electrical generating facilities, this supports a conclusion
15 that electrical generating facilities were not contemplated
16 in the light industrial designation and that this would not
17 be an appropriate use on a site with the light industrial
18 destination.

19 So, it's my opinion that siting of an electrical
20 generating facility on the Ormond Beach site, which is
21 designated light industrial, would be inconsistent with the
22 city's intention for this General Plan land-use designation.

23 MR. CARROLL: Did you make any other findings
24 related to whether or not development of a power plant on the
25 Ormond Beach Area Off-Site Alternative would be consistent

1 with the city's General Plan?

2 MR. MURPHY: Yes. I noted that the zoning for the
3 alternative site does not appear to be consistent with the
4 General Plan designation for the site.

5 As I've stated, the 2030 General Plan map, this is
6 on Page 3-3 of the General Plan, designates the site as light
7 industrial. Table 3.2 of the General Plan, which is referred
8 to as General Plan-Zoning Consistency, specifies that the
9 only zones consistent with this destination would be the M1,
10 or limited manufacturing, and CM, commercial and light
11 manufacturing.

12 I observed that the zoning on the site, the Ormond
13 Beach Alternative Site, is M2, heavy manufacturing, planned
14 development.

15 HEARING OFFICER KRAMER: Which site was that?

16 MR. MURPHY: This is the Ormond Beach Off-Site
17 Alternative.

18 HEARING OFFICER KRAMER: Is M2?

19 MR. MURPHY: Zoning is M2.

20 HEARING OFFICER KRAMER: Okay. But you're saying
21 that's, in your opinion, inconsistent with the General Plan?

22 MR. MURPHY: Yes.

23 HEARING OFFICER KRAMER: Okay.

24 MR. MURPHY: And, thus, the zoning on this site
25 appears to be inconsistent with the General Plan designation.

1 MR. CARROLL: And did you make any other findings
2 with respect to the Ormond Beach Alternative Site with
3 respect to land-use restrictions?

4 MR. MURPHY: Yes, I observed that siting the project
5 as currently designed on the Ormond Beach site would be
6 inconsistent with a 100-foot height limit that is in the
7 applicable heavy manufacturing plan development zone
8 according to the Oxnard Zoning Code.

9 The project would have an approximately 188-foot
10 stack, which would exceed this 100-foot limit.

11 There is a mechanism in the zoning code for
12 exceptions to that height limit, but the fact that the limit
13 is there in the first place for the zoned district suggests
14 and supports a conclusion that a project such as Puente,
15 again, would not be appropriate for parcels with that zoning.

16 MR. CARROLL: And given the information that you've
17 just summarized, what is your opinion regarding the
18 suitability of the Ormond Beach Alternative Site for the
19 development of a power plant such as Puente from a land-use
20 perspective?

21 MR. MURPHY: Based on this information that I've
22 gathered and this analysis, it's my opinion that development
23 of a power plant such as Puente on the Ormond Beach site
24 presents adverse land-use impacts in the form of
25 inconsistencies with the City of Oxnard's General Plan.

1 MR. CARROLL: Thank you.

2 Does that complete your direct testimony today?

3 MR. MURPHY: Yes.

4 MR. CARROLL: Applicant calls Mr. Rubenstein.

5 Mr. Rubenstein, can you please state and spell your
6 name, your current employer and current position.

7 MR. RUBENSTEIN: Yes. My name is Gary Rubenstein.

8 G-A-R-Y, R-U-B-E-N-S-T-E-I-N. And I'm currently employed by
9 Sierra Research, where I'm a Senior Partner.

10 MR. CARROLL: Mr. Rubenstein, we're going to cover
11 two topics with you. One of them, and the first one, being
12 Aviation Hazards and the second being Environmental Justice.

13 So, beginning with Aviation Hazards, what
14 experience do you have that's relevant to that discussion?

15 MR. RUBENSTEIN: In addition to the experience that
16 I've mentioned previously during this hearing, on this issue
17 particularly, I have over 40 years of experience managing a
18 variety of different types of air quality dispersion modeling
19 projects, including within the last 10 to 15 years, a number
20 of projects involving the modeling of thermal plumes from
21 power plants and how they might interact with aircraft
22 operations.

23 MR. CARROLL: And do you have in front of you the
24 document initially marked for identification as Applicant's
25 Exhibit Number 1133, now identified as Applicant's Exhibit

1 Number 1121, entitled, "Expert declaration of Gary Rubenstein
2 Regarding Alternative Sites - Aviation Hazards and the
3 associated exhibits?

4 MR. RUBENSTEIN: Yes, I do.

5 MR. CARROLL: And was that written testimony
6 prepared by you or under your supervision?

7 MR. RUBENSTEIN: Yes, it was.

8 MR. CARROLL: Do you have any changes or corrections
9 that you'd like to make to your prepared testimony?

10 MR. RUBENSTEIN: No, I do not.

11 MR. CARROLL: Did you evaluate the CEC staff's
12 conclusion as set forth in the Final Staff Assessment related
13 to the Aviation Hazards at the Ormond Beach Area Off-Site
14 Alternative relative to those associated with the proposed
15 project site?

16 MR. RUBENSTEIN: Yes, I did.

17 MR. CARROLL: And can you -- please --let me
18 rephrase the question. Are you familiar with the CEC staff's
19 conclusions or can you summarize for us the CEC staff's
20 conclusions regarding aviation impacts as they relate to the
21 proposed Puente site as a basis for then comparing what you
22 found with respect to the Ormond Beach site?

23 MR. RUBENSTEIN: Yes. The staff concluded, the
24 Commission's staff concluded that the aviation impacts at the
25 proposed project site would be not significant with the

1 mitigation measures that were proposed as conditions of
2 certification.

3 MR. CARROLL: And do you agree with the CEC staff's
4 conclusion in that respect?

5 MR. RUBENSTEIN: Yes, I do.

6 MR. CARROLL: Are you also familiar with the CEC
7 staff's conclusion again as set forth in the FSA regarding
8 aviation impacts as they relate to the Ormond Beach Area
9 Off-Site Alternative?

10 MR. RUBENSTEIN: Yes, I am.

11 In the Final Staff Assessment, and I would note
12 that I believe the staff modified their conclusions earlier
13 during these hearings, but in the staff assessment, the staff
14 had concluded that there was a potential for less of an
15 impact of thermal plumes at the Ormond Beach Off-Site
16 Alternative Site.

17 MR. CARROLL: And were you here in the hearing room
18 during the testimony of the staff in which it modified its
19 initial finding as set forth in the FSA?

20 MR. RUBENSTEIN: Yes, I was.

21 MR. CARROLL: And what -- well, I guess
22 everyone -- do you concur with the staff's conclusion as
23 modified by their testimony presented yesterday?

24 MR. RUBENSTEIN: Yes, I do.

25 MR. CARROLL: Okay. Let's turn then to the second

1 topic, which is Environmental Justice. Do you have in front
2 of you the document initially marked as Applicant's Exhibit
3 Number 1137, now identified as Applicant's Exhibit
4 Number 1121, which is the "Expert Declaration of Gary
5 Rubenstein Regarding Environmental Justice in Response to
6 Opening Testimony of Interveners" and the exhibits identified
7 in that declaration that you're sponsoring?

8 MR. RUBENSTEIN: Yes, I do.

9 MR. CARROLL: Was the written testimony contained in
10 that declaration prepared by you or under your supervision?

11 MR. RUBENSTEIN: Yes, it was.

12 MR. CARROLL: Do you have any changes or corrections
13 to your prepared testimony?

14 MR. RUBENSTEIN: No, I do not.

15 MR. CARROLL: Did you evaluate the CEC staff's
16 conclusions regarding whether or not the proposed Puente site
17 and the alternative sites result in any significant
18 Environmental Justice impacts that would raise -- I'm
19 sorry -- any significant environmental impacts that would
20 raise Environmental Justice concerns?

21 MR. RUBENSTEIN: Yes, I reviewed those.

22 MR. CARROLL: And are you familiar with the CEC
23 staff's conclusion regarding Environmental Justice as they
24 relate to the Ormond Beach Alternative Site?

25 MR. RUBENSTEIN: Yes, I am.

1 MR. CARROLL: And can you summarize those
2 conclusions for us?

3 MR. RUBENSTEIN: It's my recollection that the staff
4 concluded that the Environmental Justice impacts at the
5 Ormond Beach Off-Site Alternative were not significant with
6 respect to the areas that I was reviewing, which are Quality
7 of Public Health.

8 MR. CARROLL: And do you agree with staff's
9 conclusion in that regard?

10 MR. RUBENSTEIN: In general, yes, I do. However, as
11 noted in my testimony on this topic, I had some alternative
12 presentations of the data which suggested that, without going
13 to the question of significance, that the impacts that the
14 project located at the Ormond Beach Alternative Site would
15 have impacts on a larger Environmental Justice community than
16 would a project located at the Puente Project site.

17 MR. CARROLL: Thank you.

18 And you did present additional detail related to
19 those findings during the Environmental Justice Panel
20 yesterday; is that correct?

21 MR. RUBENSTEIN: I did in general terms. As I
22 indicated yesterday, I have concerns about the use of the
23 CalEnviroScreen model in a siting proceeding such as this.
24 However, it has been used quite a bit. But my conclusion was
25 that there is a larger Environmental Justice community that

1 is located within six miles of the Ormond Beach Alternative
2 Site than is the case for the proposed Puente Project site.

3 MR. CARROLL: Thank you.

4 And then, finally, Mr. Rubenstein, one last
5 question, which is a bit off topic, but, yesterday,
6 Mr. Theaker provided some emission information related to the
7 MGS Unit 3. There was an objection to my question of
8 Mr. Theaker based on his qualifications to testify as to air
9 quality matters, and Mr. Kramer asked if we could ask a later
10 witness with the requisite expertise the same question, and I
11 indicated that we could and would.

12 Were you present in the hearing room at the time of
13 that exchange?

14 MR. RUBENSTEIN: Yes, I was.

15 MR. CARROLL: And do you recall Mr. Theaker's -- do
16 you recall the question that I asked Mr. Theaker and the
17 response that he provided?

18 MR. RUBENSTEIN: Yes, I do.

19 MR. CARROLL: Can you --

20 MS. FOLK: Excuse me. Can you repeat that for
21 everybody else's edification?

22 MR. CARROLL: Yeah. I was just about to ask
23 Mr. Rubenstein to do that.

24 Can you please remind all of us the question that I
25 asked Mr. Theaker, what his response was, and then if you

1 could simply move into either confirming or correcting his
2 response or further explaining it as you deem appropriate as
3 someone with the requisite qualifications?

4 MR. RUBENSTEIN: I believe the question was along
5 the lines of asking Mr. Theaker whether there were any
6 environmental restrictions or issues associated with the
7 operation of Mandalay Unit 3. And as part of his response, he
8 indicated --

9 MS. FOLK: I have to object that this is -- we've
10 already been told Air Quality is a finished topic. And we're
11 talking about alternatives now, not -- alternative sites, not
12 alternative technology, which was yesterday.

13 If they did not have a witness qualified to testify
14 on that issue yesterday, then they should not be able to
15 present one today when other parties have been told that they
16 cannot ask questions about Air Quality anymore.

17 MR. CARROLL: Well, with respect to this particular
18 question, if I may respond, we were specifically asked in
19 response to the objection whether we could pose this question
20 to a witness that was going to be seated on a later panel,
21 and we indicated that we could and that we would.

22 MS. FOLK: Well, I still object that the Air Quality
23 Panel was yesterday. If you did not have a witness qualified
24 to testify on alternative technologies and their benefits
25 yesterday when you had the panel, then you cannot present

1 someone on this issue today. And other parties have been told
2 that.

3 HEARING OFFICER KRAMER: Well, had the objection
4 been, or the concern been voiced yesterday, I would be more
5 sympathetic to it. But the plan to ask today was revealed and
6 nobody expressed any concerns at the time.

7 We will allow you time to cross-examine
8 Mr. Rubenstein on this particular sub-point if you desire.

9 MS. FOLK: I still have to object to that because we
10 were not told at the time yesterday that this would be
11 happening or that other parties would be denied the
12 opportunity to ask other Air Quality questions of other
13 witnesses.

14 HEARING OFFICER KRAMER: Well, this was specific to
15 the option that was raised by various people, including some
16 public commenters of using Mandalay 3 as some kind of
17 stop-gap to eliminate the need to have the new Puente Project
18 while some of the storage and other options caught up, if you
19 will, to the needs of the system.

20 So, overruled.

21 MS. FOLK: I would just respond one more minute to
22 say that all that was brought up in the opening testimony.
23 And, so, if they wanted to present evidence on that, it
24 should have been in rebuttal testimony and not left until
25 today.

1 HEARING OFFICER KRAMER: Well, we've ruled.

2 So, go ahead, Mr. Carroll.

3 MR. CARROLL: Mr. Rubenstein, do you remember the
4 question that is pending? Let me --

5 MR. RUBENSTEIN: Yes.

6 MR. CARROLL: Okay. Then please go ahead and
7 respond.

8 MR. RUBENSTEIN: My recollection is that
9 Mr. Theaker, as I said, was asked about any environmental
10 constraints or restrictions on the operation of Mandalay Unit
11 3. And part of his response was to indicate that it was his
12 understanding that the oxides of nitrogen emission rate from
13 that unit was approximately 1100 pounds per hour. I recall
14 yesterday that there was a question as to whether that
15 information was in the record, and the answer is yes, that
16 value is shown in the Application for Certification in
17 Appendix C, which is Exhibit 1027, and, in particular, it's
18 in Appendix C2, Table C-2.8, which is a summary of the hourly
19 mass emission rates from a variety of activities at the
20 Mandalay Bay Generating Station, including Unit 3. And,
21 specifically, the value shown there is 1104.41 pounds per
22 hour.

23 That same table shows the operating rate at full
24 load for the Puente Power Project of 23.36 pounds per hour.
25 So, that's 23 pounds per hour versus 1100 pounds per hour.

1 And, frankly, sitting in the audience yesterday, I was
2 appalled at the suggestion that continued or increased
3 operation of Mandalay Unit 3 could be environmental
4 preferable --

5 MS. FOLK: I have to object. That
6 mischaracterizes --

7 MR. RUBENSTEIN: -- under any stretch --

8 MS. FOLK: -- the testimony from yesterday.

9 HEARING OFFICER KRAMER: Overruled.

10 MR. CARROLL: Mr. Rubenstein --

11 HEARING OFFICER KRAMER: Overruled.

12 MR. CARROLL: -- does that conclude your response to
13 the question?

14 MR. RUBENSTEIN: Yes, it does.

15 MR. CARROLL: Okay. Thank you for providing that
16 confirmation.

17 Do you have any further testimony with respect to
18 alternatives for your -- on your direct testimony today?

19 MR. RUBENSTEIN: No, I do not.

20 MR. CARROLL: Thank you.

21 At this time, we call Mr. Vincent Menta.

22 Mr. Menta, can you please state and spell your name
23 for the record, identify your current employer and your
24 current position.

25 MR. MENTA: Hello. I am Vincent Menta,

1 V-I-N-C-E-N-T, M-E-N-T-A. I'm employed by NRG Energy, and I'm
2 the Senior Director of Development, Engineering in the
3 Engineering and Construction Group.

4 MR. CARROLL: Thank you, Mr. Menta.

5 MR. MENTA: Could I lower this a little?

6 MR. CARROLL: Since this is your first time, I'll
7 point out to you, you need to get very close to the mic in
8 order for us to hear.

9 MR. MENTA: Yeah. Okay. Thanks, Mike.

10 MR. CARROLL: Thank you.

11 What experience do you have that's relevant to this
12 panel?

13 MR. MENTA: I have over 40 years in the power
14 business in plant design, operations, and engineering.

15 MR. CARROLL: And what has your role been with
16 respect to the Puente Project?

17 MR. MENTA: I've been the Lead Engineer responsible
18 for the design of the project, starting with site selection
19 and working through Preliminary Design, the permitting
20 process, and now working with the EPC contractor selection.

21 MR. CARROLL: And do you have in front of you the
22 documents marked as, initially as, Applicant's Exhibit
23 Number 1102, now marked as Applicant's Exhibit Number 1101,
24 "Expert Declaration of Vincent Menta Regarding the Puente
25 Power Project," and the associated exhibits?

1 MR. MENTA: Yes.

2 MR. CARROLL: Was that written testimony prepared by
3 you or under your supervision?

4 MR. MENTA: Yes, it was.

5 MR. CARROLL: And do you have any proposed changes
6 to your written testimony?

7 MR. MENTA: No, I do not.

8 MR. CARROLL: How many power plants have you
9 been -- I'm sorry. How many -- with how many power plants
10 have you been involved in the design, construction, and
11 operation over the course of your career?

12 MR. MENTA: It's been a long career, and I've worked
13 on many different types of plants starting with nuclear
14 conventional steam, gas turbine combined cycle, simple cycle
15 gas turbines, cogeneration facilities, hydro, pump hydro, and
16 energy storage.

17 MR. CARROLL: And have you designed power plants to
18 be located on both vacant sites as well as at existing
19 facilities?

20 MR. MENTA: Yes, I have.

21 MR. CARROLL: And can you expand upon your
22 experience in that regard?

23 MR. MENTA: Sure.

24 Over the last three years with NRG, we've developed
25 eight facilities on vacant property. However, most of our

1 development is on sites that are owned by NRG or our clients,
2 to make use of infrastructure that is existing on site.

3 However, early in the career, all the plants I was
4 involved in were on vacant sites.

5 MR. CARROLL: And I believe that you stated in
6 response to one of my earlier questions that you were
7 involved in the site selection process for the Puente
8 Project; is that correct?

9 MR. MENTA: That's correct.

10 MR. CARROLL: How many sites were evaluated for
11 potential development of the project that you're aware of?

12 MR. MENTA: I'm aware of that we looked at seven
13 sites, including Ormond Beach, Sanitation District, Beedy
14 Street, Camino Real Business Park, Del Norte and Fifth,
15 Mission Rock, and then various parcels around Ormond Beach.

16 I did not personally evaluate all these sites. You
17 know, some of these were eliminated due to other
18 considerations other than engineering.

19 And with the exception of the Ormond Beach
20 Generating Site, all these sites are on vacant land.

21 MR. CARROLL: Thank you.

22 And, Mr. Menta, the list that you've provided, you
23 use sort of shorthand names to refer to those sites that not
24 everyone might be familiar with. But are all of those sites
25 that identified sites that were included in Applicant's

1 Alternative Site Assessment that was submitted to the CEC in
2 December 2015?

3 MR. MENTA: They were.

4 MR. CARROLL: So if anybody wanted to understand
5 precisely the location of those sites, they would be able to
6 find that information in that document?

7 MR. MENTA: Yes, they would.

8 MR. CARROLL: Thank you.

9 Are the two alternative sites that were analyzed in
10 detail in the CEC staff's Final Assessment amongst the sites
11 that you just listed?

12 MR. MENTA: Yes. The Ormond Beach Alternative Site
13 and the Del Norte and Fifth Alternative Site are on the list.

14 MR. CARROLL: From an engineering perspective, what
15 were the most serious concerns with respect to the
16 alternative sites that NRG evaluated before selecting the
17 proposed site?

18 MR. MENTA: With the exception of the Ormond Beach
19 site, the most serious concern with the other sites is that
20 we'd have to develop new linear infrastructure for delivery
21 and disposal of water, delivery of natural gas, and the new
22 electrical, high voltage electrical, interconnection.

23 MR. CARROLL: And can you briefly explain why that
24 would be a concern from your perspective?

25 MR. MENTA: Sure. From an engineering perspective,

1 it would require, you know, identification and acquisition of
2 right-of-ways, design and permitting of that infrastructure,
3 and then construction of that infrastructure. That adds a
4 significant time, cost, and environmental impacts to a
5 development project.

6 MR. CARROLL: So from an engineering perspective,
7 development at the existing Ormond Beach Generating Station
8 or the existing Mandalay Generating Station was superior in
9 your view relative to the other sites that were evaluated?

10 MR. MENTA: Yeah, that's correct.

11 MR. CARROLL: And do you happen to know why the
12 Ormond Beach Generating Site was rejected?

13 MR. MENTA: I believe it had more to do with
14 environmental concerns, but I'm not familiar with those
15 details of the decision-making process specifically on Ormond
16 Beach.

17 MR. CARROLL: Thank you.

18 In addition to not having to develop new off-site
19 linear facilities, what are the primary advantages associated
20 with developing the project at the proposed site, the
21 existing Mandalay Generating Station, as compared to the
22 currently undeveloped sites identified in the FSA?

23 MR. MENTA: You know, the primary advantages of
24 using the Mandalay site really include the fact that we have
25 existing on site infrastructure that we can take advantage

1 of.

2 MR. CARROLL: And can you briefly describe what that
3 existing on-site infrastructure -- and, again, as I
4 understand it, this is different from the off-site linears
5 that you referred to earlier.

6 MR. MENTA: Correct. These are on-site facilities,
7 such as the service water tank, the demineralized water
8 treatment system, the demineralized water tank, the fire
9 protection pumps and the fire loop, the wastewater and storm
10 water retention basins, the on-site septic system, warehouse
11 and administration buildings, and the existing site security
12 system.

13 When we utilize these, you know, existing planned
14 infrastructure, it minimizes environmental impacts, as well
15 as provides a strategic schedule and cost advantage for the
16 project.

17 MR. CARROLL: To what extent is the design of a
18 power plant dependent upon its proposed location?

19 MR. MENTA: Well, the location of a project is
20 key from an engineering perspective. Plant location impacts
21 all the linears that we've talked about, the infrastructure
22 design, such as high voltage electrical, natural gas, water
23 supply, wastewater discharge and, in addition, to items such
24 as noise abatement and air emission modeling, to highlight a
25 few.

1 But I would like to point out that, you know, there
2 are certain aspects of a power plant that could be
3 standardized. So, in the case of Puente, that would be the
4 gas turbine power block and the axillary subsystems, that we
5 call inside the power block.

6 MR. CARROLL: Thank you.

7 Can you please explain what aspects of the Puente
8 Project would have to be redesigned if it were to be
9 relocated to an alternative site at this point?

10 MR. MENTA: If we had to relocate the project, a
11 number of issues would have to be redesigned, a number of
12 areas for re-permitting.

13 We'd have to do an environmental assessment of the
14 site.

15 Again, the interconnection, we'd have to go back to
16 Cal-ISO and Edison to secure a new interconnection study and
17 agreement, and we'd have to redesign the high voltage
18 interconnection and potentially design system upgrades.

19 We'd have to work with the gas company for the
20 natural gas infrastructure, do a new study to determine that
21 we can supply gas to the plant, and design a new gas routing,
22 including the permitting required for construction.

23 For the potable and potentially reclaimed water, we
24 would have to investigate water supply. Again, routing the
25 piping and designing a new pipe routing, including

1 rights-of-way.

2 For the wastewater discharge, we'd have to define a
3 location where we could discharge the wastewater and
4 potentially design a lift station to get it there.

5 The electrical system, in the plant, the axillary
6 system would have to be redesigned to accommodate any new
7 services we needed.

8 The plant water treatment system would have to be
9 designed, potentially redesigned, based on the type of water
10 that we could bring into the plant.

11 Air modeling would have to be redone.

12 Noise survey would have to be redone.

13 The preliminary Geotech would have to be redone.

14 And our EPC package would have to be reworked and
15 rebid.

16 That's it.

17 MR. CARROLL: And approximately how much time would
18 it take just for the engineering aspects of what you've just
19 described to redesign the project for an alternative
20 location?

21 MR. MENTA: If the project were relocated, it would
22 take approximately two years. The main drivers being redoing
23 the CAL ISO SCE interconnection agreement and the design of
24 right-of-ways and system upgrades.

25 And, again, the natural gas, water supply,

1 wastewater piping system would be redesigned.

2 And the EPC contract, the spec would be redone. And
3 we'd have to go through a complete rebid process.

4 That would take approximately two years. And that
5 doesn't include the timing for the right-of-way acquisition
6 or environmental permitting.

7 MR. CARROLL: And you referred in a couple of your
8 responses to the EPC contract. Can you just explain what that
9 is?

10 MR. MENTA: I'm sorry. That is Engineering
11 Construction and Procurement Contract. We would contract with
12 these types of contractors to do the detailed engineering and
13 construction on the site, and interface with us and,
14 ultimately if the project is approved, the CBL.

15 MR. CARROLL: And, typically, how far in advance of
16 commencement of construction does that process of engaging
17 with the EPC contractor begin?

18 MR. MENTA: Well, we're in process right now for the
19 Puente Project. We've put a spec on the street to rebid -- to
20 bid the project and -- at the end of December 2015.

21 MR. CARROLL: Thank you.

22 One of the justifications -- or, I'm sorry -- one
23 of the bases upon which the FSA concluded that the Ormond
24 Beach Off-Site Alternative was environmentally superior to
25 the proposed project site was the potential for inundation as

1 a result of tsunami.

2 Have you taken into consideration the potential
3 effects of natural hazards in the design of the Puente
4 Project at the proposed site?

5 MR. MENTA: Yes, I have.

6 MS. FOLK: I object. That's not related to
7 alternatives.

8 MR. CARROLL: Well, I believe it is directly related
9 to the alternatives because the FSA concluded that the Ormond
10 Beach Area Off-Site Alternative was environmentally superior
11 to the proposed project site on three bases, one of which was
12 inundation from tsunami. And, so, I think it's very -- it is
13 directly relevant to inquire into the extent of the risk of
14 inundation from tsunami at both the proposed site and at the
15 alternative sites since the relative risk associated with
16 those are one of the bases upon which the staff reached what
17 we think is an erroneous conclusion.

18 HEARING OFFICER KRAMER: Overruled. Excuse me.
19 Overruled. This is Paul Kramer.

20 MR. CARROLL: Thank you. Mike Carroll.

21 Mr. Menta, what types of natural hazards do you
22 design for or did you design for in the design of the Puente
23 Power Project?

24 MR. MENTA: The project would be designed for
25 earthquakes, you know, wind, severe wind, flooding, and

1 lightening. We do that by, you know, following the
2 requirements of various LORS. There is a whole series of LORS
3 that we would meet. And for the most part for these
4 particular items, it would be the California Building Code.

5 MR. CARROLL: And, specifically with respect to risk
6 of inundation, can you please describe --

7 MS. FOLK: I have to object that these are not
8 questions about alternatives. These are about the project
9 site.

10 By Mr. Carroll's theory, we could go into every
11 single impact area about the Puente Project on this panel. I
12 think the panel, especially if we want to move things along,
13 should be focused on the alternatives.

14 MR. CARROLL: And, again --

15 MS. FOLK: We have a panel on Soil and Water
16 Resources tomorrow if he wants to have his expert on that,
17 but --

18 MR. CARROLL: Again, I believe that these questions
19 are very relevant to alternatives. We will have a panel on
20 Soil and Water, but the question here is the relative merits
21 of the project site as compared to the alternative site. The
22 staff concluded that with respect to this very issue the
23 alternative site was superior. Our view is contrary to that,
24 and we're trying to present evidence in support of our view.

25 MS. FOLK: I think it's possible to make that in the

1 context of the specific impact areas.

2 MR. CARROLL: Which we could certainly do. Although,
3 I will say that Mr. Menta has been waiting for two days for
4 the Alternatives Panel, and I would hate to have to bring him
5 back tomorrow to ask him the four or five questions that I'm
6 about to ask him right now. And he would hate even more to
7 come back.

8 HEARING OFFICER KRAMER: No offense taken.

9 (Laughter.)

10 HEARING OFFICER KRAMER: Ms. Folk --

11 MS. FOLK: It's fine. It's fine. It's just --

12 MR. CARROLL: I have two questions.

13 HEARING OFFICER KRAMER: Well, okay, the Committee
14 is interested in hearing all of the relevant evidence about
15 this project. We are less interested in exactly when under
16 which topic it comes in. And it does seem that in order to
17 provide a basis for the opinion I think Mr. Carroll will be
18 asking about shortly, that some of -- because he's going to
19 compare this site to the proposed site, some information
20 about the standards he's applying to the proposed site is
21 relevant.

22 So, objection overruled.

23 MR. CARROLL: Mr. Menta, let me restate the
24 question.

25 Can you please describe -- or I'm not sure that

1 I -- this may not be a restatement. This may be an initial
2 statement. But could you please describe how the Puente
3 Project has been designed to address the risk of flooding or
4 inundation?

5 MR. MENTA: The facility will have a system for
6 managing water that would come onto the site, which includes,
7 you know, drains, piping, sumps, a basin, and a set of sump
8 pumps to collect and remove water from the site.

9 Based on preliminary design, the pumps in the
10 system are capable of moving 5,000 gallons of water per
11 minute. In addition, you know, we have some of the critical
12 facilities are constructed above grade.

13 So, the turbine foundation is set Elevation 14, and
14 the turbine is supported by a two-foot-high support
15 structure, which puts the bottom of the turbine Elevation 16.

16 And the gas turbine auxiliary support systems on
17 this GE machine are of modular design, and there are two
18 components in one module, electronic cabinet and a
19 gas-controlled module, that are set one foot above the
20 foundation at Elevation 15.

21 All other electrical and critical equipment within
22 the turbine package is elevated above 15.

23 The auxiliary subsystem electrical distribution
24 buildings, we call them PDCs, are elevated five to eight feet
25 above grade. And we do that to avoid cable vaults and the

1 hazards that workers have with cable vaults.

2 The air inlet to the gas turbine is elevated over
3 the top of the turbine.

4 MR. CARROLL: Thank you.

5 And just to reiterate, the design features that
6 you've just described would all be intended to address the
7 potential for inundation on the site?

8 MR. MENTA: Yes. The equipment the plant could
9 operate with a water level in the site presently up to
10 Elevation 15.

11 MR. CARROLL: Thank you.

12 Mr. Menta, does that conclude your direct testimony
13 on this panel today?

14 MR. MENTA: It does.

15 MR. CARROLL: Thank you very much.

16 And that concludes -- oh, I'm sorry. Final witness
17 on this panel is Mr. Theaker.

18 Mr. Theaker, could you please state your -- state
19 and spell your name, your current employer and your current
20 position.

21 MR. THEAKER: Yes. My name is Brian Theaker. First
22 name is spelled B-R-I-A-N. Last name is spelled
23 T-H-E-A-K-E-R. I am Director of Regulatory Affairs for NRG
24 Energy, Inc.

25 MR. CARROLL: Thank you.

1 And since you testified yesterday, we've heard
2 about your credentials, so I'm going to dispense with that,
3 skip ahead.

4 Are you familiar with the two off-site alternatives
5 that were analyzed in the Final Staff Assessment?

6 MR. THEAKER: I have reviewed the information in the
7 Final Staff Assessment specifically relative to the
8 interconnection of those two alternatives that were
9 specifically described.

10 MR. CARROLL: And did you do anything else to
11 prepare for your testimony today other than review the
12 relevant portions of the FSA?

13 MR. THEAKER: I did. I performed some desktop
14 analysis to evaluate how those particular interconnections
15 would meet the ISO's local area or subarea capacity
16 requirements.

17 MR. CARROLL: And, I'm sorry, I, having skipped over
18 the preliminary questions, neglected to ask you, did you
19 prepare the document identified as rebuttal -- I'm
20 sorry -- "Declaration of Brian Theaker Regarding Off-Site
21 Alternatives - Interconnection?"

22 MR. THEAKER: I did.

23 MR. CARROLL: And do you have any corrections or
24 changes to your prepared testimony?

25 MR. THEAKER: I do not.

1 MR. CARROLL: Thank you.

2 With respect to the off-site alternatives, are you
3 familiar with the CEC staff's conclusion regarding
4 interconnection of the Ormond Beach Area Off-Site
5 Alternative?

6 MR. THEAKER: Yes. The Final Staff Assessment
7 indicated that the likely point of interconnection for that
8 off-site alternative would be at the Ormond Beach Substation.

9 MR. CARROLL: Are you also familiar with the CEC
10 staff's conclusion regarding interconnection of the Del
11 Norte/Fifth Street Off-Site Alternative?

12 MR. THEAKER: Yes. The Final Staff Assessment
13 indicated that the interconnection for that alternative could
14 either be tapped into the Mandalay Santa Clara 220 kV line or
15 also interconnected at the Ormond Beach Substation. Excuse
16 me.

17 MR. CARROLL: And do you believe that either of
18 these alternative sites would provide a good point of
19 interconnection for -- I'm sorry -- a good interconnection
20 point for the project?

21 MR. THEAKER: No, I don't. Particularly if they were
22 both to be interconnected at the Ormond Beach Substation.

23 MR. CARROLL: And can you please explain why the
24 interconnection point at the proposed Puente site is in your
25 view superior to the Ormond Beach interconnection point?

1 MR. THEAKER: Yes. Again, the ISO's local capacity
2 area is the Big Creek Ventura area, is a large area that
3 encompasses a wide geographic area. There are a couple of
4 subareas with -- well, actually, there are more than that.
5 But two of the subareas within the Big Creek Ventura area are
6 the Moorpark subarea and the Santa Clara subarea.

7 So, generation that interconnects at Ormond Beach
8 would be included in the Moorpark subarea, but it would not
9 meet the Santa Clara subarea requirements. Whereas,
10 generation that would be interconnected at Mandalay, which is
11 where the project would be interconnected, would meet both
12 the Santa Clara area and the Moorpark subarea of
13 requirements.

14 MR. CARROLL: And given this information, what's
15 your opinion regarding the preferability of the proposed
16 project site relative to the off-site alternatives from a
17 transmission interconnection perspective?

18 MR. THEAKER: Based on my analysis, interconnecting
19 at Mandalay would be a preferable alternative because
20 generation interconnect there would meet both subareas of
21 requirements.

22 MR. CARROLL: Thank you.

23 Does that complete your testimony on this panel
24 today?

25 MR. THEAKER: Yes, it does.

1 MR. CARROLL: All of the witnesses on this panel are
2 now available for cross-examination.

3 HEARING OFFICER KRAMER: Okay. It is getting -- it's
4 after 1:00 now. Let me get a sense of the group.

5 Would you prefer to break for lunch right now or
6 finish this group? And then I think we'll take up the Navy
7 representatives next.

8 All those in favor of breaking now?

9 (No audible response.)

10 HEARING OFFICER KRAMER: Okay. Okay. I guess we'll
11 finish this cross-examination then. Is that -- okay. Best of
12 options. Okay. So, let's begin then with staff.

13 MS. CHESTER: Staff has no questions at this time.

14 HEARING OFFICER KRAMER: City of Oxnard, I'm sure
15 you do.

16 MS. FOLK: You're very prescient.

17 So, this is to Ms. Love.

18 Can you tell me, is the Ormond Beach Off-Site
19 Alternative located in the Coastal Zone?

20 MS. LOVE: This is Julie Love.

21 That site is not located inside the Coastal Zone,
22 as I mentioned earlier.

23 MS. FOLK: And is the Del Norte/Fifth Street site
24 located in the Coastal Zone?

25 MS. LOVE: No, it is not.

1 MS. FOLK: And when you are reviewing whether a
2 project located outside the Coastal Zone has wetlands on
3 behalf of a project Applicant, do you use the Coastal
4 Commission's criteria for making that determination?

5 MS. LOVE: I am aware that the Coastal Commission
6 One Parameter Rule does not apply to sites outside of the
7 Coastal Zone, but in order to provide a somewhat equivalent
8 or equal comparison between those alternative sites and the
9 Puente Power Project, we applied them to the alternative
10 sites and presented the results.

11 MS. FOLK: That was not my question. My question
12 was, when you represent a project Applicant on development on
13 a site located outside the Coastal Zone, do you use the
14 Coastal Commission's criteria to determine whether the
15 project site has wetlands?

16 MS. LOVE: No.

17 MS. FOLK: Okay.

18 Mr. Rubenstein, I'm going to ask you a question
19 about aviation hazards. You agree that the Final -- do you
20 agree that the Final Staff Assessment found that the air
21 hazard from the plume at Puente would be significant if not
22 mitigated?

23 MR. RUBENSTEIN: I believe it was stated that it had
24 the potential to be significant. I don't believe it was that
25 strong of a conclusion.

1 MS. FOLK: And you understand that the Final Staff
2 Assessment recommended a mitigation measure to address that
3 impact; is that correct?

4 MR. RUBENSTEIN: Yes, that's correct.

5 MS. FOLK: And, Mr. Rubenstein, you've made some
6 statements about the operation of Mandalay 3, and I believe
7 you said that you would be -- you were horrified at the
8 suggestion that it would be used more frequently; is that
9 correct?

10 MR. RUBENSTEIN: I believe what I said is that I
11 would be appalled at the suggestions that it could be used,
12 either continued to be used or used more frequently in lieu
13 of Puente.

14 MS. FOLK: And did you hear Mr. Caldwell's testimony
15 yesterday that the proposed, the idea would be to use the
16 Mandalay 3 Unit as a bridge only in the N-1 -- to address
17 only the N-1-1 contingency?

18 MR. RUBENSTEIN: I don't believe he was that
19 precise. He referred to it as a bridge in general. And,
20 frankly, he referred to it as "an old girl," and I think "a
21 dinosaur" might be a better metaphor for that unit.

22 MS. FOLK: And did you understand Mr. Caldwell's
23 testimony that if Mandalay 3 were used to address the N-1-1
24 contingency, it would occur only .1 to .3 percent of the
25 time?

1 MR. RUBENSTEIN: Yes. And .1 to .3 percent of the
2 time would be between 80 and 250 hours per year, which would
3 potentially result in violations of the air permit because
4 that unit is restricted to a much lower level of operation.

5 MS. FOLK: And, Mr. Theaker, do you agree that the
6 focus of the LTPP Track 1 and the Edison RFO was to address a
7 deficiency in the LCR need for the Moorpark subarea?

8 MR. THEAKER: The LTPP analyzed need, and I think in
9 the Big Creek Ventura area, which includes the Moorpark
10 subarea and the western LA basin, but yes, a focus of that
11 analysis was the Moorpark subarea.

12 MS. FOLK: And has CAISO identified a deficiency in
13 the LCR need for the Santa Clara subarea?

14 MR. THEAKER: I do not believe they have.

15 MS. FOLK: So does that mean that CAISO has already
16 determined that there are sufficient resources in the Santa
17 Clara subarea?

18 MR. THEAKER: If they have not identified a
19 deficiency, yes.

20 MS. FOLK: Thank you.

21 HEARING OFFICER KRAMER: Environmental Center?

22 MS. ROESSLER: Yes. Thank you.

23 HEARING OFFICER KRAMER: I'm sorry. I've been saying
24 "center," but it's really coalition. I'll try to get that
25 right by tomorrow.

1 MS. ROESSLER: We're Environmental Defense Center,
2 so it's close. Okay. Thank you.

3 This is directed at Ms. Love.

4 I believe in regards to questions about off sites,
5 the Del Norte site and the Ormond Beach site, you mentioned
6 that wetlands and the presence of sensitive species as a
7 reason to conclude those sites were environmentally superior
8 to Puente; is that correct?

9 MS. LOVE: Can you please rephrase the question?

10 MS. ROESSLER: You mentioned in regards to your
11 earlier testimony, which I apologize is kind of a while ago
12 now, that the presence of a wetland and environmentally
13 sensitive and rare species was part of your basis for your
14 conclusion that those sites were environmentally superior to
15 the Puente Project site; is that correct?

16 MR. CARROLL: Just a point of clarification. You
17 asked her if those were bases for her conclusion that those
18 sites were environmentally superior to the Puente site? I
19 think you may have -- her conclusion was that they were
20 environmentally inferior to the project site. So, I think you
21 may have just misspoken, but perhaps not.

22 MS. ROESSLER: Maybe I'm misunderstanding.

23 What was your conclusion then in regard to the Del
24 Norte site? Let's start there. Did you find that there was a
25 presence of a wetland and sensitive species on site?

1 MS. LOVE: So your first question is whether or not
2 they're environmentally superior or not?

3 MS. ROESSLER: To the, yes, Del Norte site.

4 MS. LOVE: So I do not think that the Ormond Beach
5 Alternative Site is environmentally superior to Puente. I
6 also agree, I also think that the Del Norte site is not
7 environmentally superior to Puente.

8 MS. ROESSLER: Okay. You mention also the presence
9 of wetlands on those sites. Did you use the One Parameter
10 Test to determine that?

11 MS. LOVE: So I did a desktop literature review. So,
12 for those particular features, we looked at the U.S.G.S.
13 mapped wetland features. And in those cases, there are
14 wetlands located in the immediate vicinity of both sites and
15 there's also potential for other jurisdictional water bodies
16 as well.

17 How the U.S.G.S. maps those wetlands to be begin
18 with, I'm not sure if they only use the One Parameter or if
19 there's also other factors they take into mapping those.

20 MS. ROESSLER: I believe you did make a statement
21 earlier about using the Coastal Commission's One Parameter
22 Test.

23 MS. LOVE: Okay. I apologize.

24 MS. ROESSLER: Did you not?

25 MS. LOVE: So for that part where we -- I did look

1 at the soils, so we looked at the NRCS mapped soils on
2 the -- on both sites. Both sites had partially hydric soils.
3 And they also had -- those soils on each of those sites are
4 also typically associated with tidal flats. And in those
5 cases, those types of soils that have that type of soil and
6 that type of hydric rating have a more likelihood of having
7 hydric soils. But the current use of the site may impede or
8 the presence or the persistence of the potential for hydric
9 soils on those sites.

10 MS. ROESSLER: So is that a "yes" or a "no"? Did you
11 use the One Parameter Test? Is that what you're saying yes
12 to?

13 MS. LOVE: Yes. If we use One Parameter and applied
14 it to the soils, then there is a potential that there could
15 be One Parameter wetlands on those sites.

16 MS. ROESSLER: Okay. Why don't I ask you, what is
17 your understanding of the One Parameter Test? What are the
18 three parameters?

19 MS. LOVE: So you have a hydric soil --

20 MS. ROESSLER: Uh-huh.

21 MS. LOVE: -- wetland hydrology and hydrophytic
22 vegetation. So, in the case of a One Parameter Ruling by the
23 Coastal Commission, you just need to have one of those in
24 order to have a wetland.

25 We did not conduct a field survey, so I don't know

1 specifically if there are hydric soils on the site. But based
2 on the literature I reviewed, there are potential -- there is
3 potential to have hydric soils on those two sites.

4 MS. ROESSLER: Okay. So just to be clear, for those
5 two sites, you're just using the One Parameter, which it
6 sounds like it's hydric soils; is that correct?

7 MS. LOVE: That's correct.

8 I also mentioned for Del Norte based on our review
9 of the aerial -- I didn't mention that was an aerial -- but
10 with our review of the aerial, it looks like there is some
11 vegetation on the southern portion of the site. And even
12 though it's unlikely, there is a possibility it might have
13 wetland -- or, sorry -- hydrophytic vegetation.

14 MS. ROESSLER: Okay. My next question was in regards
15 to sensitive species. I believe you testified about the
16 presence of rare or sensitive species. I can't recall, was it
17 on one or both sites, off sites Del Norte and Ormond Beach?

18 MS. LOVE: I'm sorry. Can you repeat the last part
19 of your question?

20 MS. ROESSLER: Did you find that there is a
21 likelihood for the presence of rare or sensitive species on
22 either one of those off sites?

23 MS. LOVE: Yes.

24 MS. ROESSLER: Yes.

25 Both?

1 MS. LOVE: Both sites.

2 MS. ROESSLER: How many species?

3 MS. LOVE: So there is -- let me go back. So, the
4 California Nature Diversity Database had one sensitive
5 species within the immediate project vicinity, that was the
6 endangered Belding's Savannah Sparrow. That's state listed
7 endangered.

8 And then for the Del Norte site, the CNDBB also had
9 one occurrence of the CDFW watch list California Horned Lark.

10 MS. ROESSLER: Was that on the site or in the
11 vicinity of the site?

12 MS. LOVE: That's in the vicinity. So, you'll see in
13 the declaration, our survey area was .25 miles from the
14 alternate sites.

15 MS. ROESSLER: Okay. All right. Thank you. That's
16 good for now.

17 HEARING OFFICER KRAMER: Okay. Thank you.

18 MS. FOLK: I did have one last question.

19 HEARING OFFICER KRAMER: Go ahead.

20 MS. FOLK: So, Mr. Rubenstein, can you confirm the
21 total number of hour limits in the Mandalay 3 air permit?

22 MR. RUBENSTEIN: There are two limits that restrict
23 the operation of Mandalay Unit 3. There is a limit of 200
24 operating hours per year regardless of load. And then there
25 is also an annual NOx emission limit, which restricts

1 operation to the equivalent of about 80 full load hours per
2 year.

3 MS. FOLK: And were your numbers of 80 to 250 hours
4 per year based on a capacity factor of .1 percent and
5 .3 percent?

6 MR. RUBENSTEIN: No. Because your question to me and
7 what I heard Mr. Caldwell say yesterday was that Unit 3 would
8 be called on to operate .1 to .3 percent of the time.

9 MS. FOLK: Okay. And if it were operating at a
10 capacity factor of .1 to .3 percent, would your testimony
11 change?

12 MR. RUBENSTEIN: I would need to do an analysis to
13 answer that. I couldn't answer that as I sit here. Because it
14 would affect -- it we depend on what the operating load was,
15 what the emissions were at that load, and how that related to
16 the annual NOx emission limit.

17 MS. FOLK: Would your testimony still be then that
18 80 -- it would operate 80 to 250 hours per year?

19 MR. RUBENSTEIN: It could.

20 MS. FOLK: Okay. But you have not done that
21 analysis; is that correct?

22 MR. RUBENSTEIN: No. But I would also still be
23 appalled.

24 MS. FOLK: I have one more question, which is, do
25 you understand that the capacity factor of the Mandalay 3

1 Unit is 8,736 hours in a year?

2 MR. RUBENSTEIN: I'm sorry. Could you repeat that
3 question, please?

4 MS. FOLK: So do you understand -- are you aware
5 that the capacity factor for the Mandalay 3 Unit is
6 8,736 hours per year?

7 MR. RUBENSTEIN: No. My understanding is that a
8 capacity factor is a ratio of actual or projected megawatt
9 hours delivered divided by the capacity of the unit times
10 8,760 hours.

11 MS. FOLK: Okay. Thank you.

12 So, again, I just want to confirm, you haven't
13 testified then what the capacity factor is of the Mandalay 3
14 Unit?

15 MR. RUBENSTEIN: There are data in the record that
16 would support the calculation, but I don't have those
17 numbers --

18 MS. FOLK: Okay.

19 MR. RUBENSTEIN: -- in front of me.

20 MS. FOLK: That's fine. Thanks. That's all I have.

21 HEARING OFFICER KRAMER: And did you take care of
22 your questions for Mr. Theaker that we had categorized as
23 Overrides Part 1?

24 MS. FOLK: Oh, okay. Oh, I have nothing more for
25 Mr. Theaker at this point.

1 HEARING OFFICER KRAMER: Okay. Thank you.

2 I think the last person who signed up for some
3 cross is the Center for Biological Diversity. I had Ms.
4 Belenky's name on the list. She must have -- oh, there she is
5 still. Well, that's just her computer. Let me unmute everyone
6 and see if Ms. Belenky is there and has any questions. And
7 don't start into your questions yet. I need to identify which
8 one you are so I can mute the others. So, hold on.

9 Ms. Belenky, are you there?

10 (No audible response.)

11 HEARING OFFICER KRAMER: Lisa Belenky, can you hear
12 me?

13 (No audible response.)

14 HEARING OFFICER KRAMER: Okay. Any redirect, Mr. --

15 MS. LAZEROW: Excuse me, Mr. Kramer. This is Shana
16 Lazerow at the California Environmental Justice Alliance.
17 There was a line of questioning that we tried to pose to the
18 panel yesterday during the Environmental Justice section that
19 we were informed should be addressed to this Alternatives
20 Panel today.

21 HEARING OFFICER KRAMER: Okay. Go ahead.

22 MS. LAZEROW: And I believe -- thank you.

23 HEARING OFFICER KRAMER: Go ahead then.

24 MS. LAZEROW: I'm not sure which of the
25 witnesses -- good afternoon, Shana Lazerow, California

1 Environmental Justice Alliance. I will pose maybe the first
2 question to the panel and you can decide amongst yourselves
3 who is the best qualified to answer and then I'll proceed.

4 So, the Application for Certification represents
5 the NRG's objectives for the Puente Proposal include
6 minimizing environmental impacts by developing on an existing
7 brownfield site. Are you aware whether this criterion was
8 applied in selection of the alternative sites to which you're
9 testifying today?

10 MR. CARROLL: May I suggest for expediency possibly
11 a rephrasing of the question. As opposed to "are you aware,"
12 which might require each witness -- perhaps Ms. Lazerow would
13 entertain a proposed amendment to the question --

14 MS. LAZEROW: Please.

15 MR. CARROLL: -- as to whether or not there's anyone
16 on the panel who is aware.

17 MS. LAZEROW: Is there anyone on the panel aware of
18 whether the status as a brownfield was considered as a
19 criterion in NRG's analysis of alternative sites?

20 (No audible response.)

21 MR. CARROLL: Silence being --

22 MR. MENTA: Could you define what -- in your
23 opinion, what a brownfield is?

24 MS. LAZEROW: I'm sorry. I believe this was a
25 criterion presented by NRG in its Application for

1 Certification.

2 MR. CARROLL: I think we're going to have a problem
3 here. I think the basis of the problem is that, as I recall,
4 and we may have to go back to the transcript, but my
5 recollection is that CEJA was directed to ask their questions
6 related to Project Objectives to the Project Description
7 witnesses, not to the Alternatives witnesses. And I don't
8 believe that any of these witnesses are going to be in a
9 position to answer questions related to Projects Objectives.

10 MS. LAZEROW: I can withdraw the question and move
11 on to my next question. It sounds as though there isn't an
12 NRG representative able to speak to whether or not
13 brownfields was one of the criteria considered.

14 MR. CARROLL: Not on this panel.

15 HEARING OFFICER KRAMER: Mr. Piantka is right here.
16 We could bring him back.

17 Does this set up your other questions, or is it
18 something we could do later?

19 MS. LAZEROW: It does set up my other questions. I
20 fear that if we do it later the fact that my other questions
21 are about the alternatives that were considered would require
22 bringing this panel back.

23 HEARING OFFICER KRAMER: Okay. Mr. Carroll, do you
24 have any objection to reopening to let Mr. Piantka answer
25 that question?

1 MR. CARROLL: May I ask roughly how many questions
2 Ms. Lazerow thinks she may have.

3 MS. LAZEROW: Four.

4 MR. CARROLL: Okay.

5 HEARING OFFICER KRAMER: Mr. Piantka.

6 MR. CARROLL: I have no objection to bringing
7 Mr. Piantka back to field the questions.

8 HEARING OFFICER KRAMER: Okay. Mr. Piantka, you're
9 still sworn.

10 MR. PIANTKA: George Piantka, NRG Applicant.

11 Can you please repeat the question?

12 MS. LAZEROW: Is it correct that one of NRG's
13 objectives for the Puente Proposal included minimizing
14 environmental impacts by developing on an existing brownfield
15 site?

16 MR. PIANTKA: I see you looking at the Executive
17 Summary; so, yes, that is true.

18 MS. LAZEROW: Do you know whether this was a
19 criterion considered in identifying proposed alternative
20 sites?

21 MR. PIANTKA: I don't know whether that was a
22 specific criteria for alternative sites.

23 MS. LAZEROW: Does NRG control or have access to a
24 site location in Goleta?

25 MR. CARROLL: I'm sorry. Can you please be more

1 specific? A site location? Is the question whether they have
2 a site location that would be appropriate for the siting of
3 this project or control of a site location of any nature?
4 Just a little more specificity with the question would be
5 helpful.

6 MS. LAZEROW: Are you aware of whether NRG has
7 control of a location where a power plant is currently sited
8 in Goleta?

9 MR. PIANTKA: I'm aware that an affiliate of NGR
10 Energy, Inc., has a site in Goleta with power generation,
11 yes.

12 MS. LAZEROW: Thank you.

13 Those were my only questions for you.

14 I have one remaining question for -- a short line
15 of questions for Mr. Rubenstein, to follow-up on your
16 testimony this morning.

17 Related to the testimony that you offered this
18 morning regarding Unit 3, yesterday you testified that Puente
19 was approved to meet a need identified in the event of an
20 N-1-1 contingency, correct?

21 MR. RUBENSTEIN: No, I don't believe that was my
22 testimony. I believe that was Mr. Theaker's testimony.

23 MS. LAZEROW: I'm sorry. I don't have the transcript
24 in front of me, but I believe I asked you that question
25 yesterday morning and you responded yes.

1 MR. RUBENSTEIN: If so, I apologize, it was a long
2 time ago. I would have been referring back to Mr. Theaker's
3 comments.

4 MS. LAZEROW: So is it your understanding that
5 Puente has been approved to meet an N-1-1 contingency?

6 MR. RUBENSTEIN: I'm confused by the word "approved"
7 because I don't know approved by whom. And, again, I am not a
8 transmission expert, so I was merely paraphrasing or
9 referring to statements made by others on the panel.

10 MS. LAZEROW: I'm sorry.

11 Mr. Theaker, since you are still here, is it your
12 understanding that the need that resulted in the contract
13 between Southern California Edison and NRG for the Puente
14 unit, the Puente Project, was in response to an analysis of
15 an N-1-1 contingency?

16 MR. THEAKER: Yes, it is my understanding that the
17 authorization granted to Edison to procure generation in the
18 Moorpark subarea was defined by or informed by the N-1-1
19 contingency.

20 MS. LAZEROW: And I believe this question is for
21 Mr. Rubenstein. To your knowledge, will Puente's operation be
22 restricted from use as a system resource?

23 MR. RUBENSTEIN: Speaking just for purposes of the
24 air permit and the Energy Commission conditions that I have
25 reviewed, it is restricted in terms of the total number of

1 hours of operation, emissions and fuel use, but I'm not aware
2 of any restrictions on the nature of how it is dispatched.

3 MS. LAZEROW: And, Mr. Theaker, you're nodding your
4 head. Would that be your answer as well?

5 MR. THEAKER: I would answer the same way, yes.

6 MS. LAZEROW: Is either of you, I suppose, or anyone
7 on the panel, aware of any restrictions on -- I'm sorry. Let
8 me back up. Are you familiar with the Energy Imbalance
9 Market, or the EIM?

10 MR. THEAKER: This is Brian Theaker.

11 I am.

12 MS. LAZEROW: Are you aware of any restrictions that
13 would prevent Puente from bidding into the Energy Imbalance
14 Market?

15 MR. THEAKER: No.

16 MS. LAZEROW: To your knowledge, does Unit 3
17 frequently act as a system resource?

18 MR. THEAKER: To my understanding, it does not. It
19 can, but to my understanding because of its heat rate it is
20 typically not dispatched as a system resource.

21 MS. LAZEROW: And how often to your knowledge does
22 Unit 3 bid into the Energy Imbalance Market?

23 MR. THEAKER: Well, again, let me be -- this is
24 Brian Theaker.

25 If I could be more precise. By bidding into the

1 markets operated by the California ISO, that would make that
2 dispatch of the unit available to serve needs that could be
3 identified by the EIM.

4 So, when you say -- and to be clear, when I said
5 that the unit could bid into the EIM, it would be bidding
6 into the markets operated by ISO, which would make it
7 eligible for operation as part of the Energy Imbalance
8 Market.

9 MS. LAZEROW: And to your knowledge, has NRG bid it
10 into that market?

11 MR. THEAKER: We have bid the unit to the ISO. I
12 don't know the frequency of that. But we have bid the unit
13 into the ISO on occasion, yes.

14 MS. LAZEROW: And, so, just to take that one step
15 further, are you aware of any instances in which those bids
16 have been accepted?

17 MR. THEAKER: I am aware of one instance in
18 November, the most recent instance, where Mandalay 3 was
19 dispatched relative to a system emergency that stemmed from
20 the failure of the ISO's real-time market. That was an
21 unusual circumstance, and I don't think indicative of how the
22 unit would typically operate.

23 MS. LAZEROW: Thank you.

24 I have no further questions for this panel.

25 MS. FOLK: And if I may, I really apologize, but I

1 have two more questions.

2 HEARING OFFICER KRAMER: Two? Go ahead.

3 MS. FOLK: Okay. I just want to make sure we have a
4 clear record. And I will preface this by saying I always say
5 there's a reason why I went to law school, which is, I'm not
6 good with numbers.

7 So, Mr. Rubenstein, is it true that there
8 are -- hold on -- 8,730 hours in a year? 8,760 hours in a
9 year?

10 MR. RUBENSTEIN: Yes, there are 8,760 hours in a
11 year.

12 HEARING OFFICER KRAMER: That was one of your
13 questions.

14 (Laughter.)

15 MS. FOLK: And if the unit were to, the Mandalay 3,
16 were to run .1 percent of the time, would that be
17 approximately 8.7 hours?

18 MR. RUBENSTEIN: You're right. And I --

19 MS. FOLK: That's the question.

20 MR. RUBENSTEIN: You are, and I'm trying to remember
21 whether Mr. Caldwell misspoke yesterday, because I know he
22 did the math yesterday, and we do not have the transcript,
23 but in any event, yes, it would 8 to 24 hours per year for
24 that number, not 80 to 250.

25 MS. FOLK: Okay. That is what I wanted to clarify.

1 MR. RUBENSTEIN: And I would -- at 1100 pounds per
2 hour, I would still be appalled.

3 MS. FOLK: But it does -- it is bid into the market
4 currently; is that correct?

5 MR. RUBENSTEIN: What?

6 MS. FOLK: Mandalay 3.

7 MR. RUBENSTEIN: Mandalay Unit 3?

8 That would be a question for Mr. Theaker.

9 MS. FOLK: Yeah. Okay. I'll leave it at that.

10 Now, I am done.

11 HEARING OFFICER KRAMER: And I think he already
12 described all that. He did say it was on occasion.

13 MS. FOLK: Yes.

14 MR. THEAKER: This is Brian Theaker.

15 I do not know how often. That's a function that's
16 carried out by a Commercial Operations Group, and they are in
17 charge of how that unit is operated, bided into the ISO's
18 market, and I don't know the particulars of how they -- how
19 or if they bid that unit into the ISO market.

20 HEARING OFFICER KRAMER: Any redirect, Mr. Carroll?

21 MR. CARROLL: Two very short questions, both for
22 Mr. Theaker. One is a housekeeping point. When I commenced
23 his redirect, I could not lay my hands on the exhibit number.

24 Mr. Theaker, the prepared testimony that you
25 presented for this panel, was that originally Applicant's

1 Exhibit Number 1134, now marked as Applicant's Exhibit
2 Number 1121?

3 MR. THEAKER: That sounds correct.

4 MR. CARROLL: Thank you.

5 And you responded to a question on
6 cross-examination, and I'm paraphrasing here, but I believe
7 your response to the question was based on the information
8 that you're aware of, that there is not a deficiency in the
9 Santa Clara subarea. And I my question for you is, if, in
10 fact, that were to the case, does that change in any way the
11 conclusions that you articulated regarding the superiority of
12 connecting at the Mandalay Station as opposed to the Ormond
13 Beach Station?

14 MR. THEAKER: No, it doesn't. The fact that there's
15 not a deficiency in the Santa Clara area, the fact that
16 generation connected at Mandalay or Puente would be, would
17 simply mean that that unit could substitute for generation in
18 the Santa Clara area if it were to suffer a forced outage.
19 Because it has that substitutability, I would hold that it
20 still has superior reliability characteristics to generation
21 that would be connected at other two alternative sites
22 identified in the FSA.

23 MR. CARROLL: Thank you.

24 No further questions for this panel.

25 HEARING OFFICER KRAMER: Okay.

1 MS. FOLK: I'm done.

2 HEARING OFFICER KRAMER: I think we can break for
3 lunch.

4 But before we do, Mr. Carroll, we're -- having made
5 the Navy's letter your exhibit, are you intending to sponsor
6 them as --

7 MR. CARROLL: I was not intending to. I guess I had
8 understood that perhaps staff was. But if that's not the
9 case, we'd be happy to do that.

10 HEARING OFFICER KRAMER: Okay. It just means you get
11 to start with any questions that you have.

12 MR. CARROLL: Okay. I guess I better meet them.

13 (Laughter.)

14 HEARING OFFICER KRAMER: Well, you can also say no
15 questions. That's a perfectly acceptable response.

16 Okay. So, we're going to break for 25 minutes for
17 lunch. And the timer will be up on the screen. I'll take my
18 time, so you might get another minute out of it.

19 (Off the record at 1:47 p.m.)

20 (On the record at 2:18 p.m.)

21 COMMISSIONER SCOTT: -- with the court reporter to make
22 sure we're back on the record, which we are. And this is
23 Commissioner Janea Scott. I will now turn this back over to
24 Hearing Officer Paul Kramer.

25 HEARING OFFICER KRAMER: Okay. We have witnesses

1 from the Naval Base at the table. I need to swear you in, so
2 if you can raise your right hand.

3 (Whereupon, Ventura Naval Base Witnesses duly sworn.)

4 HEARING OFFICER KRAMER: Thank you.

5 MR. CARROLL: Thank you. Applicant would like to
6 call representatives of Naval Base Ventura County. If each of
7 you could please for the record simply state and spell your
8 name and indicate your affiliation with the organization that
9 you're here on behalf of, and your titles, please.

10 MR. BEAHAN: I'm Kyle Beahan, K-y-l-e, B-e-a-h-a-n,
11 employed by the United States Navy, and I'm the Operations
12 Officer at Naval Base Ventura County.

13 MS. FAGAN: Good afternoon. My name is Amanda Fagan.
14 I'm the Community Planning Liaison Officer for Naval Base
15 Ventura County, and the spelling of my name is A-m-a-n-d-a,
16 F-a-g-a-n.

17 MS. LEE: I'm Myoung Lee. I'm the Staff Judge
18 Advocate for Naval Base, Ventura County, and that's M-y-o-u-
19 n-g, last name L-e-e.

20 MR. CARROLL: Thank you. Please feel free to proceed
21 in whatever fashion you deem most appropriate to present the
22 information that you have to the Committee. And then
23 following that, Mr. Kramer will provide each of the parties
24 at the table an opportunity to ask questions.

25

DIRECT TESTIMONY

1 MS. FAGAN: Well, this is Amanda Fagan. Thank you
2 for the opportunity to provide an overview of the Naval Base
3 Ventura County operations in the vicinity of the Ormond Beach
4 Offsite Alternative location. The purpose of our letter
5 submitted on January 25th, 2017, was simply to provide
6 information regarding the nature of military operations at
7 Naval Base Ventura County, Point Mugu, and to correct several
8 statements that were made in the Final Staff Assessment
9 regarding those operations.

10 While Naval Base Ventura County does appreciate the
11 Energy Commission Staff's efforts to consult relevant
12 reference materials, such as the Naval Base Ventura County
13 Air Installations Compatible Use Zone, or AICUZ Study, and
14 also the Joint Land Use Study, the FSA incorrectly concluded
15 that aircraft operating at Point Mugu Airfield do not transit
16 over the Ormond Beach Offsite Alternative Site.

17 A couple of examples of those conclusions are found
18 on pages 4.2-110 and 4.2-154. As explained in our January
19 25th letter, military aircraft do operate over and near the
20 offsite Alternative. Operations that may occur over and near
21 the Ormond Beach Offsite Alternative Site at relatively low
22 altitudes, ranging from 500 feet above ground level to 3,000
23 above ground level include extended pattern field carrier
24 landing practice; our medium-sized passenger aircraft
25 departing runway 27 that regularly flies a path over or near

1 the alternative site, while climbing between 1,000 and 3,000
2 above ground level, en route to San Nicholas Island and the
3 Naval Air Warfare Center, China Lake; as well as small and
4 medium-sized aircraft on departure from runways 27 and 21, as
5 they make departure turns near or over the Alternatives site,
6 also while climbing between 1,000 and 3,000 above ground
7 level; and finally, unmanned aerial systems operating in one
8 of several loiter boxes that are located near the Alternative
9 site.

10 Airfield operations are described in our 2015
11 AICUZS, or Air Installation Compatible Use Zone Study, and
12 Figures 3-3 through 3-7 depict flight frequency for both
13 baseline and projected scenarios. And each of these figures
14 shows flight operations occurring over and near the Ormond
15 Beach Alternative Site.

16 So while the preponderance of our flight operations
17 do not occur over the Alternative site, aircraft operating at
18 NBVC Point Mugu do operate both -- may and do operate over
19 the Alternative site, again, at altitudes ranging from 500
20 feet above ground level to 3,000 feet above ground level.

21 So thank you for your time. Myself and Commander
22 Beahan are happy to answer any questions you might have about
23 the letter.

24 HEARING OFFICER KRAMER: Yes. Did you have any
25 questions, Mr. Carroll? You're just nominally the sponsor. So

1 --

2 MR. CARROLL: Yes. No. I do not have any questions,
3 but I thank you for your testimony. And just for
4 clarification so that it's clear in the record what we're all
5 referring to. The January 25th, 2017 letter that you referred
6 to, is that a two-page letter addressed to Mr. Pittard from
7 Captain Janke?

8 MS. FAGAN: Janke.

9 MR. CARROLL: Janke, with two enclosures, one of
10 them enclosure one being a diagram, and enclosure two being a
11 two-page memorandum -- I'm sorry -- a three-page memorandum
12 from the Federal Aviation Administration, dated September
13 24th, 2015?

14 MS. FAGAN: That's correct. And the diagram to which
15 you refer, those are screen captures from the air traffic
16 control radar.

17 MR. CARROLL: And I'm sorry. I want to make sure.
18 Are there two diagrams or one attached? I'm not sure.

19 MS. FAGAN: It's one enclosure, two diagrams.

20 MR. CARROLL: Okay. Thank you.

21 MS. FAGAN: Two screen captures.

22 MR. CARROLL: Okay. So the first enclosure is two
23 diagrams and the second enclosure is the three-page FAA memo.
24 And that document has been marked as Applicant's Exhibit 1140
25 for identification purposes, and that is an exhibit that

1 Applicant will be sponsoring into the record.

2 HEARING OFFICER KRAMER: Any questions from staff?

3 MS. CHESTER: No, not at this time.

4 HEARING OFFICER KRAMER: City of Oxnard?

5 CROSS-EXAMINATION

6 MS. FOLK: I have just one question. Can you tell us
7 how far the Point Mugu Airbase -- Naval Base, sorry, is from
8 the Ormond Beach Inland Alternative Site?

9 MS. FAGAN: The runway is located approximately
10 three miles from the end of runway 27, and approximately 1.5
11 miles from our base boundary.

12 MS. FOLK: Okay. Thank you.

13 HEARING OFFICER KRAMER: Environmental Coalition.
14 Shaking her head no. No from CEJA? And FFIERCE was not -- you
15 hadn't intended to ask any questions? Okay. Well, we thank
16 you for -- no. So there was nothing from Center for
17 Biological Diversity indicated either.

18 Let me just test and see if Ms. Belenky's still
19 there. Well, she may have dropped off. So let me unmute
20 everyone, and Ms. Belenky, are you with us on the phone? Lisa
21 Belenky, can you hear us, or Mr. Bundy? Okay. I'm going to do
22 it the quick way here and unmute all of them

23 Okay. Thank you for coming. The reason we asked you
24 in was because your information was of interest to the
25 Committee and we wanted to make sure that the parties had an

1 opportunity to ask questions of you so that we could rely
2 upon your information as part of the evidence we consider.
3 Thank you, again.

4 MS. FAGAN: Thank you.

5 MR. CARROLL: And I apologize if I missed this, but
6 were the witnesses sworn prior to their testimony?

7 COMMISSIONER SCOTT: Yes.

8 HEARING OFFICER KRAMER: Yes.

9 MR. CARROLL: Okay. Thank you. Thank you.

10 MR. BEAHAN: All right. Thank you.

11 (Witnesses excused)

12 HEARING OFFICER KRAMER: Ms. Folk, we have Ashley
13 Golden on for five minutes of direct under Project
14 Alternatives. Were you going to postpone her testimony until
15 Land Use? Was that your plan?

16 MS. FOLK: Yes.

17 HEARING OFFICER KRAMER: Okay. So then it would
18 appear that we are done with yesterday's items. Oh, no.
19 Sorry. We have Traffic and Transportation. Cultural
20 Resources, we're going to throw into the floater category,
21 since there's no testimony or --

22 MS. FOLK: Yeah. And we have nothing, actually, on
23 Cultural Resources now.

24 HEARING OFFICER KRAMER: On which?

25 MS. FOLK: On Cultural Resources, we do not intend

1 to cross-examine Mr. Hap (phonetic).

2 HEARING OFFICER KRAMER: Right. I think you -- what
3 I did was took out your estimate and I didn't move it to the
4 other place. Okay. And Staff, on Compliance and Closure, Mr.
5 Pittard -- Pittard; oh, sorry. Whatever. He's going to be
6 here for the duration.

7 So we could postpone that until a little later
8 without any harm. Do you agree? Okay. That's Compliance and
9 Closure. So on Traffic and Transportation we just have
10 Jonathan Fong from the Staff on direct, and then questions
11 from CEJA and the City of Oxnard. So let's go ahead with
12 that. Mr. Fong, you were not sworn in earlier, were you?

13 MR. FONG: I think Monday, but I could do it again,
14 just to be sure; or Tuesday, sorry.

15 HEARING OFFICER KRAMER: Tuesday. Okay. Better safe
16 than sorry, or what do we call it, belt and suspenders.

17 (Whereupon, Jonathan Fong, Witness for Traffic and
18 Transportation, duly sworn.)

19 HEARING OFFICER KRAMER: Thank you.

20 DIRECT TESTIMONY

21 MS. WILLIS: Thank you, Mr. Fong. My name is Kerry
22 Willis. I'm Staff counsel. Could you please state your name
23 for the record?

24 MR. FONG: Jonathan Fong, J-o-n-a-t-h-a-n, F-o-n-g.

25 MS. WILLIS: And was a statement of your

1 qualifications attached to your testimony?

2 MR. FONG: Yes.

3 MS. WILLIS: Did you prepare or assist in preparing
4 the testimony entitled, Traffic and Transportation
5 Supplemental Staff -- I mean, I'm sorry -- in the Final Staff
6 Assessment Exhibit 2000?

7 MR. FONG: Yes.

8 MS. WILLIS: And do the opinions contained in your
9 testimony represent your best professional judgment?

10 MR. FONG: Yes.

11 MS. WILLIS: And Mr. Fong, did you analyze any
12 potential aviation impacts for the project?

13 MR. FONG: Yes. As part of the FSA, Staff conducted
14 an Aviation Safety Analysis for the Puente Project. Briefly,
15 part of that Aviation Safety Analysis includes analyzing the
16 existing conditions of the project site, whether or not there
17 are any existing physical obstructions, and whether or not
18 there are any existing sources of thermal plumes.

19 Staff considers the project site in relation to any
20 known flight corridors or paths, and if a project site is
21 near an airport we consider the project's location relative
22 to any approach or departure patterns of that airport. And
23 finally, Staff considers any model thermal plume sources as
24 part of the project.

25 MS. WILLIS: Mr. Fong, in your opinion would the

1 proposed projection location be hazardous to aircraft?

2 MR. FONG: No. As I stated earlier, when we -- when
3 Staff considered the Puente Project we noted that there's an
4 existing physical obstruction and there's also an existing
5 source of thermal plumes at the project site.

6 Staff conducted thermal plume modeling, which is
7 included in appendices of Staff's FSA, and determined that
8 the Puente Project would result in thermal plumes that would
9 be larger, but not substantially so, compared to the existing
10 facilities at the site.

11 In consideration of the Oxnard Airport, Staff
12 confirmed that flights are not directed over the site.
13 Departure procedures for runway 25 direct pilots to maintain
14 runway heading before they turn at the coast. When
15 maintaining runway heading, another way to put that is
16 basically to fly directly in the direction of the runway.

17 When Staff analyzed the distance between the
18 centerline of that runway with the proposed Puente site,
19 Staff determined that would be approximately 2,000 feet a
20 difference between the runway heading and the Puente Project
21 site.

22 Additionally, when Staff reviewed the Pilot Guide
23 for the Oxnard Airport, the Oxnard Airport also directs
24 smaller aircraft to turn at the Edison Canal, which is not
25 close to the Puente site. It's important to note smaller

1 aircraft are generally less powerful and slower moving than
2 larger aircraft, such as commercial airliners, and those
3 types of aircraft are more susceptible to sources of thermal
4 plumes.

5 Also, Staff would note that there's an existing
6 Notice to Airmen, or a NOTAM, which advises overflight over
7 sensitive locations for existing sources, such as power
8 plants, and because of those reasons, Staff determined that
9 there would not be a hazard to aircraft.

10 MS. WILLIS: Mr. Fong, did you model the plume from
11 all three power plants?

12 MR. FONG: Yes. As Appendices TT-2 and TT-3 of
13 Staff's Final Assessment on Traffic, Staff modeled the
14 existing the proposed plumes using both the Spillane and
15 MITRE approach.

16 MS. WILLIS: And what did you determine?

17 MR. FONG: As I mentioned earlier, Staff determined
18 that the existing -- or the proposed Puente Project would
19 have a larger, but not significantly so, thermal plume as
20 modeled against the existing power facilities on the site.

21 MS. WILLIS: And just to be clear, the three power
22 plants that you modeled, could you list those?

23 MR. FONG: Sure. It would be the McGrath Peaker, MGS
24 Unit 3 and the proposed Puente site, project.

25 MS. WILLIS: And did you find any significant

1 adverse impacts to the environment under this category,
2 aviation?

3 MR. FONG: No. I mean, we've been speaking about
4 aviation, but as part of the Traffic and Transportation
5 Section we also consider the potential impacts to the
6 affected roadways during project construction and operation.
7 Staff concluded that the existing roadway segments and
8 intersections would operate at acceptable levels of service,
9 and with implementation of the proposed conditions of
10 certification there would be no significant adverse impacts.

11 With respect to aviation, Staff is proposing
12 condition of certification Trans-7, and they would require
13 the project owner to place a notice to airmen on -- to advise
14 of a source of thermal plume and advise against overflight.

15 There would be notations in the Air Traffic
16 Information System to the same effect, and also in the
17 airport facility directory. The project owner would also be
18 required to make notices on the sectional chart, noting that
19 there is an obstruction that pilots would be advised to avoid
20 overflight.

21 And finally, the project owner would be required to
22 make updates to the Oxnard Airport Pilot Guide and that would
23 note that there's a source of thermal plumes that should be
24 avoided. Staff would also note that when we reviewed the
25 existing Pilot Guide for the Oxnard Airport that the existing

1 sources of thermal plumes, the Mandalay Generating Station
2 and the McGrath peakers, are currently not noted on their
3 Pilot Guide.

4 MS. WILLIS: Mr. Fong, is the project in compliance
5 -- in your opinion is the project in compliance with all
6 transportation laws, ordinances, regulations and standards?

7 MR. FONG: Yes. And further, to the Trans-7, the
8 notices that I spoke to earlier, while not specifically LORS,
9 the FAA does provide guidance in their Aeronautical
10 Information Manual on Best Practices and Procedures to note
11 sources of thermal plumes.

12 And Staff considers the elements in Trans-7 to be
13 consistent with the best available information provided by
14 the FAA to note airmen to avoid direct overflight of -- over
15 thermal plume sources.

16 MS. WILLIS: Mr. Fong, did you analyze aviation
17 impacts to the Del Norte/Fifth Street Alternative Site?

18 MR. FONG: Yes.

19 MS. WILLIS: And what were your conclusions?

20 MR. FONG: Our conclusions were that at that
21 proposed Alternative site there's not a current power plant
22 operating. There's no existing physical obstructions or
23 sources of thermal plumes. And when Staff considered the
24 Ventura County Airport Land Use Compatibility Plan, Staff
25 noted in the figures available to us that there's a potential

1 for overflight over that Alternative location.

2 And due to the potential for overflight and the
3 current nonexistence of existing sources of thermal plumes,
4 that that would result in a significant and unmitigable
5 impact.

6 MS. WILLIS: Does this conclude your testimony?

7 MR. FONG: Yes.

8 MS. WILLIS: Thank you. This witness is available
9 for cross-examination.

10 HEARING OFFICER KRAMER: I have one clarifying
11 question. The way you said it, I wasn't clear if it was the
12 smaller aircraft or the larger aircraft that were more
13 susceptible to the plumes.

14 MR. FONG: It would be smaller aircraft. Generally,
15 you can imagine them being less powerful and slower moving
16 than a traditional jetliner, for example, that is very much
17 faster moving. So those are more susceptible to potential
18 sources of plumes.

19 HEARING OFFICER KRAMER: Okay. Thank you. City of
20 Oxnard?

21 CROSS-EXAMINATION FOR CITY OF OXNARD

22 MS. FOLK: Good afternoon, Mr. Fong.

23 MR. FONG: Good afternoon.

24 MS. FOLK: Sir, I'd like to start just by asking you
25 a few questions about your qualifications. Do you have any

1 professional experience in the aviation industry?

2 MR. FONG: Not in the aviation industry.

3 MS. FOLK: And do you have professional experience
4 monitoring air traffic patterns in Ventura County?

5 MR. FONG: No.

6 MS. FOLK: And it's my understanding that the Final
7 Staff Assessment Model impacts under what's referred to the
8 Spillane method using calm wind conditions. Is that correct?

9 MR. FONG: Staff also at the request of the Director
10 of Airports for Ventura County, modeled it using the
11 MITRE method, as well, but yes.

12 MS. FOLK: And did you determine that the impact of
13 the plume would be significant under those models, on air
14 traffic safety prior to mitigation, just to clarify?

15 MR. FONG: I would -- I mean, the way you've asked
16 that question, I mean, I would say that the thermal plume
17 modeling does not establish a threshold. So I mean, I guess I
18 would ask that maybe you rephrase that question.

19 MS. FOLK: Okay. So you're saying the model you used
20 did not have a threshold for significance?

21 MR. FONG: The model provides results of expected
22 frequencies of plume velocities at different elevations.

23 MS. FOLK: Okay. And is it correct that the plumes
24 exceeded the significance threshold under the Spillane model?

25 MR. FONG: Could you rephrase that?

1 MS. FOLK: Well, actually, I said, is it correct
2 that the --

3 MR. FONG: Okay.

4 MS. FOLK: -- the plume velocities that you found
5 exceeded the significance threshold under the Spillane model?

6 MR. FONG: Yes.

7 MS. FOLK: Okay. And is it -- in terms of the
8 mitigation that was proposed, are the proposed measures
9 contained in Trans-7, the condition Trans-7, designed to
10 mitigate significant -- a significant thermal plume impact on
11 air safety?

12 MR. FONG: The measures and condition of
13 certification Trans-7 are the best available measures to
14 alert potential aircraft of a source of a thermal plume.
15 They're consistent with all of the available recommendations
16 and best management practices recommended by the FAA.

17 MS. FOLK: And is it fair to characterize these
18 measures as requiring the Applicant to contact air regulatory
19 agencies and request that these agencies notify pilots of the
20 potential thermal plume hazard?

21 MR. FONG: Yes.

22 MS. FOLK: Does the Energy Commission have any
23 authority to require these other agencies to implement this
24 requested mitigation measure?

25 MR. FONG: No.

1 MS. FOLK: Now, you testified that an alternative
2 project located at the Fifth and Del Norte site could pose
3 potential impacts to aircraft operating out of the Camarillo
4 Airport. Is that correct?

5 MR. FONG: Yes.

6 MS. FOLK: And is it correct that one of the
7 potential impacts of this alternative site is associated with
8 notifying the FAA of a potential obstruction hazard from the
9 new transmission lines? Is that correct?

10 MR. FONG: I think you confused me. We were talking
11 about the Del Norte site and then you asked about the
12 transmission line associated with that alternative?

13 MS. FOLK: The potential transmission lines for the
14 Del Norte site, if they were -- if it were to be constructed?

15 MR. FONG: I would say yes.

16 MS. FOLK: And is the nature of that potentially
17 significant impact that the Applicant would have to file a
18 Form 7460 with the FAA?

19 MR. FONG: That's a standard requirement, yes.

20 MS. FOLK: Does the Puente Project also trigger the
21 need to notify the FAA of potential airspace obstructions?

22 MR. FONG: Yes.

23 MS. FOLK: And does condition Trans-5 also require
24 the Applicant to submit the same form for FAA hazard review
25 before building the project at the Mandalay site?

1 MR. FONG: Yes, I believe so.

2 MS. FOLK: And does the FSA conclude that the FAA's
3 potential hazard determination in response to that form
4 constitutes a potentially significant and unavoidable
5 transportation impact for the Puente site?

6 MR. FONG: I think you've confused me, because
7 generally, the FAA would file a -- would make a determination
8 of hazard or no hazard, and that is a standard requirement.

9 MS. FOLK: But the fact that the FAA would make a
10 determination is not considered a significant impact at the
11 Puente site. Is that correct?

12 MR. FONG: Are you asking me whether or not my
13 conclusion is based on the determination from the FAA on the
14 hazard?

15 MS. FOLK: No. On the fact that the FAA would be
16 asked to make a determination. Would the fact of having to
17 ask for the determination in and of itself constitute a
18 significant impact, in your opinion?

19 MR. FONG: No.

20 MS. FOLK: Okay. Now, the conclusion that the Del
21 Norte and Fifth Street Alternative would have significant and
22 unavoidable impacts to air traffic safety is based on the
23 assertion that a project at that site could cause a hazard to
24 planes taking off or landing at the Camarillo Airport. Is
25 that correct?

1 MR. FONG: Yes, and that no similar obstruction
2 exists there.

3 MS. FOLK: And is this conclusion based on reviewing
4 aircraft arrival and departure tracks from the Airport
5 Comprehensive Land Use Plan for Ventura County?

6 MR. FONG: Yes.

7 MS. FOLK: And these -- did you evaluate this
8 tracking data to determine how frequently aircraft from the
9 Camarillo Airport actually fly near the Del Norte site?

10 MR. FONG: No. Staff relied on the information based
11 on its publication by the County of Ventura.

12 MS. FOLK: So you did not determine how frequently
13 aircraft actually fly near the Del Norte site?

14 MS. WILLIS: Objection, asked and answered.

15 MS. FOLK: I just want to confirm, because I did not
16 get a yes or no answer to the question previously.

17 HEARING OFFICER KRAMER: It's overruled.

18 MS. WILLIS: Well, I believe you did. He said that
19 he relied on the county information.

20 MS. FOLK: And I asked if he determined how
21 frequently aircraft from the Camarillo Airport actually fly
22 near the Del Norte site.

23 HEARING OFFICER KRAMER: Overruled. Go ahead and
24 answer.

25 MR. FONG: No. Staff did not consider the frequency

1 near the possibility of overflight.

2 MS. FOLK: And could the Energy Commission require
3 similar mitigation conditions such as Trans-6 or Trans-7 if
4 the proposed alternative were built at the Fifth and Del
5 Norte site?

6 MR. FONG: Yes.

7 MS. FOLK: The last question I have is, did you --
8 were you here when Mr. McNamee testified the other day?

9 MR. FONG: Yes.

10 MS. FOLK: And I'm wondering if it's possible to
11 pull up his FSA comments, which are at Exhibit 3010.

12 HEARING OFFICER KRAMER: Okay. Just give me a
13 minute.

14 MS. FOLK: I want to just scroll down to the image
15 of the overflights. So it's at the end of his comment letter.

16 HEARING OFFICER KRAMER: So if you can make it a
17 full screen again, Ari. Let's see. This is the one for the
18 project site, and you're speaking about Camarillo, correct?

19 MS. FOLK: No. This is the project site.

20 HEARING OFFICER KRAMER: Oh, okay.

21 MS. FOLK: Yeah. I just wanted to go back to that
22 first --

23 HEARING OFFICER KRAMER: Is this the one?

24 MS. FOLK: Yes.

25 HEARING OFFICER KRAMER: Okay. Let me just get it

1 rotated. Is that good enough a zoom level for what you need?

2 MS. FOLK: Sure. That's fine. I just have a couple
3 questions. Did you review this diagram?

4 MR. FONG: Yes.

5 MS. FOLK: And you understand that these are all
6 flights that actually fly over the Puente facility right now.
7 Is that -- or within recent time? To be clear, between
8 October 1st and November 15th, 2015.

9 MR. FONG: Yes. This was a figure from the
10 Preliminary Staff Assessment.

11 MS. FOLK: And you understand these flights are
12 occurring even though there currently is information in the
13 NOTAM regarding the Puente facility now, and encouraging
14 pilots not to fly over that?

15 MR. FONG: Yes.

16 MS. FOLK: That's all I have.

17 HEARING OFFICER KRAMER: Did you say earlier that
18 there were no warnings in the Oxnard Airport manuals?

19 MR. FONG: Yes. In the FSA, I mean, there is a -- we
20 did include as an exhibit Figure 6, the existing Oxnard
21 Airport Pilot Guide, where we note that there is no symbol or
22 warning of the existing power plant, yes.

23 HEARING OFFICER KRAMER: Okay. Is that different
24 than the NOTAM?

25 MR. FONG: Yes. The Notice to Airmen would be -- is

1 separate from a pilot guide, yes.

2 HEARING OFFICER KRAMER: Okay. And are you saying
3 that there is mention of the power plant in the NOTAM?

4 MR. FONG: I would say there's currently no mention
5 in any of those documents that we list in Trans-7 as there --
6 we did not find any notice or reference to an existing source
7 of a thermal plume or the power plant itself on any of those
8 facilities, directories, pilot guides, notices to airmen,
9 sectional charts, et cetera.

10 HEARING OFFICER KRAMER: Okay. I thought you just
11 said something different a minute ago in response to her last
12 question.

13 MR. FONG: I'm sorry if I might have misspoke, then.

14 MS. FOLK: Yeah. Well, I would like to clarify that
15 because I believe Mr. McNamee testified earlier that there
16 was current materials recommend avoiding overflight from the
17 Puente facility. And did you consider that testimony from Mr.
18 McNamee?

19 MR. CARROLL: I'm going to object on the basis I
20 believe that was a mischaracterization of Mr. McNamee's
21 testimony. As I recall, he had a document that he referenced,
22 and under questioning he indicated that that was a generally
23 applicable guidance from the FAA and not specific to any
24 particular project.

25 MR. FONG: I feel like we're talking about multiple

1 things. Mr. Carroll referenced that September 2015 FAA
2 memorandum, which was an included attachment of Amanda Fagan
3 from Naval Base Ventura County's letter. There was an
4 advisory from the FAA that I believe Mr. McNamee mentioned
5 there.

6 Mr. Kramer, I think you asked me a question. There
7 is an existing Notice to Airmen that recommends that pilots
8 avoid overflight over sensitive locations such as power
9 plants, but not this power plant in particular. I believe
10 that Mr. McNamee made verbal comments in his testimony that
11 he is aware of it, that pilots either disregard it or, based
12 on their routine flight in the area, have otherwise
13 disregarded it, if that is clarification.

14 HEARING OFFICER KRAMER: Okay. And is that notice
15 you just referred to, is that one specific to the Oxnard
16 Airport or just general to the --

17 MR. FONG: It is a general Notice to Airmen to avoid
18 overflight over all sensitive locations, such as power plants
19 --

20 HEARING OFFICER KRAMER: Throughout the country?

21 MR. FONG: -- coal refineries -- that could be true,
22 yes.

23 MS. FOLK: Can I clarify here, because -- so I'd
24 like to direct you to Mr. McNamee's comments on the
25 Preliminary Staff Assessment where he states, "The Department

1 of Airports," referring to the Ventura County Department of
2 Airports, "currently provides recommended patterns to avoid
3 overflight of the existing power plant in the published Pilot
4 Guide."

5 MS. CHESTER: Could you please refer us to the page?

6 MS. FOLK: Yeah, I will. Just a second. Sorry. It's
7 on page 3 of his comments on the PSA. Did you review that
8 comment?

9 MR. CARROLL: Is there is a -- is there a TN number?

10 MS. FOLK: It's Exhibit 3010. I don't know the TN
11 off the top of my head.

12 HEARING OFFICER KRAMER: 213674.

13 MR. CARROLL: Thank you.

14 MR. FONG: I am familiar with this comment, yes, and
15 the letter.

16 MS. FOLK: And do you not agree that there is
17 already a Pilot Guide published by the Department of Airports
18 that, according to Mr. McNamee, currently recommends that
19 overflight over the Puente facility be avoided?

20 MR. CARROLL: I'm sorry. I'm going to object to the
21 characterizations of Mr. McNamee's testimony. I don't know
22 that they're inaccurate, but I can't keep up with the letter
23 fast enough. And of course, we don't have the transcript in
24 front of us as to what he said yesterday.

25 So I think the record, you know, what Mr. McNamee

1 has said, either in his written testimony or in his live
2 testimony stands on its own, and I'm concerned about
3 characterizations of it that are being made now.

4 MS. FOLK: I would just like to say that it's fine
5 if you want to take a minute to get to that point in his
6 letter. I was asking the witness if he disagreed with Mr.
7 McNamee's statement.

8 MR. CARROLL: And where -- I'm sorry. Where --

9 HEARING OFFICER KRAMER: Yeah.

10 MS. FOLK: It is on page 3. It's the second to last
11 paragraph.

12 MR. CARROLL: Okay. And that's not my -- the
13 question was phrased a bit differently, which is what
14 prompted my objection, but thank you.

15 MS. FOLK: Would you like me to read the statement
16 from Mr. McNamee again, or did you --

17 MR. FONG: Sure, if you don't mind?

18 MS. FOLK: Sure. It's up on -- it's actually up
19 there.

20 MR. FONG: Is it different than down here?

21 HEARING OFFICER KRAMER: No, they're the same.

22 MS. FOLK: No.

23 HEARING OFFICER KRAMER: I hope.

24 MS. WILLIS: Could you direct us to which part of
25 the statement?

1 MS. FOLK: Where he states, "The DOA," which is a
2 reference to the Ventura Department of Airports, "currently
3 provides recommended patterns to avoid overflight of the
4 existing power plant in the published Pilot Guide." Do you
5 disagree with that statement?

6 MR. FONG: Yes, I would. In Figure 4 of -- or Figure
7 6 of Staff's Final Staff Assessment we provided what we know
8 to be the Pilot Guide for the Oxnard Airport, and it does not
9 currently show or make any reference to the existing site for
10 Mandalay or McGrath as a potential source of impact, or any
11 description to avoid.

12 It just simply says, it simply directs pilots to
13 continue to the coast before turning. It does not say and it
14 does not make any note of the presence of the Puente site or
15 the Mandalay Generating Station or the McGrath peaker. In Mr.
16 McNamee's letter that you're referring to, ma'am, I mean,
17 there is a reference where there's three arrows with --
18 they're going up towards the -- what he labels as the P-3
19 site. That's an annotated map. That does not currently exist.

20 When you look at those three red arrows, those are
21 not currently on the Oxnard Airport Pilot Guide. Those are
22 notes he made on that page when he submitted his comments.

23 MS. FOLK: The three red arrows are?

24 MR. FONG: Correct. So that's Staff's basis that
25 that is not accurate, because that's not the current version

1 of the published guide.

2 MS. FOLK: But do you dispute that it was -- that
3 Mr. McNamee is the Director of Airports for Ventura County?

4 MR. FONG: I can't -- no.

5 MS. FOLK: And there is a notation on that map to
6 avoid overflight?

7 MS. WILLIS: I'm going to object. To what -- where
8 are you referring to, please?

9 MS. FOLK: Actually, that's down below, but this is
10 a direction as to how the takeoffs and landings should occur.
11 Is that correct? Takeoffs.

12 MR. FONG: I would reaffirm that I do not believe
13 this map that you're showing me is the published Pilot Guide.

14 MS. FOLK: So you disagree with Mr. McNamee's
15 statement as to his --

16 MR. FONG: Ma'am, if you look at the border of this
17 map you can see that the red arrows go beyond it. That is not
18 what's the published Pilot Guide.

19 MS. FOLK: It's an annotation from the public -- of
20 the public pilot -- published Pilot Guide. Is that your
21 position?

22 MR. FONG: It is.

23 MS. FOLK: Okay. I have nothing further.

24 HEARING OFFICER KRAMER: Is the yellow -- are the
25 yellow boxes on the guide, are those also annotations, do you

1 know?

2 MR. FONG: The yellow boxes are on the guide, yes.

3 MR. CARROLL: This is Mike Carroll, for the
4 Applicant. I would like to register an objection to the
5 admission of this exhibit, and I know we're going to take
6 that up later, but just make a note on the record subject,
7 based on the testimony that we just heard today.

8 Subject to our ability to confirm that it is what
9 it purports to be, I'd like to just register an objection,
10 and we may not ultimately make it at the time, but.

11 MS. FOLK: Well, I believe Mr. McNamee was here the
12 other day and testified as to this document.

13 MR. CARROLL: Yes. But based on the testimony that
14 we just received, the document is not as what I understood it
15 to be when Mr. McNamee testified, and that may be my error,
16 but based on the testimony today I just need to confirm that
17 I understand what the exhibit is, because it's not what I
18 understood it to be when Mr. McNamee presented it.

19 HEARING OFFICER KRAMER: Well, at a minimum, it
20 would be taken in alongside this other testimony that would
21 explain it.

22 MR. CARROLL: True.

23 HEARING OFFICER KRAMER: So it might be appropriate.
24 In the cover page I think I'm going to have to write, where I
25 say some documents are admitted for a limited purpose I might

1 want to say for this one, see also the testimony of Mr. Fong.
2 But we can discuss that tomorrow. CEJA, questions?

3 CROSS-EXAMINATION BY CEJA

4 MS. LAZEROW: Yes. Thank you. Good afternoon, Mr.
5 Fong.

6 MR. FONG: Good afternoon.

7 MS. LAZEROW: I'm Shana Lazerow, for the California
8 Environmental Justice Alliance. I'm going to turn your
9 attention back to the cars on the road. You are sponsoring
10 the testimony concerning traffic, correct?

11 MR. FONG: Yes.

12 MS. LAZEROW: Are you familiar with the methodology
13 used to evaluate the traffic levels around the project?

14 MR. FONG: By methodology do you mean like the
15 levels of service, or the methodology by which those traffic
16 -- the traffic study was prepared?

17 MS. LAZEROW: By which the traffic study was
18 prepared. I'm specifically interested in knowing whether the
19 evaluation considered the levels of traffic, based on actual
20 traffic counts around the project?

21 MR. FONG: I believe so, yes, that the traffic
22 counts were either used from best available county figures,
23 or I do not believe that they were directly counted. I
24 believe they used the county estimates.

25 MS. LAZEROW: Are you familiar with how the county

1 conducts its estimates?

2 MR. FONG: No, I'm not.

3 MS. LAZEROW: So just so that I understand and don't
4 ask you a lot of irrelevant questions, as far as you know, no
5 one counted the cars on the road at any given time of day?

6 MR. FONG: No. That would be a question for the
7 Applicant, I believe, if they -- how they prepared the
8 Traffic Impact Analysis.

9 MS. LAZEROW: In your analysis did you consider
10 whether there were increased risks of traffic accidents due
11 to the project?

12 MS. WILLIS: I'm not going to object. Ask for
13 clarification. Which project are you talking about, current -
14 - the project as proposed, if there are additional traffic
15 accidents?

16 MS. LAZEROW: I can rephrase to be projected or to
17 clarify that. Did you evaluate whether there would be
18 increased risks of traffic accidents due to construction of
19 the Puente Project, demolition of existing Units 1 and 2 or
20 operation of the Puente Project?

21 MR. FONG: Given that the project doesn't involve
22 any modifications to the existing roadway network or the
23 entrance or exit of the site, Staff did not consider that,
24 no.

25 MS. LAZEROW: Did you evaluate the presence of

1 parked cars on the shoulder of the roads, and would you like
2 me to clarify the degree to which I mean --

3 MR. FONG: Of course.

4 MS. LAZEROW: -- in the project area?

5 MR. FONG: Yes, please.

6 MS. LAZEROW: So did you consider the presence of
7 parked cars on the shoulders of the roads in the area of the
8 Puente Project?

9 MS. WILLIS: And just to be clear, is that parked
10 cars of Staff or that are working on the construction of the
11 project, during operations of the project or just generally
12 the public has parked cars?

13 MS. LAZEROW: Generally, as a baseline of use of the
14 roads that may be affected by traffic due to the project.

15 MR. FONG: No, we did not. I mean, Staff would
16 hazard to say that if those parked cars were complying with
17 applicable laws that it would not be a significant impact.

18 MS. LAZEROW: My final question for you. Did you
19 conclude that there would be no disproportionate traffic
20 impacts on an environmental justice population?

21 MR. FONG: Yes.

22 MS. LAZEROW: What was the population to which you
23 compared an environmental justice population?

24 MR. FONG: When Staff considered or made the
25 conclusion of the disproportionate impact, staff relied on

1 the local roadway segments that are depicted in Traffic and
2 Transportation Figure 1, and considered those would be the
3 likely roadway intersections and segments that would be used
4 by the project and when considering those roadway segments in
5 correlation with the environmental justice figures in
6 combination.

7 That is the nature of our conclusion or the basis
8 of our conclusion. Maybe I shouldn't have concluded that
9 sentence that way, because I looked at your face. So
10 basically, we looked at the roadway segments and the
11 intersections, and then looking at that in relation to the
12 location of the disadvantaged communities that were presented
13 in the environmental justice figure.

14 Those in correlation were how we assessed the
15 potential impacts and made the determination that there would
16 not be a disproportionate impact to the environmental justice
17 population.

18 MS. LAZEROW: So can I reflect back what I would
19 have put in my notes summarizing that, and you can tell me
20 whether I understood you correctly? Did I understand you to
21 say -- say Gonzalez Road. Say a portion of Gonzalez road was
22 within an environmental justice community and say that a
23 portion of Harbor Road was not.

24 Would you have compared impacts on Gonzalez Road to
25 impacts on Harbor Road in order to conclude that the impacts

1 would not be disproportionate on the environmental justice
2 community?

3 MR. FONG: When Staff looked at the roadway network,
4 Staff also considered the routes proposed by the Applicant as
5 the likely routes to get from the site to, you know, major
6 roadway, highway, such as 101. And so when Staff did consider
7 where the locations of these populations were in relation to
8 where these roadways' networks, staff determined that there
9 would not be any disproportionate impacts to the
10 environmental justice community.

11 I'd hazard a hypothetical, but I would -- I don't
12 know if that would be appropriate, to give a different
13 example of how Staff might consider an environmental justice
14 impact. Do you -- I don't know if that's helpful.

15 MS. LAZEROW: I still don't understand whether you
16 compared roadways in disproportionately impacted to roadways
17 not in disproportionately impacted communities within the
18 impact area. Is that what you did?

19 MR. FONG: Staff did consider that, yes.

20 MS. LAZEROW: Did you do something in addition to
21 that in your Environmental Justice Analysis?

22 MR. FONG: Staff also in that Environmental Justice
23 Analysis and in the Traffic and Transportation section in its
24 entirety determined that the proposed routes are the most
25 direct and would not burden -- or disproportionately burden

1 any environmental justice community.

2 MS. LAZEROW: Thank you. I have no further questions
3 for this witness.

4 HEARING OFFICER KRAMER: Thank you.

5 MS. FOLK: Can I ask just one question on that?

6 HEARING OFFICER KRAMER: Go ahead.

7 CROSS-EXAMINATION BY CITY OF OXNARD

8 MS. FOLK: How do you determine disproportion of
9 impact?

10 MS. WILLIS: I'm going to object as to vague. If
11 there could be a more specific question.

12 HEARING OFFICER KRAMER: Yeah, sustained.

13 MS. FOLK: I believe he just testified that there
14 was no disproportionate environmental justice impact, and I'd
15 like to know how disproportionate is determined.

16 MS. WILLIS: I'm going to object again. That was
17 determined during the EJ panel, which was yesterday.

18 HEARING OFFICER KRAMER: Well, if Mr. Fong can -- he
19 wasn't on that panel, was he?

20 MS. FOLK: No.

21 HEARING OFFICER KRAMER: No. So if he can briefly
22 describe that methodology he uses, that seems appropriate.

23 MR. FONG: I mean, for the very specific technical
24 area of Traffic and Transportation Staff would make the
25 definition of disproportionate for the purposes of traffic if

1 the proposed routes went through exclusively environmental
2 justice, identified as disadvantaged communities, when there
3 could be more direct routes that would avoid those
4 communities, that is essentially what Staff would consider as
5 disproportionate.

6 MS. FOLK: So it has to do with whether there's a
7 more direct route that would avoid an environmental justice
8 community?

9 MS. WILLIS: I'm going to object to that. That mis-
10 states -- he did not say there had to be a more direct route.
11 I mean, it mis-states his testimony.

12 MS. FOLK: Well, okay. So I'm asking to clarify,
13 then.

14 HEARING OFFICER KRAMER: Do you understand the
15 question?

16 MR. FONG: Could you rephrase it, just to make sure?
17 I mean, I vaguely understand what you're asking me, but I
18 just want to be sure.

19 MS. FOLK: Maybe I misunderstood your testimony. I
20 thought you had testified that you would find no
21 disproportionate impact to an environmental justice community
22 if the project used the most direct route, and it was not --
23 I guess you might say deliberately routed through an
24 environmental justice community.

25 MS. WILLIS: I'm going to object to that. That was

1 not his testimony.

2 HEARING OFFICER KRAMER: Well, Mr. Fong, was that
3 your testimony?

4 MR. FONG: Staff would --

5 MS. WILLIS: I object to the word "deliberately
6 routed through an environmental justice community."

7 MS. FOLK: Well, I don't --

8 MS. WILLIS: I don't think that was -- that was not
9 his testimony.

10 MS. FOLK: I didn't mean that in a pejorative way. I
11 was just trying to see how they would make that
12 determination.

13 HEARING OFFICER KRAMER: Overruled. But Mr. Fong, if
14 she has misstated what you said, please correct her. That's
15 what she's asking you.

16 MR. FONG: I mean, in regards to attempting to
17 define disproportionate for the purposes of Traffic and
18 Transportation, if a route goes through a disadvantaged
19 community where there could be a route that avoids that
20 community, Staff would consider that to be a proportionate
21 impact or whatever, a disproportionate impact to that
22 environmental justice community.

23 MS. FOLK: And is your comparable route that avoids
24 the environmental justice community, does that have to be
25 still a direct route?

1 MR. FONG: By direct do you mean the shortest or --
2 I mean, the conditions of certification Trans-2 I believe has
3 a traffic control plan wherein Staff has the ability to
4 restrict or require project owners to use or not use certain
5 roads.

6 So direct, I'm not sure what you imply by that, the
7 use of that word. But Staff has the ability to require a
8 project owner to use any route direct, indirect or shortest,
9 longest, that they may need to.

10 MS. FOLK: But what do you mean by direct?

11 MR. FONG: The most likely, the most reasonable,
12 shortest, perhaps I mean in this instance direct to be the
13 most logical route to get to the site.

14 MS. FOLK: The most logical route?

15 MR. FONG: How about direct?

16 MS. FOLK: How did you determine it in this
17 particular case, what the most direct route was?

18 MR. FONG: When Staff considered the Regional
19 Roadway Network, the routes Victoria, West Fifth, West
20 Gonzalez and Harbor offered the most -- I almost used the
21 word "direct" -- are the routes that allow traffic to arrive
22 at the site in the most expeditious fashion.

23 MS. FOLK: Okay. Thank you.

24 HEARING OFFICER KRAMER: Any redirect?

25 MS. WILLIS: Yes. Thank you. Kerry Willis, for

1 Staff. Mr. Fong, did the FAA issue a determination of new
2 hazards to air navigation for the proposed Puente site?

3 MR. FONG: I believe so.

4 MS. WILLIS: And would construction workers or
5 workers that would be involved in the operations at the
6 proposed plant park their cars on the streets?

7 MR. FONG: No. As part of the conditions of
8 certification the project owner's required to prepare a
9 parking and staging plan, which directs all construction
10 workers to park in designated areas on site.

11 MS. WILLIS: Okay. Thank you. That's all I have.

12 HEARING OFFICER KRAMER: Any re-cross? Okay. Thank
13 you, Mr. Fong.

14 (Witness excused)

15 HEARING OFFICER KRAMER: Okay. Cultural Resources,
16 to recap, is a floater now. So we'll probably consider that
17 tomorrow, and Compliance and Closure is, unless we have time
18 today, is going to go over to tomorrow, as well. So that
19 brings us to Visual Resources, the first item on the list for
20 today.

21 I did see, Mr. Carroll, that Louise Kling was on
22 the WebEx.

23 MR. CARROLL: Yes, I believe that she is.

24 HEARING OFFICER KRAMER: I think she's on -- she's
25 on her computer, but also, she's one of our call-in users. So

1 we're going to have to unmute everybody, and Ms. Kling, if
2 you could identify yourself and say -- let's go off the
3 record for this.

4 (Off the record briefly)

5 HEARING OFFICER KRAMER: On the record. Okay. If you
6 haven't been sworn, please raise your right hand.

7 (Whereupon, Eric Knight and Louise Kling, Witness for
8 Visual Resources, duly sworn.)

9 HEARING OFFICER KRAMER: Okay. Let's go first with
10 Ms. Kling and Mr. Carroll.

11 MR. CARROLL: Thank you.

12 DIRECT TESTIMONY

13 MR. CARROLL: Ms. Kling, this is Mike Carroll. Can
14 you hear me?

15 MS. KLING: I can.

16 MR. CARROLL: Can you please restate your name and
17 spell it for the record and identify your current employer
18 and your position?

19 MS. KLING: My name is Louise Kling. First name is
20 Louise, L-o-u-i-s-e. Last name, Kling, K-l-i-n-g, and I am
21 employed by AECOM as a senior environmental planner.

22 MR. CARROLL: What experience do you have that's
23 relevant to today's proceedings?

24 MS. KLING: I have over 20 years of experience with
25 environmental research and planning, and over a decade of

1 experience specifically regarding the evaluation of Visual
2 Resources and the potential impacts of proposed development
3 on those resources.

4 MR. CARROLL: Thank you. And do you have there in
5 front of you documents initially marked as Applicant's
6 Exhibit No. 1114, now marked as Exhibit 1101, entitled, the
7 Expert Declaration of Louise Kling regarding Visual Resources
8 and the associated exhibits?

9 MS. KLING: Yes.

10 MR. CARROLL: And was that written testimony
11 prepared by you or under your supervision?

12 MS. KLING: Yes.

13 MR. CARROLL: Do you have any changes or corrections
14 to your prepared testimony that you'd like to make today?

15 MS. KLING: No, I do not.

16 MR. CARROLL: Can you briefly describe the type of
17 analysis that you did to assess the project impacts on Visual
18 Resources?

19 MS. KLING: Yes. I conducted an analysis in
20 compliance with the applicable CEC Guidelines, which also
21 comply with CEQA. My analysis specifically focused on
22 impacted Visual Resources within one mile of the site. The
23 analysis was conducted by first defining the visual sphere of
24 influence, or VSOI, and then identifying key observation
25 points within that VSOI, and using those locations to

1 evaluate potential effects by considering both visual
2 sensitivity and the degree of visual change.

3 MR. CARROLL: What conclusions, if any, did you
4 reach with respect to the existing visual sphere of influence
5 at the project site?

6 MS. KLING: The existing landscape is characterized
7 by multiple, often discordant land uses, including beach
8 settings, coastal dunes, agricultural, residential and
9 industrial oriented land uses that are often -- appear
10 discordant, resulting in visual, scenic quality that was
11 ranked as moderately low.

12 MR. CARROLL: What about your conclusions based on
13 the key observation points?

14 MS. KLING: Scenic resources were evaluated from a
15 set of KOPs and, as I said, the visual quality of the
16 resources as viewed from these KOPs was assessed to be
17 moderately low, disrupted by the scale, mass and geometric
18 form of the current MGS facilities and other existing
19 structures. The stack as it appears currently is also
20 dominant and focal.

21 MR. CARROLL: Do you believe the project as
22 proposed, and by that I mean the proposed Puente Project,
23 will significantly impact the visual sphere of influence?

24 MS. KLING: No, I do not, because the existing
25 visual sphere of influence is already heavily influenced, as

1 I said, by existing industrial structures. It is my expert
2 opinion that although the project would incrementally alter
3 the views, it would not significantly change the visual
4 character or quality of those views.

5 MR. CARROLL: And will the project emit a visible
6 plume?

7 MS. KLING: No, the project will not create a
8 visible, steam plume.

9 MR. CARROLL: Is the project expected to create a
10 light or glare impact?

11 MS. KLING: No. The project will not create a new
12 source of substantial glare or light that would adversely
13 affect daytime or nighttime views. Additionally, the
14 conditions of certification that the project must satisfy
15 ensure that there will be no significant impacts to lighting
16 during construction, demolition or operational phases of the
17 project.

18 MR. CARROLL: And based on what you've just
19 summarized, in your expert opinion what impact, if any, will
20 the project have on the visual resources in the vicinity of
21 the project site?

22 MS. KLING: In my opinion the project as proposed
23 in those conditions will not result in any significant
24 direct, indirect or cumulative impacts to visual resources,
25 and it will also comply with existing laws, ordinance and

1 regulatory standards.

2 MR. CARROLL: Thank you. And do you have anything
3 further to add on your direct testimony today?

4 MS. KLING: I do not.

5 MR. CARROLL: Thank you very much.

6 HEARING OFFICER KRAMER: Okay. Ms. Lazerow, did you
7 have any -- I don't have you down as having any questions for
8 this witness.

9 MS. LAZEROW: CEJA has no cross-questions for this
10 witness.

11 HEARING OFFICER KRAMER: Okay. Nor did anyone else
12 indicate any. Okay. Thank you. Stick around, though, Ms.
13 Kling, in case something comes up. Let's go to Mr. Knight
14 now, then.

15 DIRECT TESTIMONY

16 MS. CHESTER: Mr. Knight, can you please state and
17 spell your name for the record?

18 MR. KNIGHT: Sure. Eric Knight. It's E-r-i-c, K-n-i-
19 g-h-t.

20 MS. CHESTER: Was your statement -- was a statement
21 of your qualifications attached to your testimony?

22 MR. KNIGHT: Yes, it was.

23 MS. CHESTER: Are you sponsoring the testimony
24 entitled Visual Resources in a Final Staff Assessment marked
25 as Exhibit 2000?

1 MR. KNIGHT: Yes, I am.

2 MS. CHESTER: Do you have any changes to your
3 testimony?

4 MR. KNIGHT: No, I do not.

5 MS. CHESTER: Do the opinions contained in your
6 testimony represent your best professional judgment?

7 MR. KNIGHT: They do.

8 MS. CHESTER: Can you please state the purpose of
9 Staff's Visual Resources Analysis?

10 MR. KNIGHT: Sure. The purpose of Staff's Visual
11 Resources Analysis is to determine the project's potential
12 for significant impacts to Visual Resources as required by
13 the California Environmental Quality Act. A second purpose is
14 to determine the project's consistency with laws, ordinances,
15 regulations and standards as they apply to Visual Resources.

16 MS. CHESTER: What was your method of reviewing
17 applicable laws, ordinances, regulations and standards?

18 MR. KNIGHT: So the project's location determines
19 which LORs apply. The project is located in the City of
20 Oxnard in the coastal zone. So it is not located on federal
21 land. So no federal LORs would apply to the project as they
22 relate to Visual Resources.

23 So because the project's located in the coastal
24 zone the California Coastal Act applies, and so does the City
25 of Oxnard's Coastal Land Use Plan. I also reviewed the city's

1 Coastal Zoning Ordinance as an applicable LOR, and the City
2 of Oxnard's General Plan and Zoning Ordinance.

3 MS. CHESTER: Did you find any conflicts between the
4 project -- the proposed project and existing LORS?

5 MR. KNIGHT: I did not.

6 MS. CHESTER: Can you please explain?

7 MR. KNIGHT: Sure. So with Staff's proposed
8 conditions of certification, and these incorporate design and
9 mitigation measures proposed by the Applicant, and the
10 Applicant's proposal to demolish the existing Units 1 and 2
11 at Mandalay Generating Station, and in addition, to remove
12 the outfall structure and restore this segment -- that
13 segment at Mandalay State Beach, Staff concluded the project
14 would be consistent with all applicable LORs that relate to
15 state and local requirements to maintain, enhance views,
16 protect views, minimize aesthetic impacts. I think I -- and
17 restore and enhance to greater views of the coastal zone.

18 MS. CHESTER: Did you find impacts in conducting
19 your Visual Resources Analysis?

20 MR. KNIGHT: I found one significant impact, which I
21 found to be mitigable. So Staff's analysis evaluated whether
22 or not the project would cause a substantial adverse change
23 in the baseline viewing conditions of the project area.

24 So according to CEJA there's four questions in the
25 Appendix G Guidelines: would the project have a substantial

1 adverse effect on the scenic vista, would it substantially
2 damage scenic resources, would it substantial degrade the
3 existing visual character or quality of the site and the
4 surrounding and whether the project would create a new source
5 of substantial glare or light that would adversely affect day
6 or nighttime views.

7 MS. CHESTER: I believe you already stated this, but
8 did you find that any of the impacts could be mitigated?

9 MR. KNIGHT: Yes. I found that all the impacts could
10 be mitigated. First off, I did not find impacts to scenic
11 vistas or I didn't identify a scenic vista. Looking at the
12 local planning documents I did not identify there was a
13 scenic vista in the area.

14 There are scenic resources in the area and that was
15 considered under the second question. Those resources are the
16 beach and the dunes. The Puente would not damage a scenic
17 resource. It actually would restore a scenic resource. The
18 project would remove the outfall structure, which would avoid
19 or would restore a scenic resource, consistent with state and
20 local requirements.

21 Impacts. The impacts were evaluated from five
22 different key observation points. At four of those key
23 observation points impacts were found to be less than
24 significant. This is largely driven by the fact that the
25 existing visual quality of the site is degraded by the

1 existing Mandalay Generating Station and other oil and energy
2 infrastructure in the area.

3 But there was one key observation point, KOP-3,
4 that's located on McGrath State Beach, where I did find
5 impacts to be significant. Applicant has proposed to design
6 the project in a way to minimize this contrast, but in my
7 view that measure alone wouldn't reduce the impact to less
8 than significant.

9 What does mitigate the impact is the Applicant's
10 decision to remove the existing Units 1 and 2. With that
11 revision of the project I found the impacts to be less than
12 significant. And I should also note that there are measures,
13 as well, to control lighting and to restrict surface glare
14 from project structures.

15 Those measures proposed by the Applicant have been
16 incorporated into the conditions of certification. And I'd
17 just like to point out that the lighting of this facility,
18 Puente, would probably look more similar to the lighting you
19 see on existing McGrath peaker, as opposed to the existing
20 lighting on the Mandalay Generating Station, so.

21 And I'd also -- if I could add one more thing to
22 it. And we heard testimony yesterday that the existing
23 Mandalay Generating Station creates visible water vapor
24 plumes. Puente would not. Puente is a dry cool facility. So
25 there's no water vapor that would emit from, say, a wet

1 cooling tower.

2 In addition, the exhaust temperature is like 900
3 degrees Fahrenheit. So there is no potential for a visible
4 water vapor plume to come off of the stack.

5 MS. CHESTER: Does this conclude your testimony
6 today?

7 MR. KNIGHT: It does.

8 MS. CHESTER: Thank you. This witness is available
9 for cross-examination.

10 HEARING OFFICER KRAMER: CEJA, you had some
11 questions for Mr. Knight.

12 MS. LAZEROW: I do. Thank you.

13 CROSS-EXAMINATION FOR CEJA

14 MS. LAZEROW: Good afternoon, Mr. Knight. I'm Shana
15 Lazerow, with the California Environmental Justice Alliance.

16 MR. KNIGHT: Good afternoon.

17 MS. LAZEROW: I know you've been here. So you've
18 heard some of the other questions that I've posed to other
19 witnesses. I'd like to start asking you a couple of questions
20 about the extent of your analysis of visual impacts.

21 Did you analyze the visual impacts that would occur
22 from the perspective of the users of the beach during
23 construction of the project?

24 MR. KNIGHT: Yes, I did.

25 MS. LAZEROW: Did you include any analysis of the

1 demographics of the individuals who would be using the beach
2 during construction?

3 MR. KNIGHT: I tried to look for use numbers of the
4 beach, Mandalay State Beach in particular, the closest beach,
5 and couldn't find any information. I would, you know, venture
6 kind of an educated guess that it's probably a mixture.

7 There's -- of low-income and higher-income
8 individuals who may use that beach, given the Oxnard Shores
9 community of three to \$5 million homes about three-quarters
10 of a mile away. They're probably the most likely individuals
11 to use that beach.

12 MS. LAZEROW: Thank you. Is your educated guess
13 based on anything other than the property values --

14 MR. KNIGHT: It's just my --

15 MS. LAZEROW: -- that you --

16 MR. KNIGHT: -- just my observations of spending
17 some time in the area.

18 MS. LAZEROW: And did you conclude that there would
19 be no disproportionate impact to environmental justice
20 communities?

21 MR. KNIGHT: I did.

22 MS. LAZEROW: And so the same question, for your
23 analysis, that we have posed to other Staff. Disproportionate
24 to what?

25 MR. KNIGHT: So on -- this is addressed in my staff

1 report, page 4.4-13, where in review of the Environmental
2 Justice Figure 1, which shows the location of environmental
3 justice communities based on race and ethnicity, the closest
4 area -- closest EJ area is about two miles away from the
5 project site.

6 And there's a key observation point that was used
7 in the analysis at about that approximate location, and from
8 that distance the project is a pretty minor element of the
9 overall view shed. And so I felt from -- since it had such a
10 low degree of impact on that view that it wouldn't be a
11 disproportionate impact.

12 In addition, it's not a view that's exclusive to
13 the EJ community. It's a view that's available to the general
14 public.

15 MS. LAZEROW: Did you review CalEnviroScreen 3.0?

16 MR. KNIGHT: I did.

17 MS. LAZEROW: Are you aware that the race data for
18 the census tract within which Puente is located is 75 percent
19 people of color?

20 MR. KNIGHT: I've heard that report, yes.

21 MS. LAZEROW: And so in your analysis either under
22 the race based analysis that the CEC conducted in the PSA, or
23 the combination of CalEnviroScreen and race-based analyses,
24 the census tract in which Puente would be located in, would
25 qualify as an environmental justice community?

1 MR. KNIGHT: Correct.

2 MS. LAZEROW: And so if I understood correctly, you
3 just testified that the closest environmental justice
4 community is two miles away. Is that correct?

5 MR. KNIGHT: Which I -- you know -- I don't have the
6 census tract in front of me. It's very possible that it could
7 be -- we could be talking about the same location.

8 MS. LAZEROW: I'm sorry. It could be --

9 MR. KNIGHT: Do you know how far the census tract,
10 what area that covers?

11 MS. LAZEROW: I do. And in fact, if we could go back
12 to -- it's in the opening testimony of Strela Cervas, I
13 believe. The census tract is considerably smaller than one
14 mile and includes the Puente location itself.

15 MR. KNIGHT: Could you --

16 MS. LAZEROW: I don't have a pin site for you.

17 MR. KNIGHT: -- could you show me the -- I want to
18 see, because I have a map here that shows the location I
19 considered and --

20 MS. LAZEROW: Is that -- I'm sorry. Could -- is that
21 the exhibit that was circulated by CEC as an exhibit likely
22 to be relied on?

23 MS. CHESTER: It's included in the Final Staff
24 Assessment.

25 MR. KNIGHT: Oh, well, okay. There's that. There's

1 Visual Resources Figure 5. But there's also the figure that
2 we said we may rely on during --

3 MS. LAZEROW: So it's been docketed, yes?

4 MR. KNIGHT: Yes.

5 HEARING OFFICER KRAMER: Okay. I'm --

6 MS. LAZEROW: If you could point me to the map on
7 which you're relying, we could look at the same document.

8 MR. KNIGHT: Visual Resources Figure 5 in the FSA.

9 HEARING OFFICER KRAMER: Okay. Have we given up on
10 the Strela Cervas testimony, then?

11 MS. LAZEROW: I'm trying to establish whether the
12 map that he is consulting shows the census tract in which the
13 Puente Project is located.

14 HEARING OFFICER KRAMER: Was the Visual in Part 1 or
15 Part 2? Do you --

16 MR. KNIGHT: Part 1.

17 MS. LAZEROW: Do you have a page?

18 MR. KNIGHT: Well, it's at the back of the section.
19 It's with all the figures. So it's --

20 HEARING OFFICER KRAMER: What's the last page that's
21 numbered?

22 MR. KNIGHT: The last page is 4.14-45.

23 MS. LAZEROW: Has that figure been updated since the
24 issuance of CalEnviroScreen 3.0?

25 MR. KNIGHT: Well, Staff's approach to using

1 CalEnviroScreen 3.0 is the only -- that the only technical
2 area is that you use the data in that model were those that
3 had indicators associated with their technical area. Visual
4 Resources was not one of them.

5 So the Staff's approach to visual -- at least the
6 EJ Analysis for Visual Resources remained the same. It was
7 using the census block data, not census tract data. So it's
8 much more refined information. So it would be going back to
9 the original map.

10 MS. LAZEROW: So that's fine. Thank you for that
11 clarification. So I think I heard your answer to be -- no.
12 That's fine. Thank you. But I don't think that I heard your
13 answer to the rest of my question, and I apologize. I've
14 asked this question of several Staff.

15 Did you say disproportionate to -- how you --
16 disproportionate to what?

17 MR. KNIGHT: Well, in -- so the location where, you
18 know, from our data that shows where the EJ population
19 resides is nearly two miles away. That's -- so a good
20 viewpoint to look at is KOP-4 in the analysis. And from that
21 distance Puente is a very small object in that total field of
22 view.

23 And given its low degree of visual change, I didn't
24 feel that that -- it was, one, it was not a significant
25 impact. It was, you know, an insignificant affect, and given

1 the low degree of the change, I did not feel it was
2 disproportionate on the -- it wasn't an impact to any
3 population. And given its low degree of change, well, it was
4 not disproportionate on the EJ population.

5 MS. LAZEROW: Thank you. I have no further questions
6 for this witness.

7 HEARING OFFICER KRAMER: Okay. Thank you. Any
8 redirect?

9 MS. CHESTER: No. Thank you.

10 HEARING OFFICER KRAMER: Okay. I think that takes
11 care of Visual Resources. Thank you, Mr. Knight. Thank you,
12 Ms. Kling. That would bring us then to Land Use. I see that
13 Mr. Street has signed in to WebEx. We'll unmute him. Mr.
14 Street, can you hear us?

15 MS. WARREN: This is Louise Warren. Mr. Street
16 stepped out for just a minute, but he's here.

17 HEARING OFFICER KRAMER: Okay. Are you folks going
18 to then speak via speaker phone?

19 MR. STREET: Yes. This is Joseph Street. I just got
20 back and we are here and we have a speaker phone.

21 HEARING OFFICER KRAMER: Okay. You actually sound
22 better than most people do on those things. So I think we can
23 work with that, but please just try to get fairly close to
24 the phone so we're not hearing your room echoes.

25 MR. STREET: Okay. We'll do our best.

1 HEARING OFFICER KRAMER: Thank you. And everyone
2 else is here in the room. Is that correct, parties? Okay. So
3 Mr. Carroll, do you want to begin with Mr. Murphy, or do we
4 not need him? Talking about Land Use.

5 MR. CARROLL: Yes. His testimony -- he did file a
6 written declaration. His proposed testimony today is -- was
7 consistent with that. If there is no party -- well, I believe
8 there was somebody who's indicated that they would like to
9 cross-examine him. Is that not correct?

10 HEARING OFFICER KRAMER: No, I don't see him. Does
11 anybody wish to ask any questions of Mr. Murphy? Okay.

12 MR. CARROLL: Then we would be happy to proceed on
13 the basis of his prepared testimony.

14 HEARING OFFICER KRAMER: Okay. Thank you. Next would
15 be the staff witnesses, Ashley Gutierrez and Steven Kerr.
16 Neither of you have been sworn, correct? If you could raise
17 your right hand.

18 (Whereupon, Ashley Gutierrez and Steven Kerr, Witnesses
19 for Land Use, duly sworn.)

20 HEARING OFFICER KRAMER: Thank you. Just remember,
21 you need to be pretty close to your microphones and you're
22 not quite there yet.

23 DIRECT TESTIMONY

24 MS. CHESTER: Ms. Gutierrez, could you please state
25 and spell your name for the record?

1 MS. GUTIERREZ: Ashley Gutierrez, A-s-h-l-e-y, G-u-
2 t-i-e-r-r-e-z.

3 MS. CHESTER: Was a statement of your qualifications
4 attached to your testimony?

5 MS. GUTIERREZ: Yes, contained in Exhibit 2003.

6 MS. CHESTER: Are you sponsoring the testimony
7 entitled, Land Use and a Final Staff Assessment, marked as
8 Exhibit 2000?

9 MS. GUTIERREZ: Yes.

10 MS. CHESTER: Do you have any changed to your
11 testimony?

12 MS. GUTIERREZ: No.

13 MS. CHESTER: Do the opinions contained in your
14 testimony represent your best professional judgment?

15 MS. GUTIERREZ: Yes. However, the opinion that the
16 City of Oxnard, 2030 General Plan Policy Safety and Hazards
17 3.5 need not be incorporated into the Local Coastal Plan to
18 take effect; is a legal opinion of the California Coastal
19 Commission, Deputy Chief Counsel Louise Warren. Staff
20 reported on and gave deference to Ms. Warren's opinion in our
21 analysis.

22 MS. CHESTER: Thank you. Mr. Kerr, could you please
23 state and spell your name for the record?

24 MR. KERR: Steven Kerr, S-t-e-v-e-n, K-e-r-r.

25 MS. CHESTER: Was a statement of your qualifications

1 attached to your testimony?

2 MR. KERR: Yes. Contained in Exhibit 2003.

3 MS. CHESTER: Are you sponsoring the testimony
4 entitled, Land Use and the Final Staff Assessment marked as
5 Exhibit 2000?

6 MS. GUTIERREZ: Yes.

7 MS. CHESTER: Do you have any changes to your
8 testimony?

9 MS. GUTIERREZ: No.

10 MS. CHESTER: Do the opinions contained in your
11 testimony represent your best professional judgment?

12 MS. GUTIERREZ: Yes.

13 MS. CHESTER: Ms. Gutierrez, could you please state
14 the purpose of Staff's Land Use Analysis?

15 MS. GUTIERREZ: The Land Use Analysis addresses
16 project compatibility with existing and reasonable,
17 foreseeable land uses, consistency with applicable City of
18 Oxnard and state laws, ordinances, regulations and standards,
19 and potential project-related direct, indirect and cumulative
20 environmental effects.

21 MS. CHESTER: Would the proposed project result in
22 any significant adverse land use impacts?

23 MS. GUTIERREZ: No.

24 MS. CHESTER: What was your method of reviewing
25 applicable land use laws, ordinances, regulations and

1 standards?

2 MS. GUTIERREZ: Staff reviewed state and local
3 planning documents related to siting of an energy facility in
4 the California coastal zone. These documents are listed in
5 Land Use Table 1 in Exhibit 2000. We also reviewed documents
6 from similar projects, such as Redondo Beach Energy Project
7 and the Coastal Commission's findings for appeal de novo
8 review of the Edison Peaker Project, which is located on an
9 adjacent parcel to the project site in the same land use, and
10 has the same land use and zoning designations.

11 We also reviewed other planning guidance documents
12 such as the Governor's Office of Planning and Research
13 Planning Guide, as well as the Coastal Commission's Draft and
14 Final Consistency Reports for Puente.

15 MS. CHESTER: In your opinion, is the proposed
16 project consistent with the city's Local Coastal Plan?

17 MS. GUTIERREZ: Yes. I'd like to highlight the
18 project's consistency with LCP Policies 52, 56 and the
19 nonapplicability of Policy 62. Staff addresses Policy 52 in
20 the FSA on page 4.7-18. Puente is proposed in the coastal
21 energy facilities, or EC subzone, and is contained within the
22 boundaries of the existing Mandalay Generating Station Power
23 Generating Facility.

24 For that reason Staff concludes that the proposed
25 development is not located in a coastal resource area. Land

1 Use Staff evaluate the recreational and agricultural
2 component of this policy. Staff concluded that the removal of
3 the outfall structure that is located on the Applicant-owned
4 parcel within the coastal recreational subzone, would
5 eliminate the use of an existing legal, nonconforming
6 structure.

7 By doing so, the project would eliminate process
8 water that occasionally interferes with pedestrian movement
9 along the shore north and south of the outfall, thus
10 restoring the parcel to its original, intended use. The
11 project is not immediately adjacent to any agricultural areas
12 and would not harm existing agricultural uses within the
13 immediate vicinity.

14 Policy 56 is addressed in the FSA on page 4.7-19.
15 Soil and Water technical staff concluded that the proposed
16 project was not located seaward of the 100-year flood wave
17 run-up line. Excuse me. Policy 62 expresses the city's
18 opposition to the proposed project, but is not an applicable
19 land use law, ordinance, regulation or standard.

20 MS. CHESTER: Did you consider the City of Oxnard
21 2030 General Plan and General Plan Amendment in your
22 analysis?

23 MS. GUTIERREZ: Yes. In the FSA on page 4.7-8 under
24 the City of Oxnard 2030 General Plan Subsection.

25 MS. CHESTER: Did you review the November 28th,

1 2016, letter from the California Coastal Commission Deputy
2 Chief Counsel, Louise Warren?

3 MS. GUTIERREZ: Yes, we did.

4 MS. CHESTER: How did this letter influence your
5 conclusions?

6 MS. GUTIERREZ: In deference to the Coastal
7 Commission's legal opinion, Staff concluded that Safety and
8 Hazards Policy 3.5 does not need to be incorporated into the
9 Local Coastal Plan to take effect.

10 MS. CHESTER: Did you find any other inconsistencies
11 between the proposed project and any laws, ordinances,
12 regulations or standards?

13 MS. GUTIERREZ: No.

14 MS. CHESTER: Does the height overlay district
15 established in the City of Oxnard 2030 General Plan apply to
16 the proposed project?

17 Hearing Officer Kramer, could you please open TN
18 215769?

19 HEARING OFFICER KRAMER: Is that an exhibit already?

20 MS. CHESTER: Excuse me? No.

21 MS. FOLK: No.

22 MS. CHESTER: It's not marked as an exhibit. I
23 believe it was entered for illustrative purposes.

24 HEARING OFFICER KRAMER: Is that the one that was
25 docketed today?

1 MS. CHESTER: No. I believe it was docketed at least
2 last week.

3 HEARING OFFICER KRAMER: Okay. Give me a moment.

4 MS. CHESTER: Thank you.

5 HEARING OFFICER KRAMER: And give me the number
6 again.

7 MS. CHESTER: That would be 215769.

8 MS. FOLK: Are you planning to enter this as an
9 exhibit?

10 MS. CHESTER: No. It is merely for illustration.

11 HEARING OFFICER KRAMER: Well, if we're going to be
12 talking about it, we're going to need to make it an exhibit.
13 So it's --

14 MS. CHESTER: Okay.

15 HEARING OFFICER KRAMER: -- part of the record, and
16 people who want to correlate what is said in the transcript
17 with the document can find it.

18 MS. CHESTER: So I believe the next exhibit number
19 for Staff would be 2007.

20 HEARING OFFICER KRAMER: Oh. Actually, let's take a
21 moment to report that. When I tried to make the FDOC Exhibit
22 2004, I discovered that it was filed in many parts. And so
23 what I did was just abandon 2004 and started at 2007, and I
24 think I ended up at 2021 when I got done with the separate
25 documents. But let me share my screen and I'll show you the

1 exhibit list.

2 MS. CHESTER: You're correct. It did end at 2021.

3 HEARING OFFICER KRAMER: Okay. So this will be 2022,
4 and I think I can share it with you in a moment.

5 (Whereupon, Annotated Excerpt of the City of Oxnard 2030
6 General Plan Exhibit Number 2021, Admitted)

7 HEARING OFFICER KRAMER: And which page of this
8 would you like?

9 MS. GUTIERREZ: If you scroll down it would be the
10 second to the last page.

11 HEARING OFFICER KRAMER: Second from last?

12 MS. GUTIERREZ: Yes, please.

13 MS. FOLK: This is the city's General Plan? I
14 believe it was docketed as an exhibit.

15 MS. GUTIERREZ: Okay. So not that page. If you
16 scroll up two more pages, that's the last page.

17 HEARING OFFICER KRAMER: Okay.

18 MS. FOLK: Just for the record, I believe this has
19 already been docketed as an exhibit.

20 MS. GUTIERREZ: Okay. And down to 3-18, page 3-18.

21 MS. CHESTER: In response to Ms. Folk's comment,
22 yes. We have used an excerpt from the General Plan here,
23 again, for reference, but this document also includes --

24 MS. GUTIERREZ: Okay. That's good. Thank you.

25 MS. CHESTER: -- images -- or the information for

1 illustration.

2 HEARING OFFICER KRAMER: Am I --

3 MS. GUTIERREZ: Yeah, that's fine. So again, to
4 answer your question, no. The height overlay district does
5 not apply to this project. This was discussed in Exhibit 2000
6 on page 4.7 -- I mean, excuse me -- 4.7-8, and 10. Staff
7 analyzed the height overlay district information in the
8 General Plan and other documents referenced by the city and
9 provided a discussion of why it's not applicable to the
10 project in the FSA on the pages mentioned previously.

11 The city is applying a general plan height
12 restriction that is derived from a noncoastal zone land use
13 designation noted in the General Plan on page 3-18, which we
14 are viewing at this moment. The table, General Plan Zoning
15 Consistency Subsection and in the table, you can see the
16 column, General Land Use Designation Noncoastal Zone.

17 If you continue to scroll down to industrial, next
18 page, under Public Utility Energy Facility it would say that
19 the height overlay is applicable. However, there's no mention
20 that it is applicable to the noncoastal zone. The project is
21 proposed in the coastal zone. Therefore, it does not apply.

22 MS. CHESTER: Ms. Gutierrez, does this conclude your
23 testimony?

24 MS. GUTIERREZ: Yes, it does.

25 MS. CHESTER: These witnesses are available for

1 cross-examination.

2 HEARING OFFICER KRAMER: The Applicant, any
3 questions?

4 MR. CARROLL: No questions. Thank you.

5 HEARING OFFICER KRAMER: City of Oxnard?

6 CROSS-EXAMINATION BY CITY OF OXNARD

7 MS. FOLK: Good afternoon. And I will direct my
8 questions to the panel and you may answer as appropriate
9 between the two of you. Ms. Gutierrez, you state that the FSA
10 evaluated whether the project is consistent with Policy 52 in
11 the city's Local Coastal Plan. Is that correct?

12 MS. GUTIERREZ: That is correct.

13 MS. FOLK: And are you aware that the project as
14 designed will require the filling of a little more than two
15 acres of wetlands that have been designated as such by the
16 Coastal Commission?

17 MR. KNIGHT: Yes.

18 MS. FOLK: Is it your conclusion that coastal
19 wetlands are not a coastal resource area?

20 MR. KNIGHT: The analysis of the coastal wetlands is
21 provided under the Biological Resources section. That's
22 beyond the scope of our analysis.

23 MS. FOLK: So you did not evaluate whether the
24 filling of coastal wetlands would constitute building the
25 project in a coastal resource area?

1 MR. KNIGHT: I believe in Ashley's direct testimony
2 she explained.

3 HEARING OFFICER KRAMER: Sounds like if you spoke up
4 everyone would be happy.

5 (Colloquy between panelists)

6 MS. FOLK: I believe you testified your discussion
7 of the consistency with that plan policy was on page 4.7-18
8 of the Final Staff Assessment. And if you could review that,
9 can you tell me if that discussion includes any discussion of
10 the filling of coastal wetlands?

11 MS. GUTIERREZ: No. That would be more appropriate
12 for Biological Resources.

13 MS. FOLK: So I just want it clear. Your testimony
14 is that from a land use perspective, you did not evaluate
15 that issue?

16 MS. GUTIERREZ: No. The project site is zoned
17 coastal energy facility.

18 MS. FOLK: I understand that. I'm just saying,
19 asking if you evaluated the consistency between filling
20 coastal wetlands and a policy that provides that coastal
21 resource areas shall be avoided.

22 MS. GUTIERREZ: That would be more of a question to
23 direct to Biological Resources.

24 MS. FOLK: Okay. Thank you.

25 MS. GUTIERREZ: Uh-huh.

1 MS. FOLK: When you evaluated the consistency of the
2 project with the recreational policies in the city's General
3 Plan did you take into account the extent to which just the
4 presence of a power plant on the beach might inhibit use of
5 that beach?

6 MR. KNIGHT: The proposed project is within the
7 existing boundaries of the existing power plant that's been
8 there since the '50s. It's not on the beach. The part, the
9 portion that's on the beach is where the outfall is or
10 adjacent to the beach, and that will be restored back to
11 beach use.

12 MS. FOLK: So I just want to make sure I understand
13 your answer. Did you evaluate the extent to which the
14 presence of the power plant on the beach inhibits
15 recreational use of the beach? Let me rephrase that, since I
16 think you testified that you did not believe it was on the
17 beach.

18 Did you evaluate the extent to which the presence
19 of the power plant adjacent to the public beach would inhibit
20 recreational use of that beach?

21 MS. GUTIERREZ: It would not inhibit the use of the
22 recreational -- or the use of the recreational area.

23 MS. FOLK: And on what do you base that decision?

24 MS. GUTIERREZ: The proposed project would actually
25 remove a legal, nonconforming structure from the beach, thus

1 improving recreation in the area and the movement of
2 pedestrians north and south of the outfall.

3 MS. FOLK: And did you evaluate the extent to which
4 people do not use the beach in front of the power plant
5 because there is a power plant there?

6 MS. GUTIERREZ: I visited the site multiple times,
7 and we did view people using the beach.

8 MS. FOLK: A few people.

9 MS. GUTIERREZ: Many people walking their dogs and
10 walking up and down. So I can't make that assumption that
11 people do not use the beach.

12 MS. FOLK: Have you heard the testimony in the past
13 couple days about some people who feel like they cannot use
14 the beach because it feels like a private beach and it's an
15 industrial location, because of the presence of the power
16 plant?

17 MS. GUTIERREZ: I did listen in, correct, yes.

18 MS. FOLK: On page 4.7-10 of the Final Staff
19 Assessment it evaluates consistency of the project with
20 Policy ICS-17, regarding electrical facilities which requires
21 that new or refurbished electrical generating facilities
22 comply with the Coastal Commission's Sea Level Rise Policy.

23 And the Final Staff Assessment concludes that
24 implementation of this policy requires the city and Coastal
25 Commission to update the LCP. Is that correct?

1 MR. KNIGHT: That's correct.

2 MS. FOLK: And is it your position that a citywide
3 policy must be included in the LCP in order to be effective
4 in the coastal zone?

5 MR. KNIGHT: I think you're asking for a legal
6 opinion there. I believe the correct --

7 MS. FOLK: Well, I believe the Final Staff
8 Assessment gave an opinion, and I'm asking if it's your
9 opinion that any of the generally applicable policies in the
10 city's General Plan must be in the LCP in order to be
11 effective?

12 MR. KNIGHT: That's correct.

13 HEARING OFFICER KRAMER: If you could move the
14 microphone between you and Ms. Folk, then you'd be able to
15 speak more directly into it.

16 MS. FOLK: And you also testified that you believe
17 that was a legal opinion?

18 MR. KNIGHT: No. I'm sorry. I was confused by the
19 way you stated the question at first.

20 MS. FOLK: So on what do you base that opinion?

21 MR. KNIGHT: That I was confused by your question?

22 MS. FOLK: No. Your opinion that a generally
23 applicable policy in the city's General Plan must be in the
24 LCP in order to be effective in the coastal zone?

25 MR. KNIGHT: It's primarily based on Public

1 Resources Code Section 3014, which is from the Coastal Act,
2 which states, "The certified Local Coastal Program and all
3 applicable" -- or "all local implementing ordinances,
4 regulations and other actions may be amended by the
5 appropriate local government, but no such amendment shall
6 take effect until it has been certified by the Commission."

7 MS. FOLK: But you understand this Policy ICS-17 is
8 in the General Plan, correct?

9 MR. KNIGHT: Correct.

10 MS. FOLK: And yet you take the position it cannot
11 apply in the coastal zone at all unless it is in the LCP?

12 MR. KNIGHT: Correct.

13 MS. FOLK: And again, it sounds to me like that
14 might be your legal opinions, based on your reference to the
15 Public Resources Code?

16 MR. KNIGHT: That's where my analysis of that sort
17 of started, but it's also echoed all throughout the General
18 Plan.

19 MS. CHESTER: I would object to that
20 characterization. We've established earlier that the
21 witnesses do need to review legal documents, but it does not
22 necessarily make it a legal opinion.

23 MS. FOLK: But your opinion is based on the Public
24 Resources Code Section. Is that correct?

25 MS. GUTIERREZ: Are you talking in regards to Safety

1 and Hazards Policy 3.5?

2 MS. FOLK: No. I'm referring to the policy ICS-17,
3 which has a series of provisions that apply to new electrical
4 facilities in the city, and that's in the city's 2030 General
5 Plan.

6 MR. KNIGHT: It's not solely based on the section
7 from the Coastal Act that I quoted. It's also based on
8 statements throughout the General Plan, which echo the same
9 information that's in that policy, and on the General Plan
10 Land Use map.

11 MS. FOLK: We'll have the City's planner testify as
12 to what the city's General Plan says on that issue.

13 Do you consider Policy ICS-17 to be a land use
14 designation?

15 MR. KNIGHT: No.

16 MS. GUTIERREZ: No.

17 MS. FOLK: Did you consider whether the project is
18 consistent with the Coastal Commission's Sea Level Rise
19 Guidance that was adopted in August 2015?

20 MR. KNIGHT: As stated on page 4.7-10 of the FSA,
21 "For an analysis and discussion of sea level rise, refer to
22 the Soil and Water Resources Section of the Staff
23 Assessment."

24 MS. FOLK: So from a Land Use perspective, though,
25 you did not evaluate that issue. Is that correct? And come to

1 a conclusion regarding its consistency with that policy?

2 MR. KNIGHT: We did. We referred to the Soil and
3 Water Resources Staff, who found that there were no
4 significant impacts that were unmitigated in the area of Soil
5 and Water Resources.

6 MS. FOLK: Are you aware that the State Coastal
7 Conservancy submitted a letter earlier this week stating its
8 opposition to the facility -- the Puente Project?

9 MR. KNIGHT: I'm not -- I don't think I've seen the
10 letter yet.

11 MS. FOLK: Well, do you --

12 MS. GUTIERREZ: Well, yeah, I read the letter.

13 MS. FOLK: Did you -- when preparing the Final Staff
14 Assessment, did you consider whether the project is
15 consistency with the State Coastal Conservancy's conservation
16 planning for that -- and acquisition for the Oxnard
17 shoreline?

18 MS. GUTIERREZ: When was this letter submitted? Do
19 you have the date?

20 MS. FOLK: This letter's submitted on February 6th.

21 MS. GUTIERREZ: Of this year?

22 MS. FOLK: Yes.

23 MS. GUTIERREZ: Yeah. The FSA was already published
24 by that time.

25 MS. FOLK: No, I understand that. I'm asking when

1 you prepared the Final Staff Assessment did Staff consider
2 the extent to which the project was consistent with the
3 habitat conservation plans and -- of the State Coastal
4 Conservancy?

5 MR. KNIGHT: No.

6 MS. FOLK: Did the Staff ever consult with the State
7 Coastal Conservancy regarding the project?

8 MR. KNIGHT: Land Use Staff did not. I don't -- I'm
9 not sure if other Staff have.

10 MS. GUTIERREZ: That might be more of a question for
11 Bio.

12 MS. FOLK: In your discussion of impacts to
13 recreational resources you refer to the removal of the
14 outfall as a benefit of the project for recreational uses. Is
15 that correct?

16 MR. KNIGHT: Correct.

17 MS. FOLK: And that's also stated in the -- I
18 believe in the Staff's statement regarding Overriding
19 Considerations. Is that correct?

20 MR. KNIGHT: We reference the public benefits
21 subsection of the FSA in that document.

22 MS. FOLK: Is there -- do you know whether the
23 outfall crosses state tidelands?

24 MR. CARROLL: I'm going to object to the relevancy
25 of this question. The project includes the removal of the

1 outfall. So it's unclear to me what the relevancy of
2 questions related to the current status of the outfall is.

3 MS. FOLK: It goes to whether or not this is a
4 benefit of the project or an illegal use that has been
5 operating for several decades now that would require removal
6 in any event.

7 HEARING OFFICER KRAMER: Overruled.

8 MS. FOLK: Again, do you know whether the outfall
9 crosses state tidelands?

10 MR. KNIGHT: No.

11 MS. FOLK: Do you know if NRG has a lease from the
12 State Lands Commission for the outfall?

13 MR. KNIGHT: No.

14 MS. FOLK: And is it your understanding that a lease
15 would be required for an encroachment on state property?

16 MR. KNIGHT: That is not my understanding.

17 MS. FOLK: Do you have a different understanding?

18 MR. KNIGHT: I do not.

19 MS. FOLK: Do you know one way or the other?

20 MR. KNIGHT: I do not.

21 MS. FOLK: Okay. Thank you. That's all I have.

22 HEARING OFFICER KRAMER: Environmental Coalition?

23 MS. ROESSLER: Yes, we have a couple questions.

24 CROSS-EXAMINATION BY ENVIRONMENTAL COALITION

25 MS. ROESSLER: And I'll just direct them to both of

1 you, and whoever answers, feel free. I just want to circle
2 back to Policy 52 of the Oxnard LCP. I believe you testified
3 that the project does not violate Policy 52. Is that correct?

4 MS. GUTIERREZ: From a Land Use perspective, yes.

5 MS. ROESSLER: From a Land Use, okay. So Policy 52
6 states, "Energy-related development shall not be located in
7 coastal resource areas, including sensitive habitats,
8 recreational areas and archaeological sites, in part." So
9 from the Land Use perspective, if the project was located in
10 an area that included sensitive habitats, recreational areas
11 or an archaeological site, would it violate or be
12 inconsistent with Policy 52?

13 MR. KNIGHT: As we did in our FSA, we would refer to
14 both our Biological Resources experts and Cultural Resources
15 experts.

16 MS. ROESSLER: That's not the question I asked.

17 MR. KNIGHT: That's Baxter Nation.

18 MS. ROESSLER: I'm just asking in your opinion,
19 based on your Land Use knowledge of Policy 52, if the project
20 included sensitive habitats, recreational areas or an
21 archaeological site, would you conclude that it would violate
22 LCP 52?

23 I'm just reading from the straight language of the
24 policy and I'm not asking for a biological opinion, just your
25 Land Use opinion.

1 MS. GUTIERREZ: The project is not located within a
2 designated recreational or sensitive habitat area. So we
3 would prefer you direct this question to Bio.

4 MS. ROESSLER: I'm not -- it's not a biological
5 question. It's a Land Use question on your understanding of
6 LCP 52.

7 MR. KNIGHT: That was caused --

8 MS. ROESSLER: So if that's your answer, then. Is
9 that your answer? Is that your understanding of LCP 52?

10 MR. KNIGHT: That if -- yes. My understanding of LCP
11 52 is exactly what it says, "Energy-related development shall
12 not be located in coastal resource areas, including sensitive
13 habitats, recreational areas and archaeological sites."

14 MS. ROESSLER: So in your conclusion is it fair to
15 say for you to find that this project is consistent with
16 that, that it must not be located in a coastal resource area,
17 which includes sensitive habitats, recreational or
18 archaeological sites?

19 MS. GUTIERREZ: Yes, that would be consistent.

20 MS. ROESSLER: Okay. Thank you.

21 MS. GUTIERREZ: To read -- to further read that --

22 MS. ROESSLER: That's all.

23 MS. GUTIERREZ: -- it does say that, "All
24 development adjacent to these resource areas or agricultural
25 areas shall be designed and screened to minimize aesthetic

1 impacts." So I mean, it --

2 MS. ROESSLER: Right. I wasn't talking about
3 adjacent.

4 MS. GUTIERREZ: Okay.

5 MS. ROESSLER: I was talking about on the project
6 site.

7 MS. GUTIERREZ: Okay.

8 MS. ROESSLER: All right. Thank you. Are you also
9 aware of the Coastal Commission's 30143(d) report that
10 provided an opinion on whether or not the project was
11 consistent with LCP 52?

12 MR. KNIGHT: Yes, we're aware of that report.

13 MS. ROESSLER: What's your understanding of what the
14 Coastal Commission's opinion was on LCP 52 and whether or not
15 the project was consistent with it? It's on page 8 of the --

16 MR. KNIGHT: Pardon me?

17 MS. ROESSLER: It's on page 8 of the Coastal
18 Commission report, if that's what you're looking for. I could
19 rephrase, if you'd like.

20 MS. GUTIERREZ: Please.

21 MS. ROESSLER: Okay. Is it your understanding that
22 the Coastal Commission found the project to be inconsistent
23 with Policy 52?

24 MS. GUTIERREZ: They found it inconsistent, and
25 shortly after, the project Applicant proposed the project

1 enhancement, which actually removed the outfall.

2 MS. ROESSLER: Right.

3 MS. GUTIERREZ: Which they recommended in the
4 report, that if the outfall was removed it would then allow
5 the project to comply with 52.

6 MS. ROESSLER: So your --

7 MS. GUTIERREZ: From a Land Use perspective, yes.

8 MS. ROESSLER: -- so your understanding of Policy 52
9 was if the Applicant moved the outfall that it would then
10 make it comply with Policy 52, which refers to whether or not
11 the project is located in a coastal resource area, which
12 includes sensitive habitats, recreation areas and
13 archaeological sites?

14 MS. GUTIERREZ: Correct.

15 MS. ROESSLER: Okay. Thank you. That's all for now.

16 HEARING OFFICER KRAMER: Well, CEJA, you were just
17 interested -- an interest -- actually, it was Ms. Gutierrez.
18 So go ahead.

19 MS. LAZEROW: Thank you.

20 CROSS-EXAMINATION BY CEJA

21 MS. LAZEROW: Good afternoon. My name is Shana
22 Lazerow. I'm an attorney for the California Environmental
23 Justice Alliance, and I have a few questions, some that were
24 directed to you, based on recreational uses and some more
25 generally about your analysis.

1 So first, I just wanted to confirm that your
2 analysis of Land Use included evaluating both incompatible
3 uses and effects of the project on environmental justice
4 populations, correct?

5 MS. GUTIERREZ: Correct.

6 MS. LAZEROW: And in the FSA you conclude that the
7 project's impacts would not have an effect on the
8 environmental population during construction, decommissioning
9 and demolition or operations, correct?

10 MS. GUTIERREZ: That's correct.

11 MS. LAZEROW: And so you considered the impacts for
12 the full duration of the construction and demolition, the
13 several-year construction and demolition impacts, correct?

14 MS. GUTIERREZ: That is correct.

15 MS. LAZEROW: You state that there is not an
16 environmental justice population residing within one mile of
17 the project's Land Use impact area. Did you arrive at that
18 conclusion -- I'm sorry. Have you reviewed CalEnviroScreen
19 3.0?

20 MR. KNIGHT: Yes.

21 MS. LAZEROW: And have you reviewed the racial
22 analysis that shows 75 percent of the people residing within
23 the census tract where Puente would be located, which is
24 within the one-mile radius of Puente, 75 percent people of
25 color?

1 MR. KNIGHT: Yes.

2 MS. LAZEROW: Does your Land Use Analysis consider
3 uses other than -- or impacts other than on residents?

4 MS. GUTIERREZ: Yes.

5 MS. LAZEROW: Did you consider impacts on farm
6 workers?

7 MS. GUTIERREZ: Yes, we did.

8 MS. LAZEROW: And did you consider the construction
9 impact on farm workers

10 MS. GUTIERREZ: We did.

11 MS. LAZEROW: And in that analysis did you
12 investigate the working hours and days during which farm
13 workers would be present?

14 MS. GUTIERREZ: We came to the conclusion that land
15 Use impacts would not disproportionately affect the
16 environmental justice population, as the proposed project
17 impacts would not affect any population living or working in
18 the impact area.

19 MS. LAZEROW: And --

20 MS. GUTIERREZ: This is on page 4.7-30 of the FSA.

21 MS. LAZEROW: Yes. I understand that. Thank you. So
22 I started with that statement and now I'm trying to unpack it
23 a little bit to find out what assumptions you used about the
24 workers who would be present within the project's proximity.
25 So we can say within a mile. Did you -- how many hours during

1 the day or during the week did you assume there would be
2 workers present?

3 MS. GUTIERREZ: So potential land use impacts for a
4 project on the EJ population would be predominantly driven by
5 physical land use incompatibilities or the division of an
6 established community. The technical area of land use would
7 not have the type of impacts that would combine with any of
8 the indicators that make up the EnviroScreen score.

9 "Puente would not create unmitigated, significant
10 adverse impacts, either individually or cumulatively in air
11 quality, hazardous materials management, noise and vibration,
12 public health, visual resources and transmission line safety
13 and nuisance, and therefore, would not result in a physical
14 land use incompatibility with surrounding land uses."

15 MS. LAZEROW: So if I -- I believe I started by
16 asking you to confirm that that was your conclusion. And now,
17 I'm trying to understand the specific analyses that you did
18 to arrive at that conclusion. And what I just heard you read
19 was that you had based your conclusion that there were no
20 land use impacts on the fact that there were no impacts in
21 any of the other technical areas. Am I understanding you
22 correctly?

23 MS. GUTIERREZ: Construction impacts would likely
24 cause dust and cause type of air quality issues. That would
25 be more addressed in Public Health, Air Quality, those type

1 of sections. So it wouldn't be directly related to a land
2 use, the Land Use section, because construction and land use
3 are kind of different.

4 It would be -- this was mentioned yesterday during
5 the EJ discussion, the five areas that the EnviroScreen
6 indicators are applicable to or that affect are air quality,
7 hazardous materials management, noise and vibration, public
8 health, Visual Resources and Transmission Line Safety and
9 Nuisance.

10 Construction impact would likely create some type
11 of air quality issue. So that has been addressed in their EJ
12 determination.

13 MS. LAZEROW: So was my understanding of your
14 testimony correct that in order to determine if there were no
15 land use impacts on an environmental justice population you
16 looked at the -- those five?

17 MS. GUTIERREZ: That is correct. We concurred with
18 them.

19 MS. LAZEROW: Thank you.

20 MR. KNIGHT: That's not all of what we did, though.
21 Our Impact Analysis is based on Appendix G of the California
22 Environmental Quality Act Guidelines, and as Ashley said, one
23 of the things that we concluded could potentially have a
24 disproportionate impact on an EJ population would be if there
25 was a physical disruption or division of an established

1 community. That's directly from the CEJA checklist.

2 And our analysis of that was that Puente would be
3 located within the site boundaries of an existing power plant
4 that has operated in its current location since the '50s.
5 Access to the project would be through existing right-of-way
6 and no on street parking is anticipated.

7 There would not be a need to relocate any
8 residences as a result of the project. The project would not
9 involve the displacement of any existing development or
10 result in new development that would physically divide an
11 existing community.

12 Furthermore, the discontinued use and restoration
13 of the legal, nonconforming outfall structure would improve
14 pedestrian circulation and public access, eliminating an
15 existing division to the beach. Therefore, the project would
16 not physically divide or disrupt any community.

17 MS. LAZEROW: I wanted to turn specifically to
18 recreational uses, which was referred to your panel. So you
19 heard the testimony, I presume, that Oxnard currently has a
20 deficit of 73 acres of parks and -- I'm sorry. That actually
21 wasn't test -- that's in the FSA.

22 During public comment on Tuesday a Parks
23 Commissioner observed that Oxnard gets away with that because
24 it has beaches. And you testified that you had observed
25 recreational users on the beach. I first wanted to ask

1 whether you had done any surveys of recreational users on the
2 beach or any systematic basis for levels of beach use
3 currently.

4 MR. KNIGHT: When was Parks referred to our Land
5 Use?

6 MS. LAZEROW: During the --

7 MS. CHESTER: I believe during the -- this is
8 Michelle Chester from Staff. I believe during the
9 Environmental Justice Panel yesterday parks were discussed
10 and it was discussed in relation to the socioeconomic
11 section. Honestly, I don't recall the specific reference, but
12 we can see if it's relevant to our staff here.

13 MS. LAZEROW: Thank you. We attempted to embark on a
14 line of questioning that would explore impacts of the project
15 on use of the beaches with your socioeconomics expert, and
16 she objected that her analysis was limited to the question of
17 whether workers -- whether the project would increase a need
18 for recreational spaces, and that questions about
19 recreational uses of parks should be directed to you, to the
20 Land Use Panel.

21 MS. CHESTER: To clarify, I believe it was mentioned
22 that our staff does not do an evaluation of the baseline of
23 park use, but that the socioeconomic analysis focused on the
24 impacts of the project to park use, and the same would go for
25 these sections.

1 MS. LAZEROW: Perhaps I could start my line of
2 questioning, because we attempted to question your
3 socioeconomic expert about impacts to park use with respect
4 to the baseline of current park use and she said that she was
5 not the right person to answer.

6 MS. WILLIS: This is Kerry Willis, Staff counsel.
7 Just to clarify, she -- her testimony was actually that she
8 looks at the incremental impacts of the workers that would be
9 coming into the area on park use, not that it was in another
10 topic area, but that's what socioeconomic looks at, that
11 whether or not an influx of workers would have an impact on
12 housing, park use and other city or other facilities.

13 HEARING OFFICER KRAMER: And this is Paul Kramer. It
14 was my suggestion that the questions seemed to be going to a
15 topic that is actually a required finding or an aspect of the
16 CEJA analysis, and that is the compatibility of the proposed
17 use with surrounding uses.

18 And as I understand it, that's something that would
19 be covered in Land Use. So go ahead and ask your questions
20 and we'll see where they lead.

21 MS. LAZEROW: Thank you. And so I believe we had
22 just -- well, I'm sorry. Let me go back. I may have lost my
23 place in this line of questioning. Did you review any data to
24 establish current levels of recreational use of the beach?

25 MR. KNIGHT: No.

1 MS. LAZEROW: To your knowledge, did anyone who
2 prepared the FSA review any information about baseline
3 recreational use of the beach?

4 MR. KNIGHT: Not to my knowledge.

5 MS. LAZEROW: Did you consider whether recreational
6 -- well, I suppose I will ask this. Having established that
7 you do not have information about baseline use, I suppose
8 I'll move onto another line of questioning, since you can't
9 answer questions compared to a baseline of recreational use.

10 My final question is you each have limited your
11 Land Use Analysis to one mile surrounding the proposed
12 project site. Is that correct?

13 MR. KNIGHT: That was about the -- yeah, one mile is
14 the farthest out we looked when we were considering the
15 cumulative impacts, land use impacts of the project.

16 MS. LAZEROW: And what is the basis for that one
17 mile radius?

18 MR. KNIGHT: Because we're generally looking at the
19 compatibility of the projects use with other adjacent, nearby
20 uses and going out about a mile is pretty conservative.

21 MS. LAZEROW: Those were all my questions. Thank
22 you.

23 HEARING OFFICER KRAMER: Okay. Thank you. Any
24 redirect?

25 MS. CHESTER: No.

1 HEARING OFFICER KRAMER: Okay. Thank you, Panel.
2 This seems like a good time for a -- we're going to switch to
3 15-minute breaks. I don't think anyone will complain about
4 that, and it's especially important for our court reporter
5 who's trying to upload audio files so that transcripts can be
6 begun, and then also get the same conveniences that we all
7 enjoy. So let's take a 15-minute break and we'll be back to
8 continue this topic. Thank you.

9 (Off the record at 4:21 p.m.)

10 (On the record at 4:38 p.m.)

11 HEARING OFFICER KRAMER: Okay.

12 COMMISSIONER SCOTT: We have got the thumbs up from
13 our court reporter, so we're going to go ahead and get going
14 again. I'll turn this back over to Hearing Officer Paul
15 Kramer.

16 HEARING OFFICER KRAMER: Okay. First of all, I
17 understand that there was a question about when public
18 comment would occur today. The answer is, when we're done
19 with our topics, and we're in the middle of Land Use and then
20 we have Biology, which was estimated at a total of four and a
21 half hours.

22 I don't know if it'll go that long, but the answer
23 is, it's going to be late. It's unlike the first two days. We
24 didn't say we're going to be here at 5:30 for comment. We
25 said, we'll take public comment after we're done with the

1 day's business.

2 So I can imagine some of you might not want to
3 stick around that long. We have other options to make
4 comments, though, and that's via our -- we have an electronic
5 commenting system on our website. Or also, you can submit
6 email or you can even write an old-fashioned letter by way of
7 a comment.

8 And Mr. Ward over there from our Public Information
9 Office is sitting at the Public Adviser's table, and he could
10 help you with information about doing that. Gentleman, you
11 raised your hand. We can't take a comment, but you --

12 MALE SPEAKER: Can you take public comments
13 tomorrow?

14 HEARING OFFICER KRAMER: We will tomorrow. It's kind
15 of the same deal, though. It's going to be after we finish
16 our business. So you know, it's not a guaranteed time. So I
17 don't know if that helps, but again, there's that electronic
18 option. And that remains open even after we're done this
19 week.

20 Yeah. You could also, if you have a comment that's
21 short enough you can write in on a blue card over at the
22 Public Adviser's table. She could read it for you later. Or I
23 suppose if you have a written letter or something, she could
24 read that, as well.

25 Okay. So with that, we'll continue Land Use, and

1 let's go to the City of Oxnard and Ashley Golden. So Mr.
2 Street and your counsel, are you on the line there?

3 MR. STREET: This is Joseph Street. I am on the
4 line. Unfortunately, Louise Warren had to leave at 4:30. She
5 will be back with us tomorrow morning. So if there's
6 questions that can only be addressed by her, she could --
7 she's willing to address them then.

8 HEARING OFFICER KRAMER: Okay. But you would be the
9 one to testify, right?

10 MR. STREET: If that's what you want to call it.

11 HEARING OFFICER KRAMER: Okay. Well, we'll see.
12 Well, we'll talk about that.

13 MR. STREET: I mean, it's very -- I -- it's
14 particularly with regard to Land Use and the letter that she
15 -- the November 28th letter that she wrote. She would be the
16 best one to address that. But I will do my best.

17 HEARING OFFICER KRAMER: Okay. Well, all I was going
18 to do right now is swear both you and Ms. Golden in --

19 MR. STREET: Okay.

20 HEARING OFFICER KRAMER: -- to take care of both of
21 you at one time. So if you'd raise your right hand.

22 (Whereupon, Joseph Street and Ashley Golden, Witnesses
23 for Land Use, duly sworn.)

24 HEARING OFFICER KRAMER: Okay. Thank you. Mr.
25 Street, well, you'll be next. So please stand by.

1 MR. CARROLL: Thank you, Mr. Kramer. Mike Carroll,
2 for the Applicant. I believe this is appropriate under the
3 protocol that we've agreed. Depending on the scope of Ms.
4 Golden's testimony, we may have objections to the
5 introduction of her prepared testimony into evidence, based
6 on her qualifications.

7 It appears to me that some of the prepared
8 testimony may constitute legal conclusions. We want to hear
9 her live testimony before making any judgment about that, but
10 I -- because I did not do that the last time that I had some
11 questions and was admonished.

12 I believe that I was supposed to identify that up
13 front in the event that counsel for the city wanted to ask
14 questions of Ms. Golden regarding her qualifications. So I
15 wanted to make the parties aware of that.

16 HEARING OFFICER KRAMER: Thank you.

17 MS. FOLK: Well, we're submitting Ms. Golden's
18 testimony as the Director of Planning for the City of Oxnard,
19 and with -- in relationship to the city's Land Use policies
20 and their interpretation and their application to the
21 proposed project.

22 So I believe it's all within her area of expertise,
23 and to the extent we have heard several people testify as to
24 their view about the interpretation of the city's General
25 Plan, and their legal conclusions I think it would be

1 appropriate to hear and --

2 HEARING OFFICER KRAMER: Mr. Carroll, the Committee
3 may not always recognize it in exact the same -- exactly the
4 same way as you do, but we believe we can tell the difference
5 between legal conclusions and facts and, we do not feel bound
6 by legal conclusions that are drawn by witnesses. Does that
7 alleviate your concern?

8 MR. CARROLL: I appreciate that and it may, and I
9 will acknowledge that this area, perhaps more than others, or
10 in this area perhaps more than others, that the line between
11 Land Use expert and lawyer is fuzzy. And so I concede and we
12 don't intend to be rigid or aggressive in our objections.

13 But I just -- if at some point when we get to
14 admitting the exhibits we feel that we need to make an
15 objection, I just wanted to make sure that I was on the
16 record and that there wasn't any question about having
17 provided an opportunity to counsel for the city.

18 HEARING OFFICER KRAMER: Okay. Thank you. Go ahead,
19 Ms. Folk.

20 DIRECT TESTIMONY

21 MS. FOLK: Good afternoon, Ms. Golden. Can you state
22 your name for the record?

23 MS. GOLDEN: Ashley Golden.

24 MS. FOLK: And can you tell me what your position is
25 and what your qualifications are to submit your testimony

1 today?

2 MS. GOLDEN: I'm the Development Services Director
3 with the City of Oxnard. I've worked for the city for 14
4 years, most recently as the director for the last year and a
5 half, and before that I've always been within the Planning
6 Department at the City of Oxnard.

7 I oversee Building and Engineering, the Planning
8 Division, Co-Compliance, but I oversee all the programs and
9 the planning and supervise the projects that come out of that
10 division.

11 MS. FOLK: And did you prepare or supervise the
12 preparation of your testimony that was submitted by the city
13 in this proceeding?

14 MS. GOLDEN: I did.

15 MS. FOLK: And do you submit that testimony, both
16 opening testimony and rebuttal testimony under the penalty of
17 perjury?

18 MS. GOLDEN: I do.

19 MS. FOLK: And I'd like to start by asking some
20 questions about the city's Local Coastal Plan. We heard
21 testimony from Energy Commission Staff regarding the
22 project's consistency with certain policies in the Local
23 Coastal Plan, and I'd like to focus particularly today on
24 Police 52, which provides that industrial and energy-related
25 development shall not be located in coastal resource areas.

1 Do you believe that the project would be
2 inconsistent with Policy 52?

3 MS. GOLDEN: I do.

4 MS. FOLK: And can you tell me why?

5 MS. GOLDEN: With the Coastal Commission's
6 designation of that property and the project wanting to in-
7 fill that portion of the land, we would consider that
8 inconsistent with that policy

9 MS. FOLK: And is it correct that the city would
10 rely on the Coastal Commission's designation of that property
11 as wetlands?

12 MS. GOLDEN: That is correct.

13 MS. FOLK: And is it the city's position that
14 coastal wetlands would be a coastal resource area?

15 MS. GOLDEN: Yes.

16 MS. FOLK: And is it the city's position that that
17 policy would then prohibit the location of the development on
18 that coastal resource area?

19 MS. GOLDEN: That is correct, prohibit.

20 MS. FOLK: Now, in 2011 the city adopted its 2030
21 General Plan, and can you tell us how the Puente project
22 would be inconsistent with the recreation and aesthetic
23 policies in that plan?

24 MS. GOLDEN: Yes. There's a variety of policies that
25 we feel that it is inconsistent with, recreation Policy CD

1 1.11 being one of those. Simply the large scale and
2 industrial feel at the plant itself makes it inconsistent
3 with that policy.

4 It's not just what's happening on the site. It's
5 the impact around that. I'm born and raised in Ventura. I've
6 lived here pretty much my entire life except when I was away
7 at school, and just recently was the first time I actually
8 walked that area of the beach.

9 My father lived in the shores for a couple years
10 and any time I visited that area we always walked south. I
11 actually didn't know it was open to walk all the way through
12 and around the outfall until I took my eight-year-old
13 daughter there a few weeks ago.

14 It was just an assumption that I made that it was
15 not open, and that's just my personal experience with it.
16 When I did go out there recently and watch people, very
17 accurately, as people have said, people do walk in that area
18 and they turn around.

19 But that's part of the impact to us on that and how
20 we've viewed that policy and the conflict with that policy.
21 It's the actual massing of the building itself, not just the
22 portion that happens out on the beach that discourages
23 residents from that area.

24 Also, the policies in regards to just the scale
25 again. We have a policy about development continuing the

1 coastal and agricultural scale and development in that area.
2 188-foot stack is not consistent with the nature and the
3 scale of the development in and around the City of Oxnard
4 plain.

5 Furthermore, there's policies that speak to
6 protecting and enhancing coastal and scenic views. I live in
7 Ventura. I can see both power plants every day that it's
8 clear when I leave my neighborhood. This whole week it's been
9 foggy. I haven't seen that.

10 But on days that it's clear you can see the power
11 plants in Oxnard. And as I drive down different roadways in
12 Ventura you can see that. So to say that there's not an
13 impact on the corridor and the view sheds from in and around
14 this area, we definitely feel that it conflicts with that
15 policy.

16 MS. FOLK: And does the 2030 General Plan include
17 policies related to coastal power plants?

18 MS. GOLDEN: Yes, it does. It directed us to update
19 our Local Coastal Plan, and in doing so to prohibit new power
20 plants as it --

21 MS. FOLK: And has the city begun the process of
22 updating its Local Coastal Plan?

23 MS. GOLDEN: Yes. We've taken many steps in
24 addressing the update to the Local Coastal Plan. First, we
25 adopted the moratorium to give us time to -- that would

1 prohibit power plants -- to give us time to study that issue.
2 And we also secured funding to do the update and contracted
3 with various consultants, one being David Revell, that did
4 the coastal -- sorry. I'm trying to get closer to the mic
5 here -- that did the coastal hazard mapping for us.

6 We presented those maps to the community, which
7 were the sea level rise. And during that process of doing the
8 coastal hazard maps we realized that that policy didn't need
9 to just apply on the coast, that we actually had a concern
10 about that citywide.

11 And what that ended and resulted in was our
12 amendment to the General Plan to include that power plants
13 need to take into account all environmental hazards, not just
14 coastal sea level rise. So that would include things such as
15 earthquakes, fires and flooding.

16 MS. FOLK: And is that policy SC 3.5?

17 MS. GOLDEN: That is.

18 MS. FOLK: And does this General Plan Policy apply
19 throughout the city?

20 MS. GOLDEN: It does apply throughout the city. It's
21 not specific to zoning designations.

22 MS. FOLK: And does it apply in the coastal zone?

23 MS. GOLDEN: It would; to the extent that there's
24 any coastal hazards or environmental hazards, yes.

25 MS. FOLK: And is it a Land Use designation?

1 MS. GOLDEN: It is not a Land Use designation. It's
2 similar to an overlay that applies to the situation, not the
3 zoning designation.

4 MS. FOLK: And is it your position that generally
5 applicable policies in the city's General Plan also apply in
6 the coastal zone?

7 MS. GOLDEN: Yes. And that is consistent with how we
8 review projects on the coastal zone. Whether it be a
9 beachfront home, a wireless application, we look at all of
10 the policies, not the land use designations, but the policies
11 throughout the General Plan and do a consistency analysis on
12 that.

13 MS. FOLK: Now, Mr. Kerr testified earlier that it
14 says throughout the city's General Plan that it does not
15 apply in the local coastal zone -- in the coastal zone unless
16 the Local Coastal Plan has been amended and certified by the
17 Coastal Commission. Can you explain why that -- his
18 understanding may not be correct?

19 MS. GOLDEN: I would say that the understanding of
20 the Land Use designation itself would be subject to that
21 implementation within the Local Coastal Plan, but the
22 policies overall that are throughout our General Plan are
23 policies that apply, again, regardless of that Land Use
24 designation.

25 The Land Use designation would be in the purview of

1 the Local Coastal Plan, not the other policies that apply
2 citywide to things that are not the Land Use designation.

3 MS. FOLK: So it's your position, based on the
4 General Plan, that it's Land Use designations that may
5 require approval from the Coastal Commission, not the other
6 generally applicable policies?

7 MS. GOLDEN: That is correct.

8 MS. FOLK: And can you discuss how the proposed
9 project would interfere with the city's efforts to adapt to
10 sea level rise?

11 MS. GOLDEN: Well, the Sea Level Rise Guidance from
12 the Coastal Commission encourages managed retreat. It does
13 not encourage armoring in place. It does not encourage -- it
14 tells you to look towards the siting and design, not to
15 armor.

16 And we actually have General Plan policies about
17 that, as well. You're looking to avoid the hazard, not to
18 protect. So siting a power plant in this location that's
19 subject to sea level rise, something that's going to be there
20 for at least 30 years, it prohibits managing that -- or doing
21 a managed retreat.

22 You have to armor in place if that comes forward.
23 So for us, we would continue to have to provide
24 infrastructure and services to this area, when really, it
25 should be returned to a beach and a dune.

1 MS. FOLK: And can you explain the city's position
2 that the Puente Project would be inconsistent with the height
3 limit in the city's General Plan? And if it makes -- if it's
4 easier, maybe we could pull up the -- I don't know if it
5 would help to pull up the exhibit earlier that showed the
6 language from the General Plan, or if you just want to
7 explain?

8 MS. GOLDEN: Yeah. I'm familiar with that. I mean,
9 the reality is, it does say non-coastal areas there. That's
10 talking, again, about the Land Use designation portion. That
11 Land Use designation portion only exists within the coastal
12 zone, the public utility and energy facility designation
13 itself.

14 However, again, the height overlay is not a Land
15 Use designation. It's an overlay. It's a policy just like any
16 other that would apply throughout. So the six-story height
17 limit of that overlay applies to the site. And obviously, a
18 188-foot stack does not comply with that height overlay.

19 And furthermore, if they conclude to that finding,
20 the E.C. zone itself, which does not have a height limit,
21 then sends you to the general requirements in the coastal
22 zone. Those general requirements then tell you to look at
23 other policies, and when there is a conflict between the
24 policies you apply the stricter.

25 And for us, a conflict would be if you can't apply

1 both. You can't apply a zero and a height limit or a zero and
2 all the other policies. You have to look at it holistically.

3 MS. FOLK: And my last question is regarding
4 consultation with the city. To your knowledge, has Energy
5 Commission Staff consulted with the city regarding ways to
6 make the project consistent with the city's Land Use
7 policies?

8 MS. GOLDEN: To my knowledge, the Energy Commission
9 has not consulted with the city to make it more consistent.

10 MS. FOLK: And can you tell me whether or not the
11 NRG or the Energy Commission has ever discussed modifications
12 to the project that might address the city's concerns?

13 MS. GOLDEN: NRG has always taken the stance that
14 they cannot change the project from what was approved by
15 Edison in the contract.

16 MS. FOLK: If the project were modified to move it
17 off the coastal resources on the site and to be smaller could
18 it potentially be consistent with the city's Land Use plans?

19 MR. CARROLL: I'm sorry. Could you repeat the
20 question? I didn't catch the initial --

21 MS. FOLK: I said, if the project were modified to
22 move it off the coastal resources and to be smaller could it
23 potentially be consistent with the city's Land Use plans?

24 MS. GOLDEN: Yes.

25 MS. FOLK: Alternative -- I'll stop there. The

1 witness is now available for cross.

2 HEARING OFFICER KRAMER: Mr. Carroll.

3 MR. CARROLL: Thank you.

4 CROSS-EXAMINATION BY APPLICANT

5 MR. CARROLL: Ms. Golden, my questions are generally
6 organized in the order that they came up as I went through
7 your prepared testimony. So they're not -- they may jump
8 around a little bit, but bear with me. I just have them in
9 chronological order in the way they appeared.

10 The first question that I have is, you have a
11 statement in your prepared testimony that the MGS property is
12 located within the 100-year flood plain, and I'm wondering
13 what the basis of your conclusion was with respect to that
14 issue?

15 MS. GOLDEN: Actually, in the testimony it says when
16 adjusted for sea level rise that it may be subject to the
17 100-year flood. As we know, FEMA released draft maps this
18 fall. Those are out for review right now, and it has been the
19 city's position on project to use best available data.

20 We have a similar project that's subject to draft
21 FEMA maps up along the Santa Clara River, and we've done the
22 same thing of always using best available data. So in the
23 testimony it does say, "When adjusted for sea level rise and
24 the topography of the beach and dunes that it may indicate
25 that it would be within the 100-year flood."

1 MR. CARROLL: And so what do you mean by the phrase,
2 "When adjusted for sea level rise," and well, let me ask you
3 that first. What do you mean by the phrase, "When adjusted
4 for sea level rise"?

5 MS. GOLDEN: Currently the FEMA maps show a certain
6 point in time of elevation. They haven't taken in all
7 available data. We've submitted comments on those FEMA maps
8 to ask that that be looked at, not just for this specific
9 area, but the FEMA map in general. And like I said, those are
10 not adopted at this point.

11 MR. CARROLL: And so I'm just trying to understand.
12 When one reviews the new draft FEMA map does it indicate that
13 the project site is within the 100-year flood zone?

14 MS. GOLDEN: It does not.

15 MR. CARROLL: Okay. My second question is, what's
16 the basis of your conclusion that the proposed site for the
17 project, is it within -- and I'd like you to correct these
18 down, and Ms. Folk asked a question along these lines,
19 sensitive habitats, recreational areas or archaeological
20 sites.

21 And we've had a series of questions of some of the
22 earlier witnesses, and I don't know if you were here for
23 that, and that phrase has been used and it has been made
24 clear to me which of those three categories the witnesses --
25 I suppose it could be one, two or three of those categories

1 the witness is basing their question on.

2 So first of all, perhaps you could just explain, is
3 it your conclusion that the project site is within sensitive
4 habitats, recreational areas and/or archaeological sites? And
5 then with respect to whichever those three categories it
6 falls in, what the basis of that conclusion was?

7 MS. FOLK: I'm going to object that that question
8 mischaracterizes the policy. The policy says, "Coastal
9 resource areas, including," but it's not exclusive to those
10 three categories.

11 MR. CARROLL: Okay. Let me rephrase the question. So
12 I want to make it simple. What's the basis of your conclusion
13 that the project site is within a coastal resource area?

14 MS. GOLDEN: Coastal Commission's designation of it
15 as a wetlands.

16 MR. CARROLL: Okay. So that is the sole basis of
17 your -- well, that particular conclusion?

18 MS. GOLDEN: (No audible response.)

19 MR. CARROLL: Thank you.

20 HEARING OFFICER KRAMER: She said -- she nodded yes.

21 MS. GOLDEN: Sorry, yes. Forget that it's live.

22 MR. CARROLL: And what is the basis for your
23 conclusion that Puente would degrade the scenic quality along
24 Harbor Boulevard?

25 MS. GOLDEN: Again, depending on the vistas and the

1 views from wherever you are. Right along Harbor, obviously,
2 the massing and scale of it, itself. Taking into
3 consideration just that there's one there today. Still
4 putting one back into an area that's not designated for this
5 type of use does not take away from the fact that there's an
6 aesthetic impact of having something of this scale and
7 massing along a natural resource.

8 MR. CARROLL: And are you familiar with the Visual
9 Resource Analysis that the California Energy Commission Staff
10 prepared and is contained in the Final Staff Assessment?

11 MS. GOLDEN: I did not read the entirety of the
12 Final Staff Assessment. I listened to the testimony before
13 me.

14 MR. CARROLL: Do you have any -- what's your
15 understanding of the conclusion of the testimony that the
16 Energy Commission witness provided today?

17 MS. GOLDEN: What I heard is that there was -- they
18 feel there's no impact and it doesn't conflict with our
19 policies, which obviously, I disagree with.

20 MR. CARROLL: Okay. And so what's the basis of your
21 disagreement?

22 MS. FOLK: I believe she just testified to that. She
23 discussed the massing of the project and its proximity to a
24 sensitive, natural area.

25 MR. CARROLL: Is that your testimony?

1 MS. GOLDEN: That, yes.

2 MR. CARROLL: Did the city conduct any sort of a
3 visual analysis similar to what the CEC Staff prepared for
4 the FSA to support that conclusion?

5 MS. GOLDEN: No. We do not have an application
6 before us to do that.

7 MR. CARROLL: You also state in your prepared
8 testimony that Puente would continue industrial blight in
9 this location, and I'm quoting, "Long periods" --

10 HEARING OFFICER KRAMER: Let me stop you for a
11 second. I just got a text from one of my monitors saying
12 WebEx lost audio. Let's go off the record.

13 (Off the record at 5:02 p.m.)

14 (On the record at 5:03 p.m.)

15 HEARING OFFICER KRAMER: Test one, two, three. On
16 the record, Mr. Carroll. You want to start over, maybe?

17 MR. CARROLL: Yes. You state in your prepared
18 testimony that Puente would continue industrial -- and this
19 is a quote -- "industrial blight in this location long past
20 when the Mandalay Generating Station is scheduled to close."
21 Now, what's your understanding of when MGS is "scheduled to
22 close"?

23 MS. GOLDEN: When the outfall -- or when the -- I
24 can't remember now if it's 2021, but when they are no longer
25 allowed to use the outfall.

1 MR. CARROLL: Okay. So is that the -- are you
2 referring to the compliance date for the once through cooling
3 policy?

4 MS. GOLDEN: Correct.

5 MR. CARROLL: Okay. And so just so I understand. So
6 your understanding is that as of that date the entire MGS
7 facility is scheduled to close?

8 MS. GOLDEN: I was hearing earlier in the testimony
9 that three will now -- will be operating, but the larger one
10 and two will not be operating after that time.

11 MR. CARROLL: Okay. Thank you. And again, at page 3
12 of your prepared testimony, and you referred to this earlier,
13 but I want to make sure I understand where the city is in the
14 process, you identify intended updates to the city's Local
15 Coastal Program with which you believe the project would be
16 inconsistent.

17 To be clear, those updates to the LCP have not yet
18 been implemented, correct?

19 MS. GOLDEN: That is correct. We're underway on our
20 Local Coastal Plan update.

21 MR. CARROLL: And can you provide a little bit more
22 detail as to the status of those efforts, where in the
23 process you are and what your understanding is as to the
24 remaining process for having those changes implemented into
25 the LCP?

1 MS. GOLDEN: We're scheduled to submit our Local
2 Coastal Plan to the Coastal Commission in 2017. We'll be
3 going back out with public outreach on the modified policies.
4 We've already done sea level rise mapping and hazard mapping.

5 We'll go back through more public hearings, as
6 well, but we're more than halfway done with that policy, or
7 the entire update, and expect to have that completed this
8 year.

9 MR. CARROLL: And you state at page 5 of your
10 prepared testimony that allowing the Puente facility to be
11 approved as proposed would interfere with the city's efforts
12 to plan for sea level rise along the coast. In what way?

13 MS. GOLDEN: It goes back to what I spoke about,
14 about the managed retreat. This is an area that -- which I
15 believe other will testify to later -- that's subject to sea
16 level rise, as well as other coastal hazards. And in that,
17 this talks about armoring in place and using the dunes that
18 would be there to protect the site.

19 And we have a long history of managed retreat, not
20 just here, but we have a policy in our General Plan that also
21 talks about managed retreat rather than armoring in place.

22 MR. CARROLL: Okay. So when you refer to armoring in
23 place, I'm not clear on what you're referring to. And I think
24 you said this require armoring in place. Can you just explain
25 to me what you mean?

1 MS. GOLDEN: Well, using the dune to help for the
2 protection, the existing; not new, but it does talk about
3 sand replenishment potentially in the future, if necessary.

4 MR. CARROLL: Okay. But so when you say, "it" does
5 talk about, are you referring -- what are you referring to?
6 What is the "it"?

7 MS. GOLDEN: I believe that's the Final Assessment
8 of the Environmental Analysis.

9 MR. CARROLL: Okay. So that's the CEC's --

10 MS. GOLDEN: Yes.

11 MR. CARROLL: -- Final Staff Assessment? I see. At
12 page 6 of your prepared testimony you refer to, and I'm
13 quoting here, "Work done by the city demonstrating that the
14 MGS site is subject to coastal hazards from sea level rise,
15 coastal flooding and tsunami." What work are you referring to
16 within that statement?

17 MS. GOLDEN: The reports from our consultants,
18 Revell and Cannon.

19 MR. CARROLL: And so those would be -- are those the
20 reports that Dr. Revell has submitted as proposed exhibits in
21 these proceedings? Do you know?

22 MS. GOLDEN: He does have testimony for those, as
23 well, but they were also part of our sea level rise mapping
24 exercise, as part of our Local Coastal Plan.

25 MR. CARROLL: And also at page 6 you state that this

1 work, referring to the work that you were just speaking
2 about, "demonstrates that the Puente facility is inconsistent
3 with the city's current and future Land Use policies." Does
4 the work, if you know, completed by Dr. Revell assess the
5 vulnerability of the MGS site or the vulnerability of the
6 Puente project?

7 MS. GOLDEN: That question's probably better
8 addressed by him for the technical difference that you're
9 making there.

10 MR. CARROLL: Okay. So you're suggesting that -- and
11 the reason I asked the question is you state -- you speak of
12 the "risk to the facility itself." So was there anything in
13 particular that you had in mind there?

14 MS. GOLDEN: From the mapping that I've looked at,
15 and again, he can speak specifically if it was the proposed
16 project or the site, but we're looking at the site, meaning
17 the property in its totality.

18 MR. CARROLL: So is your understanding of Dr.
19 Revell's work that he has assessed risk, risk to the property
20 or that he has assessed risk to the Puente Power Project?

21 MS. GOLDEN: It's a risk in general, sea level rise
22 of our entire coast. It wasn't directed specifically at your
23 project.

24 MS. FOLK: But I will also point out that Mr. Revell
25 will be here tomorrow if you want to ask him specific

1 questions about his analysis.

2 MR. CARROLL: Thank you. At -- and still on page 6,
3 you state that -- or you refer to policies to avoid
4 environmental damage that might result from flooding or other
5 disruption of the facility that could result in the spread of
6 contaminated materials or soils.

7 What analysis has the city done that suggests
8 flooding or other disruption if it were to occur at the
9 facility, could result in the spread of contaminated
10 materials or soils?

11 MS. FOLK: I'm going to object that this is a
12 general statement about the purpose of these policies.

13 MR. CARROLL: I don't know that it's a general
14 statement about the purpose of a policy. I agree there's a
15 general statement. There are many general statements in the
16 prepared testimony, and that's why I'm asking some of these
17 questions, because it's not clear to me what the basis of the
18 general statements are. And so that's why I'm asking the
19 question.

20 And there is a sort of a general assertion that
21 inundation could result in the spread of contaminated
22 materials or soils, and I'm trying to understand the basis of
23 that assertion.

24 HEARING OFFICER KRAMER: I didn't hear an objection,
25 just information. So go ahead if you understand the question.

1 MS. GOLDEN: Go ahead and answer it. It is a general
2 statement of what we look at when we look at flooding and
3 hazards and what might be on the site. Again, we haven't done
4 a site analysis. The project's not with us for review.

5 MR. CARROLL: I'm sorry. I didn't catch the very
6 last thing you said.

7 MS. GOLDEN: We don't have -- the staff itself
8 hasn't done the environmental assessment on the project. That
9 is what CEC has done. Generally speaking, when we look at
10 flooding, we look at what the impact of flooding could be and
11 we look at what would be contained on any given site for
12 that.

13 In this case, we don't have the specifics on, if
14 you do have hazards on site or contaminated materials and
15 soils. That's not something that my comment was meant to
16 address.

17 MR. CARROLL: Okay. So the statement is that if
18 there were such materials on site that were not properly
19 contained, they could be spread, but you don't know whether
20 there are such materials or whether they're properly
21 contained?

22 MS. GOLDEN: Correct.

23 MR. CARROLL: At pages 6 and moving over to page 7
24 of your prepared testimony, you point out that Section 17-
25 5(m) of the city's Zoning Code, and I believe that you've

1 referred to this section in your direct testimony, state's
2 that, "If there are any conflicts between the provisions or
3 land use designations of the Coastal Land Use Plan" -- I'll
4 give you a moment to -- let me know when you -- you have it.
5 Okay.

6 MS. FOLK: Um-hum.

7 MR. CARROLL: "If there are any conflicts between
8 the provisions or land use designations of the Coastal Land
9 Use Plan in the General Plan, the Coastal Land Use Plan shall
10 prevail." Now, that's a quote from 17-5(m). Then your
11 testimony, your prepared testimony goes on to say, "To say
12 interprets a conflict in policy is to mean it is not possible
13 to apply both policies, in which case it applies the stricter
14 of the two policies." And all of this is in the context of
15 the height limit that you referred to earlier.

16 MS. GOLDEN: Um-hum.

17 MR. CARROLL: So your comment goes on to say, "Since
18 the Coastal Land Use Plan is silent as to height limits for
19 the property, the city's General Plan limits would apply."
20 And so my question is that to me there seems to be an
21 inconsistency in that series of statements and I'm asking if
22 you can clarify it for me. And let me restate what the
23 inconsistency appears to be.

24 The premise is that there's a conflict between the
25 provisions or Land Use designations of the Coastal Land Use

1 plan and the General Plan. And your initial statement is that
2 the Coastal Land Use Plan shall prevail. And then two
3 sentences later you state, "In which case," that case being
4 that there's a conflict, "it applies the stricter of the two
5 policies." That's not necessarily the same. So my question is
6 --

7 MS. FOLK: I'm going to object that that
8 mischaracterizes the testimony. The testimony says, "If there
9 is a conflict."

10 MR. CARROLL: Let me restate the question. My
11 reading of this paragraph is that if there is a conflict you
12 initially state that the Coastal Plan -- I'm sorry -- the
13 Coastal Land Use Plan shall prevail, but in the following
14 sentence you say, "The city applies the stricter of the two
15 policies."

16 And my question is, those are not necessarily the
17 same. So is it that the Coastal Land Use Plan prevails, or is
18 it that the stricter of the two policies prevails?

19 MS. GOLDEN: And there's also another section that
20 talks about -- and that's Section K-1 of the same 17.5 that
21 says, "to apply the more restrictive." So when you have a
22 zone that has no height whatsoever, you use the more
23 restrictive, which in the General Plan, that has a height
24 overlay of six, which clearly shows that this applies to this
25 Land Use designation.

1 MR. CARROLL: So I understand that that's the
2 reasoning that you've provided today and that I believe Mr.
3 Williams provided in an earlier memo that's been docketed
4 here. So in the case of the height restriction that's the
5 subject of our discussion, you are applying what you perceive
6 to be the stricter of the two requirements?

7 MS. GOLDEN: Correct, in compliance with Section K-1
8 of Re-zoning Code.

9 MR. CARROLL: Okay. But is it -- do you -- is that
10 necessarily the same as the Coastal Land Use Plan prevails
11 over the General Plan?

12 MS. GOLDEN: Again, it would go back to if there's a
13 conflict or not within those. And again, it's silent. So
14 there's not -- that's not what the -- maybe you need to
15 restate it so I can understand what you're trying to
16 distinguish between.

17 MR. CARROLL: Okay. Let me try to restate it. So the
18 -- I would posit that the conflict is that the Coastal Land
19 Use Plan does not impose a height limit.

20 MS. FOLK: I have to object that he's
21 mischaracterizing the testimony. Ms. Golden just testified
22 that if the local -- if the Land Use Plan or the Local
23 Coastal Plan is silent, there is not a conflict.

24 MR. CARROLL: So the view is that -- okay. I'm not
25 sure I understand that. So let me think about it for a moment

1 and see if I can formulate a question that will help me
2 understand what that means. So your view is that if the Local
3 Coastal Plan says that there is no height restriction in this
4 zone and the General Plan says there is --

5 MS. FOLK: I object to his --

6 MR. CARROLL: I'm sorry. Can I get the question out
7 please.

8 MS. FOLK: Well, you're assuming facts not in
9 evidence.

10 HEARING OFFICER KRAMER: Well, let him -- let him --

11 MR. CARROLL: I'm not assuming.

12 HEARING OFFICER KRAMER: -- maybe you have of it
13 before you point them all out.

14 MR. CARROLL: I'm not assuming any facts not in
15 evidence. I'm trying to understand what the approach is that
16 the city takes, because what this paragraph says is that we
17 applied the local -- that the Coastal Land Use Plan prevails
18 over the General Plan.

19 And then the very next sentence says, "we apply the
20 stricter of the two." Those are not necessarily consistent
21 statements, because if the Local Coastal Plan is the less
22 strict of the two, depending on how you interpret strict in a
23 given context, they're inconsistent statements.

24 So I'm trying to understand what is the standard
25 that the city applies in this case, and it's a pretty

1 critical question because we have a pretty strong difference
2 of opinion between the Staff and the Applicant on one hand
3 and the city on the other hand as to whether or not this
4 height restriction applies.

5 MS. FOLK: I think you have to read the paragraph as
6 a whole and --

7 MR. CARROLL: I am. That's why I'm --

8 MS. FOLK: -- to just focus on those two sentences
9 ignores Ms. Golden's testimony when she went on and point out
10 that the zoning ordinance provides that the stricter one
11 applies.

12 MR. CARROLL: So it is not always the case that the
13 Local Coastal Plan prevails over the General Plan amendment?

14 MS. GOLDEN: I would say that's correct, because
15 Section K-1 above also goes on to say, like I pointed out,
16 that it's the most restricted, provided that that's not
17 inconsistent with the Coastal Act. And the Coastal Act also
18 in my testimony talks about protecting use and visual
19 compatibility.

20 Again, you look at in totality of all the different
21 policies and regulations that are out there. You can't pick
22 just one and say, I want to apply that one. It's a whole
23 picture.

24 MR. CARROLL: Well, no, it's not really a whole
25 picture. We're talking about whether or not this particular

1 requirement applied to the project, which is the height
2 limit. So I don't see the need to look at the totality of the
3 General Plan.

4 MS. FOLK: Are you testifying?

5 MS. GOLDEN: I'm talking about the totality of the
6 items that speak to height. You look at the General Plan, you
7 look at Coastal Act and you look at all the policies within
8 both of those documents to look at that specific issue.

9 I don't mean the totality of everything that you're
10 proposing today. I'm talking about the height specifically in
11 my testimony. In that height you have to use all the
12 different policies that apply to the height.

13 MS. FOLK: And I want to object that this line of
14 questioning has gotten argumentative and it's -- the city is
15 testifying as to its position regarding interpretation of the
16 plan.

17 MR. CARROLL: I'll move on. Based on what you know
18 about the design of the project, does it exceed six stories?

19 MS. GOLDEN: I know that the stack exceeds six
20 stories.

21 MR. CARROLL: And how do you determine whether a
22 structure that doesn't have stories, at least in the
23 traditional sense, would exceed stories or how many stories
24 it would have?

25 MS. GOLDEN: You would go back to the definitions

1 and look at the definition of story or height. Typically, and
2 I haven't looked at it in this specific case, within the
3 inland zone I do know that we have definitions of that, which
4 is typically 10 feet per story.

5 MR. CARROLL: And do you -- can you give me a
6 citation or just a general area where we could find that
7 definition?

8 MS. GOLDEN: You would look in both the Building
9 Code, as well as in the Chapter 16 of the City Code and look
10 at the definitions of story and height.

11 MR. CARROLL: Okay. Are you familiar with Mr.
12 Williams' memo dated October 17th, 2016, in which he
13 addresses this issue?

14 MS. GOLDEN: I had not reviewed that.

15 MR. CARROLL: Okay.

16 MS. FOLK: And Mr. Williams has not submitted
17 testimony in this proceeding.

18 MR. CARROLL: Well, I believe Mr. Williams' memo has
19 been identified as one of the city's exhibits, has it not?

20 MS. FOLK: Not that I know of.

21 MS. GOLDEN: It's not.

22 MR. CARROLL: Okay. If not, I stand corrected. How
23 many sites within the city are zoned EC Coastal Energy's
24 facilities, or have -- are within the EC Coastal Energy
25 Facilities Subzone?

1 MS. GOLDEN: I don't have that information.

2 MS. FOLK: And Ms. Golden had not submitted
3 testimony on that specific issue.

4 MR. CARROLL: Well, but the question here is whether
5 -- the question here -- I would disagree with that, because
6 the question here is whether or not the height restriction
7 that is the subject of these discussions is applicable in the
8 EC Coastal Energy Facilities Subzone, and the city's position
9 is that it is, and the Staff and the Applicant disagree.

10 What's your understanding of the nature of the
11 types of facilities that are intended for development in that
12 zone?

13 MS. GOLDEN: In the EC Zone?

14 MR. CARROLL: In the EC Coastal Energy Facilities
15 Subzone.

16 MS. GOLDEN: I didn't submit testimony as to the
17 zoning ordinance itself and the allowed uses. I don't have
18 that information with me.

19 MR. CARROLL: So is it your testimony then that you
20 are only familiar with the particular aspects of the city's
21 General Plan and Zoning Code addressed specifically in your
22 prepared testimony and not the remainder?

23 MS. GOLDEN: That is definitely not my testimony.
24 What I'm saying is I haven't reviewed that and under -- being
25 under -- what's the right word -- I raised my right hand in

1 the beginning, I don't want to say something that I'm not
2 absolute about. I don't know all the different uses that are
3 allowed within the zone off the top of my head.

4 MS. FOLK: And I will clarify that. Ms. Golden
5 submitted testimony specifically related to the policies with
6 which the project is inconsistent and that's what her
7 testimony is about, and that's what you reserved time to
8 cross on.

9 MR. CARROLL: Well, I'm not -- that's fine. Do you
10 know what the zoning is for the Mandalay Generating Station
11 property?

12 MS. GOLDEN: It's EC.

13 MR. CARROLL: EC Coastal Energy Facilities?

14 MS. GOLDEN: Yes, the same as the --

15 MR. CARROLL: The one that I was just --

16 MS. GOLDEN: -- site.

17 MR. CARROLL: -- referring to?

18 MS. GOLDEN: Correct.

19 MR. CARROLL: Okay. So you do know of at least one
20 site that is zoned that; that would be the Mandalay
21 Generating Station?

22 MS. GOLDEN: Correct.

23 MR. CARROLL: Now, let me then restate my question.
24 But you don't know -- and I'm not asking you to give me a
25 comprehensive list. I'm asking you what the nature of the

1 types of facilities are that were -- that would be intended
2 for that zone.

3 MS. FOLK: I'm going to object the questions vague.
4 If you want to ask a specific question, that's fine.

5 MR. CARROLL: Is that -- I would surmise, based on
6 the name of the zone, that the intended uses for that zone
7 would be coastal energy facilities. Would that be a fair
8 assumption?

9 MS. FOLK: I'm not -- it's speculation. I'm going to
10 object to that.

11 MR. CARROLL: Okay. So your testimony is that you do
12 not know of the types of projects that are -- that were
13 intended by the city to be sited in the EC Coastal Energy
14 Facilities Subzone when it adopted that designation?

15 MS. GOLDEN: Their uses predated our adoption of
16 this, regardless of what my understanding is. Those uses were
17 there in those locations before our Local Coastal Plan was
18 adopted and the implementing ordinance.

19 MR. CARROLL: Okay. So then why don't you tell me
20 what those uses are that you are aware of that predated the
21 adoption of the designation?

22 MS. GOLDEN: Both power plants that have been spoken
23 to during this entire week.

24 MR. CARROLL: Okay. So that would be the Mandalay
25 Generating Station, the Ormond Beach Generating Station?

1 MS. GOLDEN: That is correct.

2 MR. CARROLL: Okay. Is it typical for facilities
3 like that to have a stack?

4 MS. GOLDEN: Under the technology in the '50s when
5 they were built, obviously so.

6 MR. CARROLL: Okay. So let me make sure I
7 understand. So your interpretation of the city's Code, again,
8 taken together is that it includes a specific designation for
9 EC Coastal Energy Facilities Subzone, which is specifically
10 intended to accommodate large power plants like the Puente --
11 or I'm sorry -- like the Mandalay Generating Station and the
12 Ormond Beach Generating Station, but also applies a 72-foot
13 height restriction?

14 MS. FOLK: I'm going to --

15 MS. GOLDEN: Okay.

16 MS. FOLK: I was going to object that you're
17 mischaracterizing her testimony.

18 MS. GOLDEN: And I was just going to say that we
19 would apply it again in totality of looking at all the
20 different policies. Those uses and those -- the technology
21 that was used at that time and when those were built, our
22 policies and height limits were not in place during that
23 time.

24 MS. FOLK: And I'm also going to object that Ms.
25 Golden is not qualified as an expert on energy facilities and

1 cannot testify as to whether there may be energy facilities
2 that meet the definitions of the zone that do not require
3 188-foot stack.

4 MR. CARROLL: And I'm not asking you to testify to
5 that. All I'm --

6 MS. FOLK: I believe that's what you just asked her
7 to agree to.

8 MS. GOLDEN: Right.

9 MR. CARROLL: But all I'm trying to surmise is the -
10 - is your interpretation of the city's Land Use requirements,
11 the Zoning Code, the General Plan designations and how they
12 work together. At page 7 of your prepared testimony you
13 stated that the -- and I'm quoting -- "The General Plan Land
14 Use Designation Table shows that this public utility/energy
15 facility designation is subject to the height overlay
16 district regulations."

17 As the Staff has pointed out, that table, to my
18 reading, indicates that it's for non-coastal zone
19 designations. Could you explain to me how I'm misinterpreting
20 or misreading that table?

21 MS. GOLDEN: The non-coastal zone heading that's at
22 the top I believe is in error. This is a program that started
23 back in 2002 that we didn't adopt till 2011. Things were left
24 over. That designation only applies to the -- to properties
25 that are within the coastal zone.

1 MR. CARROLL: So it's your testimony that that
2 language that appears at the top of the table, which I think
3 plays a large part in the Energy Commission's interpretation,
4 is in error?

5 MS. GOLDEN: The portion that says, "non-coastal
6 zone," correct.

7 MR. CARROLL: Okay. What's the basis of your
8 conclusion at page 7 of your prepared testimony that the
9 proposed project would have significant aesthetic effects?
10 And you know, strike that. I've already asked you a question
11 to that effect. I'll move on.

12 How do you square your statement at page 7 of your
13 prepared testimony that issuance of permits for demolition of
14 Units 1 and 2 is within the jurisdiction of -- I'm sorry. Let
15 me back up. Is it your understanding that the California
16 Energy Commission has exclusive jurisdiction over the
17 permitting of facilities like Puente?

18 MS. FOLK: I'm going to object. That calls for
19 testimony outside of her area of expertise and it's a legal
20 issue.

21 HEARING OFFICER KRAMER: Overruled. If she doesn't
22 feel she's qualified, she can tell us that.

23 MS. GOLDEN: I do not feel I'm qualified to answer
24 that question. I don't know all the different -- who's -- but
25 if you're talking about the -- my testimony itself, I'd be

1 happy to answer that questions, but in permitting in general,
2 I'm not sure.

3 Maybe I didn't -- let me just rephrase the
4 question. Is it your understanding that the Puente Power
5 Project falls within the exclusive permitting jurisdiction of
6 the CEC?

7 MS. GOLDEN: Yes.

8 MR. CARROLL: And do you understand that the
9 demolition of MGS Units 1 and 2 is part of the project now
10 before the CEC?

11 MS. GOLDEN: I do understand that that was added
12 after the fact, yes.

13 MR. CARROLL: After the fact being?

14 MS. GOLDEN: That you changed the project
15 description to include, now, the removal of the other sites,
16 yes.

17 MR. CARROLL: Okay. And so what is it that you mean
18 when you say, "Issuance of permits for demolition of Units 1
19 and 2 is within the jurisdiction of Oxnard"?

20 MS. GOLDEN: And can you point to my testimony,
21 because I know I've talked about that.

22 MR. CARROLL: Yes.

23 MS. GOLDEN: But I've lost where you --

24 MR. CARROLL: Sure. I'm sorry. It's --

25 MS. GOLDEN: -- oh, I thought you said page 7.

1 MR. CARROLL: -- on page 7. I'm sorry. It looks like
2 it's page 8. Very top of page 8.

3 MS. GOLDEN: Yes.

4 MR. CARROLL: Wait.

5 MS. GOLDEN: So what I've heard in the -- throughout
6 this is that those are only coming down if this is approved.
7 If this project is not approved that you intend to leave
8 power plant -- or Mandalay 1 and 2. Those would then be in
9 the jurisdiction for the demolition from permits from the
10 city, it was my understanding.

11 MR. CARROLL: Okay. So let me just make sure I
12 understand. So what you're saying is that if for some reason
13 the demolition of Units 1 and 2 was not completed as part of
14 the Puente Project, but NRG nevertheless decided to proceed
15 with that work, that it would be within the permitting
16 jurisdiction of the city?

17 MS. FOLK: I have to object that this line of
18 questioning assumes a legal issue, which is that the Energy
19 Commission has complete jurisdiction over the demolition of
20 the facilities, in addition to the licensing of the facility
21 -- new facilities, and that's a distinction that we do not
22 necessarily agree with.

23 HEARING OFFICER KRAMER: Okay. Overruled. Mr.
24 Carroll's just trying to understand what this paragraph
25 means, and that's appropriate for him to be able to probe

1 that.

2 MS. FOLK: I will again then renew my objection that
3 he is assuming a legal issue. The underlying basis of his
4 questions is that the Energy Commission has exclusive
5 jurisdiction over the demolition of the Puente [sic] Project.

6 MR. CARROLL: Well, the witness testified that
7 that's --

8 MS. FOLK: I mean, sorry, the --

9 MR. CARROLL: -- consistent with her understanding.

10 MS. FOLK: -- Mandalay project. And I believe her
11 testimony is that generally, demolition permits are issued by
12 the city.

13 HEARING OFFICER KRAMER: And she said that -- well,
14 I don't know that she said exactly that a minute ago. You
15 know, overruled.

16 MR. CARROLL: Let me rephrase the question. So the
17 particular sentence that I am focused on is at the top of
18 page 8. And it states, "The issuance of permits for
19 demolition of Units 1 and 2 is within the jurisdiction of
20 Oxnard."

21 And my question is, given that you've testified
22 that your understanding is that the Puente Project is within
23 the jurisdiction of the CEC and that the demolition of Units
24 1 and 2 is within the scope of the project, what is it that
25 you mean when you state that the issuance of permits for the

1 demolition is within the jurisdiction of Oxnard?

2 MS. GOLDEN: I mean, specifically reading just that,
3 that the city must review the application and the
4 environmental impacts of the demolitions of Units 1 and 2.

5 MS. FOLK: I believe that the rest of the testimony
6 is that the demolition would require permits from the city.

7 MR. CARROLL: All right. I'll move on. Moving
8 further down the page at page 7, you make a similar statement
9 with respect to activities that involve the movement of sand.
10 And again, it's in the context of mitigation measures that
11 would be implemented in connection with the Puente Project if
12 approved by the Energy Commission, and an indication that
13 permits from the city would be required to implement those
14 mitigation measures in the event that they involved movement
15 of sand.

16 So is it your understanding that if the project
17 were to be approved by the Energy Commission and one of the
18 mitigation measures involved removal of the outfall -- or I'm
19 sorry -- part of the project involved removal of the outfall
20 and that involved movement of sand, that that activity would
21 require a permit from the city?

22 MS. GOLDEN: My testimony is about the dune
23 maintenance, not the removal of the outfall.

24 MR. CARROLL: Okay. I see. It says, "The Final Staff
25 Assessment also recommends dune maintenance in the event that

1 it's necessary to protect the dunes that front the Puente
2 Project." So that's correct. I apologize. So if the project
3 were to be approved with the recommendation of the Staff
4 Assessment to implement dune maintenance, your view is that
5 the implementation of that mitigation measure would require a
6 permit from the city?

7 MS. GOLDEN: It is.

8 MR. CARROLL: Do you have an understanding of the
9 elements -- and I realize that you're not testifying as an
10 attorney. So if you don't, feel free to say it. Do you have
11 an understanding of the elements that are necessary to
12 establish a public nuisance?

13 MS. GOLDEN: What I've put in is what's simply
14 within our City Code. I did not go further into the legal
15 assessments of making the determination. That's something
16 that we would consult with our counsel on if that got to that
17 point.

18 MR. CARROLL: Thank you. In the last paragraph of
19 your prepared testimony you state that, "NRG has informed the
20 city on several occasions that NRG would not would not
21 consider alternative projects that differed from the project
22 described in the contract."

23 And I believe that you said something similar to
24 that in your testimony today. What was the nature of those
25 communications?

1 MS. GOLDEN: I've had meetings with NRG Staff that
2 have said that they will not change the technology or the
3 location of the project. It needs to be in alignment with
4 what was approved by Edison.

5 MR. CARROLL: And you know, I'm not looking for
6 specifics, but can you give me some sense of when those
7 discussions occurred and just to break it down simply, were
8 those pre-filing of the application at the CEC or post-filing
9 of the application at the CEC?

10 MS. GOLDEN: I actually tried to remember that and I
11 could not remember, because I was not the project manager
12 overall. It was early in the process I could say that, but in
13 terms of actual applications, I don't know the exact timing.

14 MR. CARROLL: Do you remember the year?

15 MS. GOLDEN: I don't.

16 MR. CARROLL: Okay. Do you recall whether there were
17 any discussions between NRG and the city with respect to the
18 nature and location of the project that occurred prior to the
19 filing of the application with the CEC?

20 MS. GOLDEN: There -- I was not party to those
21 discussions, if those happened.

22 MR. CARROLL: So you don't know whether they
23 happened?

24 MS. GOLDEN: I do not know.

25 MR. CARROLL: Thank you. Are you familiar with the

1 November 28th, 2016, letter from Deputy Chief Counsel Louise
2 Warren at the Coastal Commission, which addresses the city's
3 General Plan Policy -- whoops -- SH-3.5?

4 MS. GOLDEN: I have not specifically read it. I was
5 listening to the testimony and tried to pull up the rebuttal
6 that makes reference to that.

7 MR. CARROLL: So you're not -- and I'm sorry.
8 Spilling my water here. I got distracted. So you're not
9 specifically similar with the letter, two point -- where I
10 could ask you questions about your understanding of it?

11 MS. GOLDEN: No. I just -- I had got to the baseline
12 that they agreed that 3.5 applies citywide and in the coastal
13 zone.

14 MR. CARROLL: All right. Okay. Just one moment,
15 please.

16 (Pause)

17 MR. CARROLL: Just one more short question, and you
18 may have stated this early on. If you did, I apologize. When
19 did your employment with the city begin?

20 MS. GOLDEN: 2003.

21 MR. CARROLL: Thank you. No further questions at
22 this time.

23 HEARING OFFICER KRAMER: Staff, any questions?

24 MS. CHESTER: Yes. Thank you.

25 CROSS-EXAMINATION BY STAFF

1 MS. CHESTER: Ms. Golden, are you aware of the
2 city's intent in adding the Policy Safety and Hazards 3.5 to
3 Oxnard's General Plan?

4 MS. FOLK: I'm going to object that that's an issue
5 that's stated -- sorry. The intent of the City Council is
6 reflected in the document itself and the resolution.

7 MS. CHESTER: I'm wondering if she can speak to the
8 resolution, then.

9 MS. GOLDEN: To recite the findings from the
10 resolution? Is that what you're -- I mean, because the
11 findings at the resolution clearly laid out the intent behind
12 the -- that policy.

13 MS. CHESTER: So then would you agree that it was
14 the intent of policy SH-3.5 to prohibit a power plant of 50
15 megawatts or greater in an area susceptible to coastal and
16 other hazards, particularly on the proposed Puente site?

17 MS. FOLK: I'm going to object that the resolution
18 speaks for itself and makes no specific reference to the
19 Puente Project or the site. And it's well-established that
20 the legislative actions of public agencies are not subject to
21 questioning for intent or motivation.

22 MS. CHESTER: I believe she had testified to other
23 options that could have been discussed in a consultation
24 between the Energy Commission and the city, and I just wanted
25 to follow up. If the City Council document does indeed speak

1 for itself, I wonder why we were expected to find intent
2 otherwise that there could be a power plant in the city.

3 MS. FOLK: The document speaks -- the resolution
4 speaks for itself and it's easy -- it's possible to look at
5 the resolution and understand what is and isn't permitted,
6 and that's on the face of the resolution. The intent of the
7 Council itself is not at issue.

8 MS. CHESTER: I believe it was brought in issue
9 based on the consultation.

10 MS. WILLIS: Mr. Kramer, if I may, Kerry Willis,
11 Staff Counsel. Ms. Folk has indicated and argued that the
12 Staff did not consult -- in her interpretation it seems like
13 negotiate a modified power plant. All we're trying to ask is
14 if there -- I mean, we have heard through workshops that
15 there was an intent to pass this modification to the
16 amendment to the general plan.

17 But and it does speak for itself. We were just
18 wondering if there was -- if this was the intent, was not to
19 have a power plant 50 megawatts or greater on this site, if
20 that was the intent, then we're curious as to what the
21 consultation would have -- what the results would be if we
22 had gone to the city when they clearly passed something with
23 a specific intent.

24 MS. FOLK: I really have to object that testifying
25 as to the motivation of a public agency with respect to its

1 legislative acts is not appropriate, and that it's possible
2 to look at the face of the document to see whether there are
3 projects that would have been consistent with the General
4 Plan Amendment, and that does not require knowledge about the
5 City Council's intent.

6 The obligation's on the Staff and the Agency to
7 consult with the city, and not to make an assumption about
8 City Council and intent.

9 MS. WILLIS: Well, as you stated, the intent is
10 plain language in the actual policy.

11 MS. FOLK: Then I think it's appropriate to look at
12 the policy.

13 HEARING OFFICER KRAMER: Doesn't the intent inform
14 this, to use one of your words, negotiation that you would
15 like to occur?

16 MS. FOLK: We didn't say there was a negotiation
17 that had to occur, but we said a consultation must occur.
18 It's required by the regulations. And if it occurs, then the
19 determination could be made as to whether or not there was a
20 particular intent on the part of the city, if Staff would
21 like to make that determination, but to probe the motivation
22 of a public agency as to its legislative fact is, under the
23 law, not appropriate.

24 The resolution speaks for itself and it's not
25 specific to the coastal zone. It's not specific to coastal

1 hazards. It applies throughout the city and it applies only
2 to certain size power plants.

3 MS. WILLIS: It's actually specific to coastal
4 hazards.

5 MS. CHESTER: It very plainly states that the --

6 MS. FOLK: But it's not specific to the coastal
7 zone. It applies --

8 MS. CHESTER: My question did not go to the coastal
9 zone, but to the language of the General Plan Amendment
10 itself regarding areas susceptible to coastal and other
11 hazards.

12 MS. FOLK: I believe we have testified throughout
13 the proceeding regarding alternative sites.

14 MS. CHESTER: Not the purpose of my question.

15 MS. FOLK: And the deliberative process of the city
16 is not subject to discovery.

17 MS. WILLIS: And I think that's confusing. We're not
18 asking about the deliberative process of the city. And
19 obviously, Ms. Golden would have been present for any public
20 discussion of this. But however, the question that you had
21 presented to her was whether or not the Staff came to
22 consult, and then consultation was confused with modification
23 of a power plant.

24 Consulting and negotiating and modifying are not
25 synonymous words, and therefore, we were just trying to get

1 to the -- what Ms. Golden understood.

2 MS. FOLK: And I believe the testimony that has been
3 consistent throughout is that the city was not consulted, was
4 not approached with any kind of discussion about how to make
5 the project consistent with the city's planning policies.

6 MS. WILLIS: The city was a party to the proceeding
7 and was present at numerous workshops where we had those
8 exact discussions.

9 MS. FOLK: I believe the testimony was otherwise.

10 HEARING OFFICER KRAMER: So the mythical Hearing
11 Officer who was there, how did he rule?

12 MS. WILLIS: I'm sorry.

13 HEARING OFFICER KRAMER: Oh, sorry.

14 MS. WILLIS: I didn't mean to confuse --

15 HEARING OFFICER KRAMER: I wonder if you got a
16 ruling, because it sounds -- what you're saying is you have
17 the same impasse at your workshops. Is that right, what I'm
18 hearing?

19 MS. WILLIS: Well, we had discussions at the
20 workshops. Whether -- how -- I mean, those records do speak
21 for themselves, how those discussions went on, at which point
22 Mayor Pro Temp Ramirez, Dr. Chris Williamson and other
23 expressed what the intent of the city was during the process
24 when they were developing the prohibition of a power plant,
25 50 megawatts or greater, in an area where there could be

1 coastal hazards.

2 We were clear that we were having those
3 discussions, not only at the PSA Workshop, but also at the
4 FSA Workshop. And --

5 MS. FOLK: I have to --

6 MS. WILLIS: -- and excuse me, but Ms. Folk was not
7 actually present at the first. The first workshop that went
8 almost -- literally almost 13 hours. So we had hours of
9 discussion on this topic. The fact that we didn't approach
10 the city in private was partially because they were a party
11 to the case. So we did actually have these discussions in
12 public.

13 MS. FOLK: And I just want to point out, at the time
14 of the preliminary Staff Assessment Workshop the Staff had
15 not even taken the position that the project was inconsistent
16 with the city's Land Use Policy. So it's unclear how that
17 consultation could have occurred at that point, because the
18 staff did not accept there was an inconsistency.

19 There are ways to make the project consistent with
20 the policy. It would require changing the project. We
21 understand that. But that does not mean the obligation to
22 consult does not exist.

23 HEARING OFFICER KRAMER: Well, if the city is going
24 to insist that the document speaks for itself, we will uphold
25 that with the caveat that that's going to leave all of us,

1 including the Committee, making inferences from what the
2 document says.

3 So if you're okay with that, that's fine. I think
4 what we should hear this evening, then, and not that Ms. Folk
5 can testify, but we should hear, if we can, from the city's
6 witnesses about some of these things that the city believes
7 that the project could do to make it consistent, just so we
8 can understand what that potential is.

9 MS. FOLK: We did offer testimony just a minute ago
10 about that particular issue. Ms. Golden testified that a
11 smaller project, a project not located on coastal wetlands, a
12 project not located on a site subject to coastal or other
13 hazards, could be consistent with the policy.

14 HEARING OFFICER KRAMER: And still be in the coastal
15 zone?

16 MS. FOLK: I think that would depend on where the
17 site was located, but it has to -- the question would be, is
18 it subject to coastal hazards that have been documented by
19 the city.

20 HEARING OFFICER KRAMER: Okay. So are you saying that you
21 believe that you've offered all the testimony you could in
22 answer to that question that I just posed?

23 MS. GOLDEN: We're talking to me now? Am I back on?

24 HEARING OFFICER KRAMER: Sure.

25 MS. GOLDEN: Yes, I believe that my testimony speaks to

1 where there are inconsistencies between the project and the
2 city's zoning and policies throughout.

3 HEARING OFFICER KRAMER: Okay. Staff, any more questions?

4 MS. CHESTER: No. Thank you.

5 MR. CARROLL: May I have just a couple of follow-up
6 questions on this topic that was the subject of --

7 HEARING OFFICER KRAMER: Okay. Let me make sure there
8 aren't others we should be hearing from. CEJA wanted to speak
9 to staff and you did, did you have anything for the city
10 witnesses?

11 MS. LAZEROW: We have no cross for this witness. Thank
12 you.

13 HEARING OFFICER KRAMER: Okay. Mr. Carroll, before you
14 go, let me through out a few committee questions, because you
15 may want to follow that up. And it might eliminate one round
16 of questions overall.

17 HEARING OFFICER KRAMER: I'd like to hear a little bit
18 more about the city policy that requires that energy facility
19 wastewater be treated and put to reuse. And whether or not
20 the proposed discharge to the Edison Canal satisfies that
21 policy?

22 MS. GOLDEN: I did not submit testimony specific to that.
23 I don't feel that I've reviewed that in enough detail to
24 answer that question.

25 HEARING OFFICER KRAMER: Okay. It was identified as an

1 issue though, correct, by somebody?

2 MS. GOLDEN: I don't believe that was identified in our
3 testimony.

4 HEARING OFFICER KRAMER: Oh, okay. I picked this up
5 somewhere reading -- okay, never mind.

6 The height overlay district in the General Plan, does it
7 allow for exceptions. And if so, could you just describe not
8 the process that you would go through at the city, because of
9 course that's our job as the Commission to apply city
10 standards in your shoes, but what the standards are for --
11 that would be applied to a request for height exception under
12 the Overlay District?

13 MS. GOLDEN: I actually don't. We haven't had somebody
14 apply for that, so I'm not sure how that does come into
15 effect. But there are other zones that allow heights over
16 what we would consider, I'm going to just roughly say 60 feet
17 and that's 6 to 100. I mean, the M2 (phonetic) zone and other
18 zones do have a higher height than that. But when the overlay
19 applies itself, it's limited to that six-story height limit.
20 So I don't -- we haven't had an application come forward that
21 has the height overlay subject to it at this point.

22 HEARING OFFICER KRAMER: So you're saying there's no
23 possibility of an exception?

24 MS. GOLDEN: I'm saying I don't know that there is a
25 possibility to that. In this site specifically and this

1 location where the zoning, underlying zoning, does not I
2 don't see the ability to go over six stories in height. I
3 want to just clarify that I'm talking about that site
4 specifically. Elsewhere if the zoning and the height overlay
5 both comply, again you'd have to look at it in its totality
6 of all the different policies and zone designations that
7 would talk and speak to height.

8 HEARING OFFICER KRAMER: So there's no specific standards
9 like you probably have in your ordinance for a height
10 variance.

11 MS. GOLDEN: There are findings that you can make for
12 variances, yes.

13 HEARING OFFICER KRAMER: Would those be the same types of
14 findings that you would address if you were granting a
15 variance to the General Plan height overlay district?

16 MS. GOLDEN: Can you restate the question?

17 HEARING OFFICER KRAMER: If you're -- I'm trying to find
18 out what the standards are, if there are any written down
19 either in the General Plan or in your ordinances that or
20 codes for answering the question if it were presented -- or
21 answering the request for an exception to the height overlay
22 district requirements.

23 MS. GOLDEN: I do not believe within the General Plan
24 that it makes any of those distinctions to allow for a
25 variance. It is possible within the specific zone

1 designations that there would be language that would speak to
2 variances and different heights that are in conflict with the
3 six-story height overlay zone. And then there would be permit
4 procedures, both inland and coastal, that would speak to what
5 those procedures would be. And what findings you would have
6 to make to allow any type of variance and height could be
7 something that is a variance.

8 HEARING OFFICER KRAMER: Okay. Thank you. And then last,
9 I wanted to ask about the -- make sure I'm saying last
10 question properly, I guess I am -- early topic. The city
11 suggests that it has the ability to require the removal of
12 the decommissioned Mandalay 1 and 2 facilities. And that's in
13 your testimony at page --

14 MS. GOLDEN: 8.

15 HEARING OFFICER KRAMER: -- 8, under the heading
16 "Nuisance Abatement." Do you have any -- have you made any
17 effort to determine what it would cost to remove those
18 facilities?

19 MS. GOLDEN: I have not.

20 HEARING OFFICER KRAMER: Do you believe, does the city
21 believe that it could force the property owner to either make
22 the removal at its own expense or pay the costs if the city
23 had somebody else do it on the owner's behalf?

24 MS. GOLDEN: We have a recent abatement case where we did
25 put a lien against the property after we went through and

1 abated a property. So there are those practices after you
2 make the finding. I have not looked at the specific to that,
3 but in our recent case that is how we did that.

4 HEARING OFFICER KRAMER: So you're saying the property
5 owner paid for it?

6 MS. GOLDEN: It's a lien against their property for the
7 abatement that we did.

8 HEARING OFFICER KRAMER: Okay. So what was the cost of
9 this abatement?

10 MS. GOLDEN: The current lien on the property was a
11 little under 100,000 that went to collections a couple of
12 years ago.

13 HEARING OFFICER KRAMER: Do you know approximately what
14 the property was worth?

15 MS. GOLDEN: I do not.

16 HEARING OFFICER KRAMER: Okay. That's the extent of our
17 questions. Mr. Carroll?

18 MR. CARROLL: Yes. I just have a few follow-up questions.

19 Ms. Golden, at pages 8 and 9, it's the bottom of page 8,
20 top of page 9 of your prepared testimony you state,
21 "Throughout this proceeding the city has encouraged CEC staff
22 to seriously consider alternative project sites to avoid
23 inconsistencies with the city's land use regulations and
24 adaptation efforts. Despite this, the FSA rejects numerous
25 inland project sites that would reduce conflicts with the

1 city's land use plans."

2 Can you identify for me, those or some of those, inland
3 project sites that the city believes could be developed in
4 consistent with city's land use plans?

5 MS. GOLDEN: I believe the two that we spoke of earlier
6 today were the Del Norte site and the one just off of -- just
7 north of Ormond and off of Arcturus.

8 MR. CARROLL: Okay. And so are you aware that the zoning
9 for the Ormond Beach offsite alternative, which you just
10 testified would be consistent with the city's land use plans
11 has a 100-foot height restriction applicable to it?

12 MS. GOLDEN: Yes.

13 MR. CARROLL: So what would the mechanism be for making a
14 project at that site consistent with the city's land use
15 plans given the height restriction?

16 MS. GOLDEN: That is something that we could look again,
17 the variance question that was asked awhile ago about that. I
18 have not looked into that detail, but there's also the
19 ability that the project changes, which is something that's
20 typical that comes through when we review a project.

21 MR. CARROLL: Okay. So there are mechanisms that are
22 available to address issues such as height restrictions?

23 MS. GOLDEN: In certain zones as I attested to earlier,
24 in certain permanent procedures, there may be -- I don't know
25 for certainty -- I don't know the project that would be on

1 that site. But again, you would look at the entire assessment
2 and you would have to make certain findings for any time that
3 you're not able to meet a development standard. And if
4 there's no other policy that it would conflict with and it
5 would have to comply with CEQA as well.

6 MR. CARROLL: Okay. But the city has concluded that the
7 findings, whatever they may be could be made with respect to
8 the Ormond Beach offsite alternative?

9 MS. FOLK: I don't believe that it was the testimony that
10 they could be made. I believe that her testimony was that the
11 project could be considered and at that time, they would
12 consider the findings.

13 MR. CARROLL: Well, I believe the testimony was that the
14 project, if built at the Ormond Beach offsite alternative or
15 the Del Norte 5th Street offsite alternative, would be
16 consistent with the city's land use plans.

17 MS. FOLK: I believe it said would avoid some of the
18 conflicts, would reduce conflicts with the city land use
19 plans is the testimony.

20 MR. CARROLL: That's what the letter says. That's not
21 exactly what the testimony said and I -- was the Ormond Beach
22 offsite alternative and the Del Norte 5th Street offsite
23 alternative, were those two sites not on the list of
24 alternative sites that the city requested the Energy
25 Commission investigate as alternative sites for the project?

1 MS. GOLDEN: That's okay, I'm sorry --

2 MR. CARROLL: I'm sorry, I was -- do you know whether
3 the two sites analyzed in the FSA -- well let me back up. Are
4 you aware that the city, in the course of these proceedings,
5 provided a list of sites to the Energy Commission that it
6 requested it evaluate as possible alternative sites for the
7 project?

8 MS. GOLDEN: I actually have not seen a specific list
9 that my staff or my consultants may have submitted. But I do
10 know that these are two sites that staff has discussed with
11 me that this project may be more compatible with. We have not
12 made a determination that this project could be built on
13 these sites, but I cannot speak to exactly what my staff may
14 have presented to CEC at those hearings. I was not at those
15 hearings.

16 MR. CARROLL: Okay. So these two sites may well have
17 inconsistencies with the city's General Plan or zoning
18 requirements that would be equivalent to the inconsistencies
19 that you've identified with respect to the proposed project
20 site?

21 MS. FOLK: I'm going to object. That mischaracterizes the
22 testimony. I believe her testimony was that these projects
23 may be more compatible with the city land use plans than the
24 Puente project at the Mandalay site.

25 MR. CARROLL: Well, I believe that the testimony goes

1 beyond that. These were two sites that the city specifically
2 identified the Energy Commission to look at as alternative
3 sites for the project in order to avoid an inconsistency with
4 the General Plan. If there is an existing inconsistency with
5 the General Plan at the alternative sites, I'm not sure why
6 the city would suggest these as two viable alternative sites?

7 MS. FOLK: I believe the idea was to avoid or reduce the
8 impact, the inconsistency.

9 MR. CARROLL: And so it's a relative judgment as to the
10 degree of inconsistency?

11 MS. FOLK: I am not the witness here. I just was
12 objecting that you mischaracterized her testimony.

13 MR. CARROLL: Well, you're answering the questions and so
14 I'm positing them back to you.

15 Moving back to policy SH 3.5 is it your understanding --
16 and Ms. Golden, I'm now back to you -- is it your
17 understanding that the policy applies exclusively to
18 California Energy Commission jurisdictional projects?

19 MS. GOLDEN: Yes.

20 MR. CARROLL: Okay. And with respect to the consultation
21 issue that was discussed a short time ago, what is your
22 understanding of what the consultation process requires?

23 MS. GOLDEN: I do not have an understanding of that nor
24 did I testify to my understanding of that proceeding.

25 MR. CARROLL: Who within the city would have an

1 understanding of the city's view of what the consultation
2 process requires?

3 MS. GOLDEN: I don't have a specific person or position
4 that I would say would have that proceeding. We've relied on
5 our outside counsel as well as other staff working on this
6 project, but I'm not the project manager on this. I represent
7 the Development Services Department as a whole. I do know in
8 other consultations that I reviewed, I believe it was the
9 Redondo Beach case, where it was a formal consultation and
10 hearing that was specific to that. But I don't know the
11 legality and I've never read anything on those actual
12 proceedings.

13 MR. CARROLL: Okay. Well, someone within the city has
14 made a pretty firm determination that the consultation
15 process has not been satisfied. Presumably that was not
16 outside counsel, so (indiscernible) --

17 MS. FOLK: I object that you're getting into a legal
18 adequacy question, which is not the witness's expertise. She
19 testified as to whether or not the city had been consulted
20 about ways to modify the project to make it consistent with -
21 - to reduce or avoid the inconsistencies with the city's
22 planning documents.

23 MR. CARROLL: What I'm trying to understand is the city's
24 -- the question on the table is whether or not the
25 consultation has occurred. There seems to be a difference of

1 opinion about whether it's occurred or not, so I think it's
2 relevant to understand what the parties' understanding is of
3 the requirements to satisfy the consultation requirements. So
4 the city has taken a very firm position, the consultation
5 requirement has not been satisfied.

6 Somebody within the city presumably made that judgment
7 and so I'm just trying to understand what it is that the city
8 believes needs to occur. And I'm not taking any position of
9 agreement that it hasn't occurred, but what the city's
10 position is with respect to what must occur in order for the
11 consultation process to have been satisfied.

12 MS. FOLK: And I'm going to object. Ms. Golden is not
13 testifying as to the legal adequacy of the consultation
14 process. She's testifying as to whether or not the city was
15 actually consulted about ways that the project could be
16 modified to avoid or reduce the inconsistency with the city's
17 planning policies.

18 MR. CARROLL: Yes.

19 MS. FOLK: And she did point to another proceeding in
20 which the Energy Commission staff did formally consult with
21 the city regarding these --

22 MS. WILLIS: I'm going to object to that
23 characterization. Ms. Folk is actually relying on docketed
24 items in another proceeding in which the facts are quite
25 different than they were -- I was part of that meeting. It

1 had nothing to do with modifying the power plant. It had only
2 to do with the City of Redondo Beach coming to the Energy
3 Commission to let them know that they were going to be
4 proposing a modification to their ordinance. They had not
5 passed an ordinance at that point in time, and they wanted to
6 give us a heads up that that was what was happening. And that
7 they were talking with the Coastal Commission and what that
8 might mean for the process.

9 I documented it and put it into the record. And if you
10 read it carefully, the first point says they were advised it
11 was not a negotiation. It was only to exchange information,
12 which is always allowed under the Energy Commission's
13 regulations. The regulations do not require that consultation
14 involve discussion of modifying the power plant.

15 MR. CARROLL: And just to respond, I did initially ask
16 Ms. Golden if she had a view. She indicated that she did not.
17 I'm no longer pressing her on that. My most recent question
18 was simply who within the city could one speak with to
19 understand what the city's position is with respect to what's
20 necessary to satisfy the consultation requirement.

21
22 MS. FOLK: And I believe the city filed a statement
23 regarding consultation in the proceedings, which speaks for
24 itself. And so then later as we proceed there will be
25 briefing, I'm sure.

1 MR. CARROLL: So it hasn't occurred yet, but we'll let
2 you know when it does.

3 MS. FOLK: No, there's not a statement about what has
4 happened to date.

5 MR. CARROLL: And that that is not satisfactory.

6 MS. FOLK: Yeah, and Ms. Golden has testified as to the
7 extent of consultation that she believes has occurred. And we
8 will make an argument about the legal adequacy of that in our
9 briefing.

10 MR. CARROLL: I think the positions are clear. I'm no
11 longer -- or no further questions. Thank you.

12 HEARING OFFICER KRAMER: Okay. I'm going to put that down
13 as one of the topics to brief.

14 MS. FOLK: I have just a couple of follow-up questions,
15 sorry.

16 FOLLOW UP QUESTIONS

17 HEARING OFFICER KRAMER: Go ahead.

18 MS. FOLK: You testified that the statement or the
19 notation in the General Plan table regarding the application
20 of the height overlay district, which says "non-coastal" was
21 a mistake. And is that based on the fact one of the zones
22 listed in that table, the public utility/energy facility
23 zone, is a zone that will only exist in the coastal zone?

24 MS. GOLDEN: That is correct.

25 MS. FOLK: So it would make no sense for that zone to be

1 on the chart if it was a -- it did not apply in the coastal
2 zone?

3 MS. GOLDEN: Correct.

4 MS. FOLK: And can you recall, when you met with NRG what
5 they told you regarding their willingness to make
6 modifications to the site and the city's position with
7 respect to what could be done?

8 MS. GOLDEN: I wasn't in many of the meetings. Like I
9 said I was not the project manager. I was in a very early
10 meeting where both Chris Williamson were there with my
11 predecessor, Matt Wineger. And at the meeting it basically
12 was that, "We cannot change the technology in the siting. We
13 have a certain budget for the project. If you don't fight us
14 we have a community benefit package that we can work through,
15 and if you do then we'll use that on our lawyers instead."

16 MR. CARROLL: I'm going to object to the characterization
17 of comments that were made at a meeting that the witness has
18 just testified she did not attend. I'm also concerned,
19 because --

20 MS. GOLDEN: I didn't testify that.

21 MS. FOLK: She didn't --

22 MS. GOLDEN: I attended one. I can't even say if it was
23 only one meeting. I was in one meeting that I am recalling
24 the details from with myself, Chris Williamson, and my
25 predecessor Matt Winegar and NRG where that was early on. And

1 what I am saying I don't know the details of is the timing of
2 that, which is what I answered previously in my question as
3 well. Because I don't know the timing of that. I don't know
4 if that was before the contract was awarded or the RFOs, but
5 it was before counsel had also given direction of the power
6 plants in general or for this power plant, so.

7 MR. CARROLL: So when you say "early on" what do you mean
8 by that? Because I will point out that the timing is quite
9 critical in whether these discussions took place, the
10 discussion that you are referring to took place, prior to the
11 filing of the application for certification or subsequent to.
12 Which is I'm not asking for a lot of precision here, but do
13 you recall and whether or not it was pre-application or post.
14 And when do you say "early on" what do you mean by that?

15 MS. GOLDEN: Well, no that's -- I don't know the timing.
16 I really don't. I mean, Don (phonetic) was present in the
17 meeting that I am referring to, but I do not know the timing
18 of that meeting.

19 MR. CARROLL: So it could well have been after the filing
20 of the application?

21 MS. GOLDEN: It could.

22 HEARING OFFICER KRAMER: Okay. Thank you.

23 How much time do you think we're going to need for Mr.
24 Street on Land Use? I have, let's see, 20 minutes from the
25 applicant and that seems to be all.

1 Is that right, Mr. Carroll?

2 MR. CARROLL: That's right from us. I don't know if
3 that's right for --

4 HEARING OFFICER KRAMER: Is 20 minutes is still a good
5 estimate?

6 MR. CARROLL: I think that should be plenty and that's
7 probably based on what we heard at the prehearing conference.
8 It may be more than enough. Our initial set of questions go
9 to, for lack of a better term I use, the posture with which
10 Mr. Street is appearing here, and presenting the Coastal
11 Commission report. And whether he is simply saying, "I
12 confirm that this is the report adopted by the Coastal
13 Commission," or whether he is in a position to answer any
14 questions with respect to the substance of the report. If
15 it's the former, I think it will be a very short question and
16 answer.

17 HEARING OFFICER KRAMER: Okay. So let's, for his sake
18 knowing that he --

19 MS. ROESSLER: I have a question too?

20 HEARING OFFICER KRAMER: -- gets to come back tomorrow,
21 let's talk to him and then we'll take our evening break.

22 MS. ROESSLER: Mr. Kramer, before we start the substance
23 of what Mr. Carroll just described sounded like the substance
24 that we were going to address Mr. Street in the context of
25 Biological Resources. Is that -- are you examining him twice?

1 I'm just wanting to know where ours fits in?

2 MR. CARROLL: Well --

3 MS. ROESSLER: Is that the line of questions you're going
4 to proceed with Mr. Street first?

5 MR. CARROLL: So I do have the same question with respect
6 to the three areas covered by the Coastal Commission report.
7 I don't know if the answer is the same to all three or not.
8 And yeah, hold on.

9 MS. ROESSLER: So you're addressing that question to just
10 the land use context and then when you get to Bio you'll
11 address it to Bio?

12 HEARING OFFICER KRAMER: It sounds like he really needs
13 to determine if Mr. Street can testify to the extent of that.
14 And then he would ask the Land Use questions and then we
15 would deal with Bio and the other topics when they come up
16 tomorrow -- or wait --

17 UNIDENTIFIED: Tonight.

18 HEARING OFFICER KRAMER: -- Bio's today. That's right.

19 MR. CARROLL: I guess what I had proposed is to approach
20 it as a general question first and if the answer is I cannot
21 testify, and will not testify to any of the substance on any
22 of the topics then there's really no need for us to revisit
23 it two more times. If the answer is, "I cannot testify as to
24 the land use substance, but I may be able to testify as to
25 the biology," then that would be different.

1 MS. ROESSLER: Okay. Thank you. I just wanted to know
2 where to fit in our questions.

3 HEARING OFFICER KRAMER: Okay. Mr. Street, are you there?

4 MR. STREET: I'm here.

5 HEARING OFFICER KRAMER: Okay. You sound chipper.

6 MR. STREET: That's probably correct.

7 HEARING OFFICER KRAMER: Okay. We need -- wait, I swore
8 you in earlier, so to skip the step I was about to take
9 again. Did you want to make any opening statement before we
10 go to cross examination?

11 MR. STREET: Yes, please.

12 HEARING OFFICER KRAMER: Go ahead, then.

13 MR. STREET: Okay. Well, my primary purpose for being
14 here today is to formally sponsor into the evidentiary record
15 the Coastal Commission's report to the Energy Commission on
16 15-AFC-01, which is this proceeding.

17 This report was approved by the Coastal Commission on
18 September 9th of 2016 and docketed on September 15th of 2016.
19 And I believe the number is TN Number 213667. And my other
20 role and this is laid out in a Memorandum of Understanding
21 between the Energy Commission and the Coastal Commission is
22 to be available for questions about the report.

23 So I can answer questions about the report and I can
24 report on the findings in the report, but there's a limit to
25 how far I can go. I'm not here to offer my own opinion I'm

1 here to report on the findings of the Commission.

2 HEARING OFFICER KRAMER: Okay. Well, then let's look
3 through the Land Use part and then after that we'll get an
4 estimate to see how long people predict they would need to
5 speak to you about Biology. And if that's not very long maybe
6 we can get you finished before we do take our evening break.

7 But Mr. Carroll, go ahead along the topic of Land Use.

8 DIRECT EXAMINATION BY APPLICANT

9 MR. CARROLL: Thank you.

10 Hello, Mr. Street. This is Mike Carroll on behalf of the
11 applicant. I'm not exactly sure how to proceed here. So the
12 topic today is, or at the moment, is Land Use. And you
13 probably heard in my preliminary remarks what I'm trying to
14 understand as an initial matter, to determine what the
15 appropriate scope of the questions would be, is the extent to
16 which you are in a position to speak to the substance of the
17 land use analysis and recommendations contained in the
18 Coastal Commission report. So perhaps rather than me asking
19 you a series of questions, we could begin with a simple yes
20 or no answer to that question.

21 Are you qualified and in a position to speak to the
22 substantive land use issues that are addressed in the Coastal
23 Commission report.

24 MR. STREET: As I said before I can report the findings
25 that the Coastal Commission made or did not make with regard

1 to land use. But I would be referencing specific pages or
2 sections of the Coastal Commission's report.

3 MR. CARROLL: Okay. And let me ask a question, the report
4 had appendices attached to it with respect to biology and sea
5 level rise. And so my assumption is that those are the
6 technical experts in those two areas. There was no such
7 memorandum attached for purposes of land use, so are you --
8 is that your area of expertise or was there someone else that
9 you consulted who was in a similar position to the
10 individuals that prepared the appendices on sea level rise
11 and biology?

12 MR. STREET: There was no one person who was our land use
13 expert. In terms of preparing the recommendation that we
14 brought to our Commission there were a number of staff
15 members who were involved. But the findings that are in the
16 report are those of the Commission.

17 MR. CARROLL: Okay. And give me just a moment, I'm trying
18 to get the report in front of me. Are you familiar with the
19 letter dated November 28th, 2016 that was written by Ms.
20 Warren, Deputy General Counsel for the Coastal Commission?
21 And I know she was there earlier, but I believe you said she
22 left.

23 MR. STREET: Yeah, she couldn't stay beyond 4:30 and I am
24 familiar with the letter.

25 MR. CARROLL: Okay. My first question is whether or not

1 that letter -- bear with me just a moment. I'm getting the
2 Coastal Commission's report in front of me, so that I can
3 give you a page reference. My first question -- let me give
4 you a place to turn to. If you turn to page 7 of the Coastal
5 Commission's final report, which is where the meat of the
6 land use discussion begins. There's a heading about in the
7 middle of the table "C. Land Use."

8 MR. STREET: Yes.

9 MR. CARROLL: And if you scroll down past the italicized
10 wording to the following page, there's a paragraph that
11 begins on June 7th, 2016?

12 MR. STREET: Yes, I'm there.

13 MR. CARROLL: My first question is whether or not the
14 November 28th, 2016 letter from Ms. Warren modifies this
15 paragraph as it appears in the -- I mean, I know it doesn't
16 have strike-through language. I don't mean literal
17 modification, but does that letter modify the intent or the
18 meaning of this paragraph in the Coastal Commission report?

19 MR. STREET: I don't believe so. The paragraph you're
20 referencing in the report, which is on page 8 is speaking to
21 what the Coastal Commission is using and considering for this
22 as a part of this report. And, you know, under both the
23 Warren-Alquist Act and the Coastal Act, we're tasked with
24 reviewing the project's consistency with Coastal Act policies
25 and with polices of the certified LCP.

1 So that paragraph was merely to clarify that a General
2 Plan amendment was not part of the LCP and thus the Coastal
3 Commission would not be using that policy as part of its
4 review. Whereas I believe that Ms. Warren's letter was in
5 response to a request from Energy Commission staff asking for
6 an opinion whether that General Plan amendment policy affects
7 development only within the coastal zone.

8 I'm confusing myself here. It was a question of whether
9 the General Plan amendment was effective in coastal zone
10 despite having been incorporated with the city's LCP.

11 MR. CARROLL: Okay.

12 MR. STREET: So then there is no intent to modify that
13 paragraph you cited.

14 MR. CARROLL: Thank you. That's helpful.

15 Is it your interpretation of the city's policy, SH 3.5,
16 that it applies exclusively to California Energy Commission
17 jurisdictional projects? If you have a view on that.

18 MR. STREET: Well, the Commission didn't make any
19 specific findings about that. I think it'd probably be a
20 question better addressed to Ms. Warren when she's here
21 tomorrow.

22 MR. CARROLL: Okay.

23 MR. STREET: So I don't think I can offer a view on that.

24 MR. CARROLL: Okay. Thank you, I don't have any further
25 questions for Mr. Street related to land use. Nothing

1 further.

2 HEARING OFFICER KRAMER: Oh, thank you.

3 City didn't indicate, but you may have some questions
4 for Mr. Street, do you? No, okay. CEJA didn't indicate any
5 need to question him.

6 Okay. Thank you, Mr. Street. I may have got your hopes
7 up earlier, because we need you on Biology. Hold on a second.

8 (Brief off mic colloquy.)

9 COMMISSIONER SCOTT: Okay, so we are going to take a
10 break in just a moment. I know that we have a few folks here
11 who have not been here before and not had a chance to make a
12 public comment. So if there's anyone who's not planning to
13 stay until end and has not yet had a chance to speak to the
14 Committee, we'd like to call you forward. I just have one of
15 those cards. If there are other folks and they'd like to
16 speak, please let Michael know and we will hear from you.

17 So I'd like to take a comment from Dennis O'Leary
18 please.

19 COMMISSIONER DOUGLAS: So just as he comes to the podium,
20 so we just want to make the accommodation. We see that there
21 aren't too, too many people. We have a lot of evidence to
22 take tonight, but we want to accommodate people who haven't
23 had a chance to speak to us before and who obviously would
24 like to and don't want to be here all night. So please speak,
25 and if you're in that category please fill out a blue card if

1 you haven't already. And we'll accommodate the folks who we
2 can. Thank you.

3 PUBLIC COMMENT

4 MR. O'LEARY: On many different levels, I appreciate the
5 being able to go home earlier. Thank you for allowing me to
6 speak. My name is Denis O'Leary. And I'm a School District
7 Trustee for the Oxnard School District.

8 We're an elementary school district, kindergarten
9 through eighth grade, and we are actually the largest
10 elementary school district in the State of California. It
11 seems odd, but we have 17,500 students in that age group.
12 Yes, there are some mega-school districts, but they're all
13 unified. But I'm here basically to speak at -- on the subject
14 once again. It's been many months and what that I've spoken
15 in front of another Commission, I believe.

16 The people of the Oxnard plain, generally see that we
17 have brunted the environmental butt of a lot of progress.
18 We're talking about our second, third, fourth energy plant on
19 our coast. We're still trying to recover from a failed Halaco
20 plant that is a super fund environmental site. Which by the
21 way, is not reported often, that did have and continues to
22 have spikes in our children's population in asthma and other
23 elements. You think about it. We have a coast in Southern
24 California, where the closest housing to the beach, to a
25 beautiful beach, are migrant low-income housing. There's a

1 reason. And that's in that area.

2 But we would really like a reconsideration of placing
3 any more power plants in our area, just because we have taken
4 a big brunt of this. My personal opinion is yes, a community
5 like Oxnard -- not all of our residents are able to vote, I
6 don't ask why -- but we don't have the political clout.

7 Within the school district of 17,500 students, 85
8 percent of our students are lower-income lunches, or free
9 lunches, I should say. And it just gets down to again the
10 majority minority population that is economically
11 disadvantaged. And we seem to be getting these environmental
12 hazards put on our coast. Not just once or twice, but several
13 times.

14 And we've also seen, in the case of Halaco, old issues
15 that are very clear in how they have taken years and may even
16 take a generation or two to actually get clean, that pristine
17 beach that again is a super fund site. So I ask that this
18 power plant be placed somewhere else where it's needed.
19 Electricity can travel and it can be used in other parts of
20 the state. And it can come from other parts of the state.

21 Our Oxnard residents have already suffered from the past
22 and we would like to see somebody else share in the wealth of
23 our need for energy. I thank you very much.

24 COMMISSIONER SCOTT: Thank you. Do I have any others, as
25 Commissioner Douglas noted, that have not had an opportunity

1 to speak? Please, come.

2 COMMISSIONER DOUGLAS: And what we're really hoping for
3 is people who haven't spoken last night either, or --

4 MR. ALVES: So it's our first time?

5 COMMISSIONER DOUGLAS: First time.

6 COMMISSIONER SCOTT: And would you please state and spell
7 your name for our court reporter so she gets it right in the
8 transcript?

9 MR. ALVES: Our names are Roger and Scotia Alves.

10 COMMISSIONER DOUGLAS: Thank you.

11 MR. ALVES: R-o-g-e-r A-l-v-e-s. My wife's name is
12 Scotia, S-c-o-t-i-a. All right, we have a company here in
13 Oxnard, we've had for 37 years this month. We employ 150
14 people in the local area. We have been here in Oxnard
15 specifically for 20 years. In that 20 year time span, we have
16 grown over 100, 120 percent in size.

17 And it sounds to me like this has been going on for
18 about 15 years. So at that rate we've employed a lot more
19 people and we want to continue to employ a lot more people
20 going into the future. And if we can get these things
21 expedited, we would like to see an insurance of our energy
22 going into the future. Because when we have blackouts and
23 power outages we have to let our employees go, they have to
24 go home. It shuts down productivity. It makes us want to
25 expand elsewhere. So we'd like your consideration to get this

1 done. Thank you.

2 COMMISSIONER SCOTT: Thank you.

3 Ms. Scotia, were you going to speak as well?

4 MS. ALVES: Well, I was talking to one of the college
5 kids and he was just graduating from Channel Islands
6 University. And he said, "My main goal is I'd love to get a
7 job in Ventura County." And I think the kids that have
8 graduating from Oxnard College and Channel Islands University
9 would like to be able to get jobs. I think the disadvantages
10 that he was just talking about would like to be able to get
11 jobs and not have to move out of state, because we need the
12 reliable energy.

13 So we just thought we'd show up and talk about the
14 inconvenience of the blackouts and the brownouts when our
15 employees have to go home and nothing can get done. Thank
16 you.

17 COMMISSIONER SCOTT: Thank you for being here.

18 MR. ALVES: Thank you.

19 COMMISSIONER SCOTT: You're welcome.

20 Do I have any others who have not had an opportunity to
21 speak? Please, and if you don't mind would you please spell
22 your name for the court reporter?

23 MR. LISAGOR: Good evening. My name is Mark Lisagor, L-i-
24 s-a-g-o-r. A 40-year resident of Ventura County and I'm also
25 a trustee on the Ventura County Board of Education. Our 20

1 districts that we oversee represent the 140,000 children in
2 this county. And every one of them is as important as the
3 next. So that includes West Lake Village, Ojai, but it also
4 includes Port Hueneme and Oxnard.

5 For me, this is clearly and completely a social justice
6 issue. It's been spoken of previously on many occasions much
7 more eloquently than I could ever do. But Oxnard has given it
8 up for the team, quite amazingly on so many occasions over
9 the years, and it really is time to give this city a break.
10 I'm also in health care and pediatrics. And the asthma is
11 embarrassing. And to have it just be ignored as an issue and
12 to put another power plant in this community is unthinkable.

13 And I would ask the Commission to really, really give
14 this some consideration. Thank you.

15 COMMISSIONER SCOTT: Thank you.

16 Okay, one more. Please come on up. If you don't mind,
17 please spell your name for our court reporter, so she gets it
18 right in the transcript.

19 MAYOR FLYNN: My name is Tim Flynn and I'm the Mayor of
20 the City of Oxnard.

21 COMMISSIONER SCOTT: Okay, great.

22 MAYOR FLYNN: And I didn't intend on speaking this
23 evening, but I wanted very briefly to thank you for coming to
24 the City of Oxnard, so you can hear from the people.

25 And we're people in this city, we're the largest city in

1 the county as you're aware of, and out of ten cities in the
2 county. And we're people that really feel, historically, that
3 we haven't been listened to. And I now that people have come
4 to you and they have implored you right, not to place this
5 power plant on the beach.

6 And I'm here as the Mayor of the City to simply say that
7 there's a very strong consensus on our City Council, five
8 members including the Mayor, that are resolute in wanting
9 this power plant not to be on this sacred coastline. And I
10 think, more than anything else, the thing that I can say that
11 I hope has and adds some value to this is, if you spend some
12 time tomorrow -- and/or any time that you come back to the
13 City of Oxnard -- and actually go to the coast.

14 I don't think it really does -- it's almost like the
15 Declaration of Independence, it's self-evident. It's really
16 self-evident about what it is that you have to decide --
17 which I understand you have a heavy burden on your shoulders
18 -- go to the coastline. Go and watch a sunset with the
19 Channel Islands and I believe it's self-evident. And that
20 would speak much stronger than I can as Mayor of the City.

21 I want to thank you for coming. And I understand that
22 you have a very deliberative process, but I want to thank my
23 colleague, Mayor Pro Tem Ramirez, for standing strong and
24 leading our Council on this very vital issue for our
25 community. Have a nice evening. Thank you.

1 COMMISSIONER SCOTT: Thank you. Thank you for being here
2 Mayor Flynn.

3 MAYOR PRO TEM RAMIREZ: Commissioners, Carmen Ramirez
4 here. I wanted to let you know that Senator Hannah-Beth
5 Jackson is en route and she will be here at 7:00. I hope you
6 can indulge her. Thank you.

7 COMMISSIONER SCOTT: Of course, thank you very much.

8 All right, is there anyone else here who is not planning
9 to stay to the end, who has not had a chance to speak, that
10 would like to make a comment? Yes, please approach.

11 MS. MONDRAGON: Hello, good evening. My name is Dolores
12 Mondragon. I come to you as a sister, as a homeowner, as a
13 veteran, as a wife of a retired veteran and as the community,
14 as a leader of Native American community here, a supporter of
15 the Chumash people here, as a teacher, as a mother and as a
16 grandmother.

17 One of the things that I haven't been hearing in these
18 conversations is Latinos being talked about as being
19 indigenous people. And I think one of the important things to
20 understand is when we say Latino, we're talking about
21 indigenous peoples. And I'd like to read something to you
22 that is very prevalent amongst indigenous people, which is
23 genocide, the legal definition of genocide.

24 Genocide is defined in Article 2 of the Convention on
25 the Prevention and Punishment of the Crime of Genocide in

1 1948 as, "...any of the following acts committed with intent
2 to destroy, in whole or in part, a national, ethnic, racial
3 or religious group." As such, "Killing members of a group,"
4 causing them, "...serious bodily or mental harm."

5 Asthma has been brought up. And to me, that is a big
6 issue, my brother almost died of asthma and was in a coma for
7 ten days.

8 To members of the group, "Deliberately inflicting on the
9 group conditions of life calculated to bring about its
10 physical destruction in whole or in part."

11 Again, I say this, because this is not something that is
12 framed this way. Environmental racism is destructive.
13 Genocide is what is happening to indigenous people all across
14 this country.

15 And we can see it very evident, especially in North
16 Dakota with a DAPL and the approved easement by the Army Corp
17 of Engineers. Where they had moved that pipeline away from
18 Bismarck, because over 90 percent of the population was
19 white. And they didn't want that toxicity around where they
20 were. So they moved it close and under the reservation, under
21 sacred land, under people's burial grounds, their ceremonial
22 grounds.

23 And yes this land is sacred. It's sacred to the Chumash
24 people. It's sacred to us. We live here. Our children breathe
25 this air. My grandson breaths this air. And having us

1 relocate is part of the definition, the quintessential
2 definition of genocide, taking away our language, our
3 community, and the people around us.

4 Thank you very much.

5 COMMISSIONER SCOTT: Thank you.

6 Okay. We are going to now take a short break for dinner.
7 Maybe dinner's too strong to grab food that you have here
8 with you.

9 COMMISSIONER DOUGLAS: A 15-minute break.

10 COMMISSIONER SCOTT: And yeah, Senator Jackson is
11 supposed to be here at 7:00. Why don't we regroup at 7:00
12 o'clock and we'll kick it off with her and then we'll
13 continue our evidentiary hearing.

14 (Off the record at 6:38 p.m.)

15 (On the record at 7:00 p.m.)

16 COMMISSIONER SCOTT: All right. I'm going to turn
17 the conduct of this proceeding back over to our Hearing
18 Officer Paul Kramer.

19 HEARING OFFICER KRAMER: Okay. First
20 witness -- we're now on Biological Resources. And the first
21 witness is Julie Love for the Applicant.

22 And then I think for Mr. Street's sake then we will
23 take him next and have all of the cross-examination of him
24 and then we'll go back to staff's direct witnesses.

25 Ms. Love, you were sworn in previously.

1 MS. LOVE: That is correct.

2 HEARING OFFICER KRAMER: Okay. So, Mr. Carroll,
3 would you like to go ahead?

4 MR. SMITH: May I? I'm sorry, before we begin, and I
5 seriously do not want to add any time to any of these
6 proceedings unless necessary, but may I request that we
7 consider cross-examination directly after the direct
8 examination for these witnesses? I think that would be my
9 client's preference. And I don't know if there are strong
10 views held by others.

11 HEARING OFFICER KRAMER: Any objection to that?

12 That's basically what I was thinking, Ms. Love and
13 then her cross and then we would go to Mr. Street, who is
14 only cross.

15 MR. SMITH: Okay. Thank you for clarifying that.
16 Thank you.

17 MR. CARROLL: Thank you.

18 Applicant calls Julie Love.

19 Can you please state and spell your name for the
20 record, identify your employer and your position, please.

21 MS. LOVE: Hi. My name is Julie Love, J-U-L-I-E,
22 L-O-V-E. I work for AECOM as a Senior Restoration Ecologist
23 and Biologist.

24 MR. CARROLL: And what experience do you have that
25 is relevant to today's proceedings?

1 MS. LOVE: I have over 15 years of experience
2 working on and managing projects that involve the evaluation
3 of Biological Resources, specifically wetland delineations
4 and jurisdictional delineations, botanical surveys and
5 sensitive wildlife surveys.

6 MR. CARROLL: And do you have in front of you the
7 following three documents: Applicant's Exhibit Number 1104,
8 now a portion of 1101, entitled, "Expert Declaration of Julie
9 Love Regarding Biology," secondly, Applicant's Original
10 Exhibit Number 1125, now a portion of 1121, entitled, "Expert
11 Declaration of Julie Love Regarding the Presence of Wetlands
12 on the Puente Project Site," and, third, Applicant's Exhibit
13 Number 1127, now a portion of 1121, entitled, "Expert
14 Declaration of Julie Love in Response to Statements of
15 Lawrence E. Hunt and Eileen Anderson regarding Biological
16 Resources"?

17 MS. LOVE: Yes.

18 MR. CARROLL: And was that testimony prepared by you
19 or under your supervision?

20 MS. LOVE: Yes.

21 MR. CARROLL: Do you have any changes or corrections
22 to your prepared testimony?

23 MS. LOVE: No, I do not.

24 MR. CARROLL: Thank you.

25 Rather than having you provide a general overview

1 of your analysis and conclusions, all of which are set forth
2 in your prepared testimony, I'd like to focus on a couple of
3 specific issues, including the one issue on which Applicant
4 and staff disagree with respect to this resource area, and
5 then some of the issues that have been raised by the
6 Interveners in their opening and rebuttal testimony.

7 And for your sake and the sake of others, most of
8 the questions I'm going to ask you pertain to the
9 approximately three-acre site upon which the power plant
10 itself will be located and do not pertain to the other areas
11 that may be affected by the implementation of the project,
12 such as the area surrounding the outfall. So, for the sake of
13 simplicity, when I refer to project site in my questions, you
14 should assume that I'm referring to the approximately
15 three-acre project site proper and respond accordingly. If I
16 get to a question that is broader and would apply to some of
17 the other areas like the outfall area, I'll clarify that.

18 On how many occasions did you visit the project
19 site to conduct the investigations to support the analysis
20 set forth in your prepared testimony?

21 MS. LOVE: We conducted several site visits. I was
22 on site on March 12th and 31st of 2015, November 19th of
23 2015, and October 18th of 2016. And each one of those times I
24 was there for approximately a half a day to a full day.

25 MR. CARROLL: Thank you.

1 Let's first address the one issue upon which
2 Applicant and staff disagree with respect to this area.

3 In its Final Staff Assessment, staff concludes that
4 2.03 acres of the project site constitute a California
5 Coastal Commission jurisdictional wetland.

6 Do you agree with that conclusion?

7 MS. LOVE: No, I do not. The CEC's FSA, as well as
8 the Interveners, failed to account for how disturbed the site
9 is by decades of industrial use. The site has been graded,
10 the soils are compacted, and they do not constitute a wetland
11 habitat.

12 The vegetation has been completely removed in the
13 past, other than patches of the Coyote Brush and Woolly
14 Seablite, the vegetation on site is dominated by non-native
15 ice plant mats, as well as other invasive species, such as
16 Russian Thistle.

17 Both hydrologic conditions and the majority of the
18 vegetation species on site are not indicative of wetlands.

19 The majority of the MGS property, including the
20 project site itself, is composed of industrial use impervious
21 surfaces like buildings, paved roads, that type of thing. And
22 these areas have little to no value for wildlife.

23 Animals that use these areas are likely limited to
24 the species that are highly adapted to developed lands. Some
25 examples would be the Western Fence Lizard, House Sparrows,

1 Rock Doves, European Starlings, animals like that.

2 MR. CARROLL: Did the Applicant complete a
3 jurisdictional determination wetland delineation to evaluate
4 whether or not the project site contained wetlands?

5 MS. LOVE: Yes, we conducted a wetland delineation
6 and jurisdictional determination in March of 2015.

7 MR. CARROLL: Can you please describe the criteria
8 that was used in that delineation?

9 MS. LOVE: Yeah. So, we used the Army Corps. Arid
10 West Regional Supplement. That's a supplement to the Wetland
11 Delineation Manual by the Corps. We specifically also
12 analyzed California Coastal Commission wetlands in -- as they
13 applied to -- I'm sorry. To back up, we specifically looked
14 at Coastal Commission One Parameter wetlands.

15 MR. CARROLL: And what were the results of that
16 delineation?

17 MS. LOVE: So we confirmed that the site has neither
18 hydric soils nor does it have wetland hydrology. There are
19 hydrophytic species on site, but the vegetation is very
20 problematic. It's anthropogenically influenced and highly
21 disturbed, and it's not a reliable indicator because of those
22 reasons.

23 Thus, we concluded that we did not have Army Corps.
24 Wetlands on site nor do we have Coastal Commission wetlands
25 on site.

1 MR. CARROLL: And can you briefly explain what you
2 mean when you said that the vegetation is anthropogenically
3 influenced?

4 MS. LOVE: It is a vegetation community that is
5 highly influenced by humans and their uses on site.

6 MR. CARROLL: Thank you.

7 What is your understanding of the basis for the
8 contrary conclusion reached by CEC staff in the FSA?

9 MS. LOVE: So, the FSA adopts a determination by the
10 Coastal Commission that a portion of the project site is a
11 wetland under its One Parameter Rule, or definition of a
12 wetland.

13 MR. CARROLL: Can you please describe the California
14 Coastal Commission's One Parameter definition and how the
15 Coastal Commission goes about applying that definition?

16 MS. LOVE: Sure. So, the Coastal Commission analyzes
17 the site and determines whether or not the whole site or part
18 of a site, I guess, can -- meets their definition of
19 wetlands, which is described in the California Coastal Act
20 and the California Coastal Commission regulations.

21 So, the California Coastal Act defines a wetland
22 as, quote, "Lands with the..." oh, excuse me. Back up. It's
23 defined as, quote, "Lands within the Coastal Zone which may
24 be covered periodically or permanently with shallow water,"
25 end quote.

1 was that is so tall that they were speaking.

2 I do appreciate the opportunity to come and speak
3 to you this evening. I apologize, I don't know whether you
4 had a program earlier. The airlines are flying with their
5 predictable speed and two- to three-hour delays, so I had the
6 joyful privilege of spending a lot of time in the Sacramento
7 airport before coming here.

8 So, it's a pleasure to be in my home district. And
9 I know you have spent the better part of -- this is, I guess,
10 the third day of your hearings. And I appreciate the
11 opportunity to speak to you in opposition to this proposal.

12 So, first off, my name is Hannah-Beth Jackson. I am
13 the State Senator with the honor and privilege of
14 representing the good people of this community in the 19th
15 State Senate District, which includes the proposed Puente
16 Power Project site here in Oxnard.

17 And I thank you again for the opportunity to
18 provide comment on this proposal.

19 I join with the many community members, elected
20 officials, and local advocates who have spoken out in
21 opposition to this project.

22 I continue to have serious concerns about the
23 negative environmental and environmental justice impacts of
24 this project, and I also question the necessity of adding
25 additional power supply to a system that is already overbuilt

1 and costly.

2 And I will add parenthetically that I was in the
3 State Assembly when we had the energy crisis back in 2004.
4 So, I am quite familiar with the challenges associated with
5 the need to assure a reliable energy supply. So, I understand
6 the concern to make sure that we have reliability.

7 But I believe that there has been a great deal of
8 progress since that time in a variety of fields and areas so
9 that -- was it 2002, now that I'm thinking about it -- at any
10 rate, it feels like a hundred years ago and only yesterday
11 that we were addressing the issue of our energy system and
12 suffering brownouts and over-purchasing, you know, energy
13 from Enron in Texas and the 40-billion-dollar shift in wealth
14 that went with that. Something we never want to do again.

15 So, I come to you not naively. I come to you having
16 learned very quickly that we need to have a stable system.
17 But I believe that this isn't a way to achieve that.

18 Oxnard has been identified as a community
19 disproportionately burdened by multiple sources of pollution.
20 In fact, this project would be located in a community that
21 ranks in the top ten percent of zip codes negatively impacted
22 by pollution in this state. Locating another power plant
23 which impacts the health and state of Oxnard residents -- and
24 I recognize it's a reduction in emissions from what we've
25 had, but it's still emissions -- and this community has

1 experienced enormous amounts of degradation. We have the most
2 number of coastal power plants and a relatively high
3 proportion of immigrants and people of color here. And it
4 raises concerns about the State's commitment to the principle
5 of environmental justice.

6 Having chaired the Joint Legislative Committee on
7 Energy Management, I appreciate the energy production and
8 transmission challenges that we still face in this state, and
9 I understand the importance of creating resiliency and
10 reliability. But it seems to me that the CEC's assessment of
11 this power project does not adequately account for actual and
12 future energy demand.

13 We have been very creative, and I applaud the
14 efforts the CEC has undertaken along with the PUC and the ISO
15 to really try to find different ways to address our energy
16 needs. But as the Los Angeles Times pointed out this weekend,
17 Californians are already paying billions of dollars for power
18 they don't need. And by 2020, the State's power plants are on
19 track to produce at least 21 percent more energy than
20 consumers require.

21 And the irony is that Californians are also leading
22 the way in developing and implementing reliable renewable
23 energy sources. We're using 2.6 percent less electricity
24 annually, but we're paying 50 percent more than the rest of
25 the country. This is a challenge we need address.

1 We pay more for a variety of products for a variety
2 of reasons, but we don't need to be paying more, I believe,
3 for our electricity.

4 Continuing to overbuild the system is a costly and
5 ineffective strategy.

6 The proposed Puente Power Project continues leading
7 us, I believe, in the wrong direction. And I believe the CEC
8 should use this, though, as an opportunity to develop storage
9 solutions that assists California in moving away from natural
10 gas facilities.

11 And I strongly urge the CEC to continue to pursue
12 other strategies in needling and time of use and other -- and
13 conservation procedures as well. But I think developing the
14 storage solutions that assist California in moving away from
15 these gas facilities really is, I think, the future.

16 These energy storage facilities are being built
17 throughout the State, providing a strong alternative during
18 times of high electricity consumption to natural gas peaker
19 plants, such as the Puente plant.

20 And just a couple weeks ago,
21 Southern California Edison opened a 20-megawatt Tesla Battery
22 storage facility at the Mira Loma substation in Ontario, and
23 two other storage facilities are in process of being built.
24 My understanding is they were able to build that within
25 90 days. Now, granted, we haven't figured out -- it's not a

1 panacea. We haven't figured out exactly how to store the
2 maximum amount of energy, but we are moving in that
3 direction.

4 And these three projects will add 77.5 megawatts of
5 storage capacity to the grid. This means the State will have
6 new ways to storage renewable energy that can be called upon
7 to feed the grid at any moment.

8 So, my hope is that we will work together to
9 explore similar local energy storage opportunities in this
10 community so that rather than subjecting Oxnard to additional
11 pollutants, the city can be part of achieving California's
12 Green Energy Goals.

13 And, with that, I also ask that the PUC and the
14 Energy Commission pause this process and reevaluate the need
15 for this project. And as part of this reevaluation, the
16 California Energy Commission study the various options that
17 have been successful, use those brilliant creative juices
18 that you have to find new ones and also to study things such
19 as battery storage as an alternative. They are moving very
20 quickly and rapidly.

21 I just ask that you have the vision to think
22 forward rather than rely upon things of the past. I think we
23 can do better, and I know the good people of this community
24 would like to be part of the solution.

25 And, with that, I thank you for your time.

1 COMMISSIONER SCOTT: Thank you very much, Senator
2 Jackson.

3 (Applause.)

4 COMMISSIONER SCOTT: Okay. We will now turn back to
5 questions from Mr. Carroll.

6 MR. CARROLL: Thank you.

7 Ms. Love, I'm going to pick up the questions, but
8 just to refresh your recollection where we left off, you had
9 just described for us the California Coastal Commission's One
10 Parameter definition of a wetland and how that is applied in
11 the sense that a finding of only one of the three parameters
12 is all that's required for the Coastal Commission to make a
13 positive determination of a wetland.

14 Picking up with the questioning. What were the
15 Coastal Commission's findings with regard to the project
16 site?

17 MS. LOVE: This is Julie Love.

18 Applying this One Parameter definition, the Coastal
19 Commission report concluded that a portion of the project
20 site constitutes a wetland based on the presence of
21 hydrophytic plants alone. The project site notably does not
22 exhibit wetland hydrology or hydric soils, as I mentioned
23 earlier.

24 MR. CARROLL: Do you agree with the conclusion of
25 the Coastal Commission?

1 MS. LOVE: No, I do not.

2 MR. CARROLL: And can you please explain why not?

3 MS. LOVE: So, first and foremost, neither the
4 definitions of wetlands contained in the Coastal Act nor the
5 definition contained in the Coastal Commission regulations
6 apply to any portion of the project site. No portion of the
7 project site is, quote, "...covered periodically or
8 permanently with shallow water," the site contains no
9 hydrologic features, it receives no hydrologic inputs other
10 than direct rainfall, and it's not connected to any
11 freshwater habitats or tidal habitats.

12 In addition, the project site is approximately
13 14 feet above sea level and is protected by seaward dunes to
14 the west side and an earthen berm to the north.

15 In addition, no portion of the project site is
16 affected by a, quote, "...water table at, near, or above the
17 land surface." The project site is five to nine feet above
18 the water table.

19 Furthermore, the Coastal Commission's application
20 of it's One Parameter definition is misguided in this case.
21 Sound wetland science and practice dictates that when a
22 wetland determination is based on the presence of one
23 parameter alone, that particularly when the other two
24 parameters are absent, as the case is at the project site,
25 that we should look more carefully at the One Parameter.

1 If circumstances suggest that the presence of the
2 One Parameter is not a reliable indicator of the site's
3 wetlands status, it alone should not provide the basis of a
4 wetland determination.

5 MR. CARROLL: Now, you've testified that the Coastal
6 Commission is basing their determination on the presence of
7 hydrophytic plants alone.

8 Could you please explain what those hydrophytic
9 plants are?

10 MS. LOVE: Sure. We had three hydrophytic species on
11 site, Pickleweed, Woolly Seablite, and Slender Leaf ice
12 plant.

13 MR. CARROLL: And do those plants cover the entire
14 site?

15 MS. LOVE: They do not.

16 MR. CARROLL: Are there any indications that suggest
17 that the presence of the hydrophytic plants on portions of
18 the project site is not a reliable -- what you've testified
19 that are -- what are the indications that suggest to you that
20 the presence of the hydrophytic plants on portions of the
21 project site are not a reliable indicator of the site's
22 wetland status?

23 MS. LOVE: Although the project site exhibits
24 hydrophytic vegetation, the vegetation is most likely the
25 result of chronic disturbance and human intervention and is

1 not indicative the wetland condition.

2 The site has been used for a variety of functions
3 over the years. Those functions include lay-down areas for
4 construction equipment and materials, storage area for
5 construction debris, the most recently long-term storage of
6 material dredged from the bottom of Edison Canal.

7 So, the presence of wetland indicator plant species
8 on the project site is likely the result of those stored
9 dredge materials that came from the nearby Edison Canal
10 because the Edison Canal is saltwater, it's a saltwater
11 environment, the dredge piles that were placed on top of the
12 project site were saturated with saltwater and that during
13 that time of storage, the saltwater likely infiltrated into
14 the soil.

15 Over the time when this practice was occurring, the
16 salt accumulated and that was making the soil more suitable
17 for salt-tolerant hydrophytic plant species.

18 The hypothesis is supported by the fact that none of
19 the surrounding areas in the Mandalay facility which exhibit
20 the same disturbed conditions as the project site, but which
21 are also -- but which were not used for the same storage of
22 dredge materials, but they are located within the same
23 landscape position, so relatively in the same type of
24 topography. None of those areas support salt-tolerant
25 hydrophytes.

1 MR. CARROLL: Based on that analysis, in your expert
2 opinion, does any portion of the project site constitute a
3 wetland?

4 MS. LOVE: So based on the information that I've
5 received and analyzed, it is my opinion that no portion of
6 the project site qualifies as a wetland under either of the
7 relevant definitions, namely the California Coastal Act and
8 the California Coastal Commission regulations.

9 MR. CARROLL: And does that include, just to be
10 specific, the California Coastal Commission's One Parameter
11 definition?

12 MS. LOVE: Yes, that's correct.

13 MR. CARROLL: Thank you.

14 I want to move on to a related but slightly
15 different topic.

16 In a letter dated October 13th, 2016, CDFW -- I'm
17 sorry, California Department of Fish and Wildlife suggested
18 that there might also be what dune swale wetland on the
19 project site. In his prepared testimony, EDC's witness, Dr.
20 Hunt, asserts that there is, in his opinion, a dune swale
21 wetland on site.

22 Are you familiar with that conclusion?

23 MS. LOVE: Yes.

24 MR. CARROLL: And did you evaluate dune swale
25 wetlands in your initial analysis of the project site?

1 MS. LOVE: Yes, we did. We looked at all hydrologic
2 features, as well as all vegetation communities on the site.

3 MR. CARROLL: In your opinion, does any portion of
4 the project site constitute a dune swale wetland?

5 MS. LOVE: No, there are no portions of the project
6 site that would constitute a dune swale wetland.

7 MR. CARROLL: On what do you base that conclusion?

8 MS. LOVE: So a coastal dune is a small valley or
9 swale between dunes or behind dunes, so it's a depressional
10 area, where the surface, the land surface, is close to the
11 water table.

12 So, the typography of the area on the project site
13 that the Intervener seems to be suggesting is a dune swale
14 wetland is flat. It's slightly higher in elevation than the
15 surrounding landscape, so not by much. So, there's -- it's,
16 like I mentioned, it's flat. So, there is neither a dune nor
17 a swale in this specific location, nor on the remainder of
18 the project site.

19 So, furthermore, the water table, as I mentioned
20 earlier, in that area is five to nine feet below the surface,
21 so it's not shallow. And in the absence of this topographic
22 feature or a hydrologic feature, it's not possible for any
23 portion of the project site to have a dune swale wetland.

24 MR. CARROLL: Dr. Hunt's prepared testimony doesn't
25 address the topographic or hydrologic features that you just

1 described, but appears to suggest that the presence of Coyote
2 Brush Scrub alone is indicative of the presence of a dune
3 swale wetland.

4 Is the presence of Coyote Brush Scrub a reliable
5 indicator of a dune swale wetland?

6 MS. LOVE: Not in this particular case.

7 So, it is true that there are .52 acres of Coyote
8 Brush Scrub next to the Woolly Seablite community, however,
9 the on-site Coyote Brush Scrub in question has
10 characteristics that lead me to believe that it's not a dune
11 swale wetland. So, the Coyote Brush Scrub on site is
12 dominated by a Coyote Brush. That's an Upland plant; that is
13 not a wetland indicator. The community is composed mostly of
14 Upland species. It doesn't contain any obligate or
15 facultative species. Those are species that almost always are
16 usually occurring in wetlands respectfully.

17 It does, however, contain a few facultative species
18 which have an equal likelihood of occurring in a wetland or
19 outside of a wetland. The Coyote Brush Scrub is not
20 associated with a swale or any other sort of hydrologic
21 feature.

22 MR. CARROLL: In his prepared testimony, Dr. Hunt
23 also seems to suggest that the presence of Mulefat is an
24 indicator of a dune swale wetland on a project site.

25 What is your response to that suggestion?

1 MS. LOVE: So, in general, Mulefat Scrub can be an
2 indicator of wetlands, however, we do not have Mulefat Scrub
3 on the site. There are only two individuals of Mulefat that
4 occur on site, and they are both located within the ice plant
5 community and they are not located within the supposed dune
6 swale wetland feature.

7 Mulefat Scrub is only located offsite to the north
8 within an area that is currently being restored, and it's
9 mapped as such in the AFC.

10 MR. CARROLL: So, in your expert opinion, does any
11 portion of the project site constitute a dune swale wetland?

12 MS. LOVE: So, based on the information that I have
13 received and analyzed, it's my opinion that no portion of the
14 project site qualifies as a dune swale wetland.

15 MR. CARROLL: Thank you.

16 I want to talk a little bit about the mitigation
17 that has been proposed for the impacts to these areas that
18 you've just described.

19 How are wetland mitigation ratios typically
20 determined?

21 MS. LOVE: So wetland mitigation ratios are
22 typically determined based on the functions and values of the
23 affected area versus the function that is being restored or
24 enhanced or replaced at -- so that the replacement is at a
25 one-to-one ratio so that both acreage and function is

1 accomplished.

2 So, that is if a higher quality mitigation is
3 provided, the mitigation ratio may be lower than if the lower
4 mitigation or lower quality of mitigation site is provided.

5 MR. CARROLL: And the FSA calls for mitigating the
6 2.03 acres of Coastal Commission wetland by implementing a
7 wetland restoration plan at a four-to-one ratio, meaning four
8 acres of restored land for every one acre disturbed; is that
9 correct?

10 MS. LOVE: Yes, that's correct. That's in Condition
11 of Certification Bio 9.

12 MR. CARROLL: And, in your view, is that an
13 appropriate remedy for the magnitude of the impact that's
14 being asserted?

15 MS. LOVE: I don't think that's appropriate for
16 multiple reasons.

17 First, as we discussed, no land in question is
18 actually a wetland and, therefore, no mitigation should be
19 required. But even if the mitigation were to occur
20 four-to-one, a four-to-one ratio, is not an appropriate
21 mitigation ratio given the highly-disturbed nature of the
22 habitat.

23 So, the wetland mitigation ratios are typically
24 determined based on the functions and values affected versus
25 the function that is being restored, as I mentioned. So,

1 one-to-one replacement ratio for both acreage and function
2 needs to be accomplished.

3 Given the highly-disturbed nature of the project
4 site, also given the high percentage of non-native wetland
5 species -- or, I'm sorry -- non-native plant species that we
6 have on site and the general lack of wetland functions, a
7 mitigation ratio of one-to-one and 1.5-to-1 might be more
8 appropriate if the mitigation provided consisted of moderate
9 to high quality mitigation or 1.5-to-1 if the mitigation
10 provided consisted of low to moderate quality wetlands.

11 MR. CARROLL: Thank you.

12 Are you aware that Dr. Hunt has also stated in his
13 prepared testimony that a four-to-one compensation ratio is
14 appropriate for the Mulefat and Coyote Brush Scrub habitat on
15 site?

16 MS. LOVE: Yes, I'm aware of that. But, as I
17 mentioned previously, Mr. Hunt is mistaken that the habitat
18 he describes constitutes a wetland.

19 Even using the expansive interpretation of the
20 wetland, the land in question still fails to qualify as a
21 wetland because the land is not a wetland and it would be
22 inappropriate to require mitigation at any ratio.

23 Moreover, as I already described earlier, even if
24 it were a wetland, the four-to-one ratio would be too high
25 given the degraded quality of the habitat there.

1 MR. CARROLL: Thank you.

2 Moving on to another subject. I don't -- well, in
3 fact, I know you were not here. But during the prehearing
4 conference, there was some discussion about whether we were
5 ready to proceed to evidentiary hearings on this matter, and
6 one of the questions that was raised by some of the
7 Interveners was whether or not sufficient surveys and
8 investigations of the project site and the surrounding area
9 had been completed to provide adequate information to
10 proceed.

11 Can you please describe the work that's been done
12 in this regard? And, in answering this next set of questions,
13 I'm now going to deviate from my previous definition of
14 project site. So please include in your responses all of the
15 areas potentially affected by the project, which would
16 include the project site proper and then the area of
17 demolition of MGS Units 1 and 2 and the existing outfall and
18 any other areas of the project -- or any other areas of the
19 MGS property that might be affected by the project.

20 MS. LOVE: Right.

21 So, a reconnaissance survey of the project vicinity
22 was conducted on January 12th, 2015, by my coworker.

23 I conducted site visits of the project site and the
24 lay-down area on March 12th and 31st of 2015 with my
25 coworkers.

1 We conducted a wetland delineation and
2 jurisdictional determination, a focus botanical survey,
3 vegetation community characterization and mapping, and a
4 wildlife survey, including looking for sensitive species.

5 So, during these multiple surveys, we analyzed the
6 soil with two soil pits associated with our wetland
7 delineation. We also used a handheld rake to analyze the
8 compaction of the soil for ground-dwelling wildlife.

9 Within the adjacent dunes -- within the adjacent
10 dunes to the north and at the edge of McGrath Lake, we also
11 did a focused botanical survey. We did vegetation
12 characterization and mapping. And we also did a wildlife
13 survey, including looking for sensitive species.

14 And, for the areas that were located outside of MGS
15 proper, we conducted vegetation mapping by surveying the area
16 from public roads in a car.

17 For the beach fall -- or the beach outfall area, a
18 portion of that was already surveyed in March of 2015, as I
19 just mentioned, when we went out to the dunes and out towards
20 McGrath Lake. And then we also had a follow-up survey
21 in -- on October 18th in 2016. And, during that October 2016
22 survey, I also surveyed the wastewater discharge area.

23 And during those surveys, we conducted a focus
24 botanical survey, though, I do want to note that it wasn't
25 during the spring blooming period; it was in October.

1 Vegetation community mapping and characterization. And we
2 also did a wildlife survey, including looking for sensitive
3 species at that time.

4 So, we took all this information from all of the
5 field surveys that we conducted, and then we cross-referenced
6 that with the species that were known to occur in the area
7 from our literature review. And then we determined the
8 potential of sensitive species to occur on the project site
9 with all that information.

10 MR. CARROLL: And did you, based on that,
11 information conduct any surveys for special status species?

12 MS. LOVE: And, so, as I mentioned, we did conduct
13 focus botanical surveys and wildlife surveys that included
14 sensitive species on the project site, the lay-down area, the
15 wastewater discharge, and the beach outfall. But, as I
16 mentioned, all these areas are highly disturbed and are
17 continually used for operations or immediately adjacent to
18 site activities. And, as such, they do not support habitat
19 for special status species. So, therefore, we did not conduct
20 any focus surveys for individual special status species.

21 Pre-construction surveys and a mechanism to avoid
22 and mitigate for impacts of special status species are
23 outlined in the mitigation measures.

24 MR. CARROLL: Do prior uses of the project site
25 affect the potential presence of plants and wildlife in the

1 area?

2 MS. LOVE: Yes, they do. And, as I mentioned, the
3 soil on the project site is highly compacted and complete
4 vegetation removal has occurred in the past. Vegetation on
5 the project site is currently dominated by ice plants, which
6 is an invasive non-native plant community. There is some
7 Coyote Brush Scrub, which is a native Upland common plant
8 community. And there is also the Woolly Seablite Scrub
9 present.

10 The proposed lay-down area in the southern portion
11 of the property has also been previously disturbed in that
12 area. It contains ruderal vegetation. I think I forgot to
13 mention there's actually a strip of ruderal vegetation within
14 the project site itself.

15 So, with regards to these vegetation communities,
16 the project site has been graded and subject to various human
17 uses in the past and the vegetation is significantly
18 disturbed so dominant plants include many, many invasive
19 species.

20 The majority of the project site is composed of
21 industrial uses and impervious surfaces, like I mentioned,
22 buildings and paved roads. And, so, none of those areas
23 support habitat for wildlife or sensitive wildlife species.

24 So, as I mentioned before, animals that would use
25 these areas would be highly adapted to areas that are

1 developed.

2 MR. CARROLL: And what special set of species, if
3 any, have the potential to occur on the project site?

4 MS. LOVE: So the AFC and the project refinement
5 identify which species have potential to occur on the site.
6 With few exceptions, there is low likelihood or no likelihood
7 of the species identified within our review to occur on the
8 site.

9 MR. CARROLL: And when you refer to "project
10 refinement," do you mean the amendment to the project to
11 remove the existing outfall?

12 MS. LOVE: That is correct.

13 MR. CARROLL: Thank you.

14 All right. Turning to a review of the presence of
15 and impact to special status species, what conclusions did
16 you reach concerning specifically the Tidewater Goby?

17 MS. LOVE: Okay. So, based on the water quality and
18 habitat requirements for the Tidewater Goby, the portion of
19 Edison Canal near the proposed discharge point for the
20 project is not suitable for Tidewater Goby. There are several
21 reasons for this. Factors such as high salinity, lack of
22 emergent vegetation and deep water would preclude the
23 Tidewater Goby from surviving there.

24 MR. CARROLL: And just to back up for a moment to be
25 clear. So, am I correct that the proposal is to remove the

1 existing ocean outfall and then to direct the discharge from
2 Puente and the stormwater from discharge from the site to the
3 Edison Canal so the need to evaluate any potential impacts on
4 the Edison Canal came about as a result of the project
5 refinement to eliminate the ocean discharge?

6 MS. LOVE: That's correct.

7 MR. CARROLL: Thank you.

8 How did you come to your conclusion that the -- I'm
9 sorry. I threw a question in the middle, and I don't know if
10 people remember your conclusion.

11 So, can you restate what you said with respect to
12 the conclusion you've reached concerning the Tidewater Goby
13 briefly?

14 MS. LOVE: Yes. So, we don't think that Tidewater
15 Goby would exist within the canal.

16 MR. CARROLL: And how did you come to that
17 conclusion?

18 MS. LOVE: So, we did not do any aquatic surveys,
19 but we did visually inspect the area.

20 MR. CARROLL: And what, specifically, was the basis
21 for your conclusion after that analysis?

22 MS. LOVE: So in regards to salinity, Tidewater
23 Gobies, they can survive in water that is up to 42 parts per
24 thousand, but it's not a favorable or a long-term habitat for
25 them to survive and reproduce in. And the U.S. Fish and

1 Wildlife Tidewater Goby Recovery Plan states that, quote,
2 "The species is typically found in waters with salinities of
3 less than 12 parts per thousand," end quote.

4 So, the salinity in Edison Canal near the proposed
5 discharge is very, very close to the salinity of the Pacific
6 Ocean, where the Edison Canal originates. And the salinity in
7 that area is typically 32 to 34 parts per thousand, as
8 documented by on-site water-quality sampling that's conducted
9 by the Applicant.

10 MR. CARROLL: And were there any other bases for
11 your conclusion that Edison Canal was not suitable habitat
12 for the Tidewater Goby?

13 MS. LOVE: Yes. In regards to emergent vegetation,
14 there is no emergent vegetation within that portion of Edison
15 Canal.

16 And, additionally, there's been surveys ongoing in
17 the intake since the mid-1980s, and they have not documented
18 the presence of Tidewater Goby in the canal.

19 And I also understand from the CEC declaration that
20 Krista Lith of the U.S. Fish and Wildlife Service has no
21 concern that Tidewater Goby will occur within the Edison
22 Canal.

23 MR. CARROLL: Thank you.

24 Some of the Intervenors' experts have identified
25 Silvery Legless Lizards near the site.

1 What, if any, conclusion did you reach in regard to
2 that species?

3 MS. LOVE: So, unlike the relatively undisturbed
4 habitat where the Intervener has been looking, the soils at
5 the project site have been graded and are badly compacted
6 from decades of industrial use, so the majority of the site
7 is covered by impervious surfaces. Regardless of what the
8 habitat may have been at some point in time in the past, the
9 habitat there no longer is suitable for the legless lizard
10 because of the compaction.

11 And, as I understand it, the legless lizard
12 requires loose and -- loose and sandy soil to bury itself.

13 MR. CARROLL: Thank you.

14 Dr. Hunt also asserts in his prepared testimony
15 that environmentally sensitive habitat areas may be present
16 on the project site.

17 Did you conduct any survey of environmentally
18 sensitive habitat areas, or ESHA?

19 MS. LOVE: So, as I mentioned, we mapped the
20 vegetation communities and characterize them within the
21 project vicinity. And we describe whether -- we describe
22 them, characterize them, map them, and then we analyze
23 whether or not they were sensitive.

24 So, although we didn't specifically map the ESHA,
25 or environmentally sensitive habitat areas, all the

1 information needed to draw a conclusion on whether or not the
2 ESHA is there or not is presented in the AFC and the project
3 refinement.

4 Please remind me the official name of that
5 document.

6 MR. CARROLL: Project refinement is good.

7 MS. LOVE: Okay.

8 MR. CARROLL: It's the amendment to the AFC to
9 implement the removal of the ocean outfall. It has a long
10 name, but I don't recall what it is either.

11 MS. LOVE: Thank you.

12 MR. CARROLL: In your opinion, based on that work,
13 is there ESHA on the project site?

14 MS. LOVE: No, there is no ESHA on the project site.

15 So, as I understand it, the City of Oxnard Coastal
16 Plan does not designate ESHA on the project site.

17 The Coastal Commission defines ESHA as, quote, "Any
18 area in which plant or animal life or their habitats are
19 either rare or especially valuable because of their special
20 nature or role in an ecosystem and which could easily be
21 disturbed or degraded by human activities and development,"
22 end quote.

23 So, the on-site habitat is not rare or especially
24 valuable. The CEC stated in the FSA that there is a ESHA on
25 site. Also, the Coastal Commission stated that there is a

1 ESHA on site.

2 MR. CARROLL: Is the ESHA in the project surrounding
3 vicinity?

4 MS. LOVE: Yes, there are.

5 So, as I understand it, the Ventura County Coastal
6 Area Plan designates the wetlands and dunes at McGrath Lake
7 as ESHA.

8 And the City of Oxnard Coastal Land-Use Plan and
9 General Plan designates various dunes habitats as ESHA.

10 MR. CARROLL: And are the dunes immediately west of
11 the project site, which would be towards the Pacific Ocean,
12 where some of the demolition work-related to the removal of
13 the existing outfall ESHA?

14 MS. LOVE: So the CDFW sensitive dune map vegetation
15 community located in this area may be dune ESHA per the City
16 of Oxnard's Coastal Land-Use Plan.

17 Project activities in this area are going to be
18 confined to an existing road that is currently used on a
19 regular basis. And activities will also be confined to the
20 immediate area adjacent to the outfall. So, impacts to the
21 vegetation community in this area will be limited to the
22 existing road and immediately around the outfall.

23 So, I would also like to point out that, overall,
24 you know, accessing this beach area to remove it will be a
25 benefit to the ecosystem there as a whole.

1 MR. CARROLL: If I understand your last statement,
2 what you're saying is that while there may be some risk of
3 temporary impact, that the removal of the outfall is a
4 significant benefit in terms of restoring habitat in that
5 area?

6 MS. LOVE: That's correct.

7 MR. CARROLL: Thank you.

8 So, based on your analysis of the project overall,
9 what is your conclusion regarding the potential for adverse
10 impacts to Biological Resources?

11 MS. LOVE: Based on the information available and my
12 analysis, it is my expert opinion that with implementation of
13 proposed Conditions of Certification Bio 1 through Bio 10
14 contained in the FSA, the project will not result in any
15 significant direct, indirect, or cumulative impacts to the
16 Biological Resources and will comply with all applicable laws
17 and regulations pertaining to Biological Resources.

18 MR. CARROLL: Thank you.

19 Does that complete your direct testimony today?

20 MS. LOVE: It does.

21 MR. CARROLL: Thank you.

22 The witness is available for cross-examination

23 HEARING OFFICER KRAMER: Staff?

24 MS. WILLIS: No cross-examination. Thank you.

25 HEARING OFFICER KRAMER: City of Oxnard?

1 MS. FOLK: I have no questions.

2 HEARING OFFICER KRAMER: Environmental Coalition?

3 MR. SMITH: Yes, we have some cross questions.

4 Good afternoon, Ms. Love. Matt Smith from the
5 Environmental Defense Center.

6 MS. LOVE: Hello.

7 MR. SMITH: Ms. Love, in these questions, I'm going
8 to be using the definition of the project site that
9 Mr. Carroll referred you to the first time. And, so by, to be
10 clear, I'll be referring to the three-acre area where the new
11 project facility would be built.

12 Do you understand that?

13 MS. LOVE: Yes.

14 MR. SMITH: And if that's confusing or unclear in
15 the context of any particular question, you'll let me know?

16 MS. LOVE: Okay.

17 MR. SMITH: The project site is within the Coastal
18 Zone, correct?

19 MS. LOVE: Correct.

20 MR. SMITH: And that means that the California
21 Coastal Commission's definition of wetlands controls as to
22 this project site, correct?

23 MS. LOVE: Correct.

24 MR. SMITH: And under that definition, the presence
25 of a hydrophytic species on the project site is sufficient to

1 constitute that site as a wetland, correct?

2 MS. LOVE: It is.

3 MR. SMITH: And hydrophytes are, in fact,
4 predominant on this project site, are they not?

5 MS. LOVE: In that location, yes, they are. But it's
6 very highly disturbed, as I mentioned.

7 MR. SMITH: Okay. And, in fact, you relied on the
8 One Parameter definition prescribed by the California Coastal
9 Commission in coming to the conclusion that some of the
10 alternative sites discussed in the Final Staff Assessment
11 were not environmentally superior to the project site, do you
12 not?

13 MS. LOVE: Yes, I did mention that earlier that we
14 did use the One Parameter Rule to describe what may be
15 present at the alternative sites, but I did also mention
16 other factors as well.

17 MR. SMITH: But the One Parameter definition was
18 part of what you considered --

19 MS. LOVE: Yes.

20 MR. SMITH: -- in coming to your conclusion,
21 correct?

22 MS. LOVE: Correct.

23 MR. SMITH: Okay. And under the Coastal Commission's
24 definition of wetland, the disturbed nature of the wetland
25 site is not relevant to the determination as to whether it is

1 wetland or not to your understanding; is that correct?

2 MS. LOVE: I don't believe so, but we believe that
3 those plants are only there because of anthropogenic reasons.

4 MR. SMITH: Okay. But, then, under the Coastal Act,
5 the California Coastal Commission's approach to the
6 definition of a jurisdictional wetland, the anthropogenic
7 origin of the hydrophytic species that may be present on a
8 project site is not a relevant to determining whether that
9 site is a wetland, is it?

10 MS. LOVE: I don't believe so.

11 MR. SMITH: So, the fact that the -- let me
12 rephrase.

13 The fact that the hydrophytes are present on the
14 project site because of anthropogenic interference does not
15 defeat the otherwise wetland status of this site, is that
16 correct, assuming there are hydrophytes on the site?

17 MS. LOVE: Can you please repeat that one more time?

18 MR. SMITH: I'll try again.

19 So, if you have a site that has hydrophytes on
20 it --

21 MS. LOVE: Uh-huh.

22 MR. SMITH: -- and those hydrophytes are present
23 because of anthropogenic causes, under the California Coastal
24 Commission's approach, that site would still qualify as a
25 wetland, correct?

1 MS. LOVE: I believe so, yes.

2 MR. SMITH: And is it fair to say that your
3 conclusions as to the presence of a dune swale wetland on the
4 site are contrary to the conclusions of the California
5 Department of Fish and Wildlife?

6 MS. LOVE: I --

7 MR. SMITH: Let me rephrase.

8 The California Department of Fish and Wildlife --

9 MS. LOVE: Yeah.

10 MR. SMITH: -- has concluded that there is a dune
11 swale wetland present on the project site, correct?

12 MS. LOVE: Yes --

13 MR. SMITH: Thank you.

14 MS. LOVE: -- they have said that. And I don't
15 believe they have seen the area in question, but they have
16 stated that Coyote Brush in the area could constitute a dune
17 swale wetland.

18 MR. SMITH: And the California Coastal Commission
19 has concluded that there is a 2.03-acre wetland on this site,
20 correct?

21 MS. LOVE: Can you repeat that, please?

22 MR. SMITH: The California Coastal Commission has
23 concluded that there is a 2.03-acre wetland present on the
24 site, correct?

25 MS. LOVE: Correct.

1 MR. SMITH: So you are disagreeing with the findings
2 of both of those agencies as to the presence of a wetland on
3 this site?

4 MS. LOVE: That is correct.

5 MR. SMITH: And would you concede that those
6 agencies have some expertise in the identification of
7 wetlands?

8 MS. LOVE: Yes, I do.

9 MR. SMITH: Just one moment.

10 Some deep-rooted phreatophytes can tap groundwater
11 at a depth of as much as five feet below ground level; is
12 that correct?

13 MS. LOVE: That is probably likely, but I'm not sure
14 I can say that for sure.

15 MR. SMITH: Okay. So, are you offering any opinion
16 today as to whether the Coyote Brush Scrub that's located on
17 the project site has the ability to tap groundwater beneath
18 the project site?

19 MS. LOVE: I would say that five to nine feet below
20 the ground's surface is not shallow enough to constitute a
21 wetland, but it is possible that Coyote Brush roots could go
22 down that far, but I'm not entirely certain about that.

23 MR. SMITH: Okay. And if the Coyote Brush is tapping
24 the groundwater that's that far below the surface, is it
25 acting as a hydrophyte?

1 MS. LOVE: I do --

2 MR. CARROLL: I'll object to the question that it
3 posits a hypothetical.

4 MR. SMITH: Well, she's an expert. I think I can ask
5 her hypothetical questions. Unless you want to withdraw her
6 as an expert.

7 MR. CARROLL: I would ask that you make it clear
8 that you're positing a hypothetical question.

9 And I would also ask that you please slow down a
10 little bit and let the witness answer the question before you
11 start --

12 MR. SMITH: I apologize, Mike. The witness has
13 tapped into my own proclivity towards speaking quickly
14 because she speaks a little fast herself. So, I'm --

15 MR. CARROLL: Some of us are taking notes.

16 MR. SMITH: We're feeding off of each other here
17 maybe. So, I'll slow down and try not to pretend I'm not
18 conscious only because of six cups of coffee I've had earlier
19 today.

20 (Laughter.)

21 MR. SMITH: So, I'm going to withdraw that last
22 question.

23 Pickleweed is a hydrophyte, right?

24 MS. LOVE: Correct.

25 MR. SMITH: And, so, under the Coastal Act

1 definition, Pickleweed would be a wetland indicator?

2 MS. LOVE: It is a wetland indicator.

3 MR. SMITH: All right. Did any of your biological
4 surveys on the project site look specifically for the
5 presence of Pickleweed on site?

6 MS. LOVE: Yes, we did.

7 MR. SMITH: So, if it were proven to you that there
8 were Pickleweed present on the project site, you would
9 conclude that the project site meets the Coastal Act's
10 definition of a wetland, would you not, as construed by the
11 California Coastal Commission?

12 MS. LOVE: I guess there is a couple of things I
13 would say about that. One, Pickleweed --

14 MR. SMITH: Maybe I'll withdraw the question. I'm
15 sorry. It was too complicated.

16 MS. LOVE: I'm not sure it's too complicated, but --

17 MR. CARROLL: I object. You know, I object to that,
18 that each time the witness has a thoughtful response to the
19 question or appears as though she has a thoughtful response
20 to your question, you withdraw the question and then move
21 onto another rapid-fire question.

22 MR. SMITH: No, Mike, I haven't withdrawn a question
23 yet.

24 MR. CARROLL: I just ask that you let the
25 witness -- once you've asked the witness a question, let the

1 witness answer the question, please.

2 MR. SMITH: Well, now, I don't even remember what
3 the question is. So --

4 MS. LOVE: You were asking me whether or not a
5 Pickleweed constitutes -- whether Pickleweed was a
6 hydrophyte, and if Pickleweed was present, would that be
7 considered a One Parameter wetland. And I would say that one
8 Pickleweed or a couple Pickleweeds would not constitute a
9 wetland; it's a community of plants that constitute a
10 wetland.

11 MR. SMITH: But if there were a community of
12 Pickleweeds located on the project site, then would you
13 acknowledge that the project site was a wetland under the
14 California Coastal Act?

15 MS. LOVE: Our site does not have a community of
16 Pickleweed.

17 MR. SMITH: I'm asking you to assume the
18 hypothetical. Suppose it were proven to you that there is a
19 community of Pickleweed located on the project site, would
20 you then conclude that the project site is a wetland --

21 MR. CARROLL: Calls for speculation.

22 MR. SMITH: -- as defined by the Coastal Act?

23 MR. CARROLL: There is no evidence in the record
24 that there is a community of Pickleweed. In fact, the even
25 testimony that we've had on the subject so far is that there

1 is not a community of Pickleweed.

2 MR. SMITH: May I respond to that? Our expert's
3 about to testify, so maybe you would allow me to pose the
4 hypothetical and we can see what evidence there is in the
5 record by the time the record's closed.

6 MR. CARROLL: I'll withdraw the objection.

7 MR. SMITH: Can the reporter read the question back?
8 Is that possible?

9 HEARING OFFICER KRAMER: She's not that kind of
10 reporter.

11 MR. SMITH: Okay. I apologize. That's a question I'm
12 withdrawing I'm guessing no one objects.

13 So, the question, Ms. Love, was if there were a
14 community of Pickleweed present on the project site, would
15 you concede that in that situation if that were proven to be
16 true the project site would be a wetland under the Coastal
17 Act?

18 MS. LOVE: I do not feel comfortable making a
19 decision on whether a wetland exists or not based on a
20 hypothetical despite what plant you're using as an example.

21 MR. SMITH: Okay. At this point, I actually prepared
22 a binder of the exhibits that I would like to use with this
23 witness because I'm going to be referring her to a couple of
24 different documents. I think referring to the binder would
25 expedite the questioning process slightly and move things

1 along.

2 Assuming there's no objection, may I distribute
3 identical copies of that binder to the attorneys and the
4 witness, the presiding member, and the reporter?

5 HEARING OFFICER KRAMER: Does anyone object?

6 MR. CARROLL: I'm not clear on what the documents
7 are.

8 Are the materials in the binder materials that were
9 previously docketed as exhibits?

10 MR. SMITH: All but one. And the one that is -- that
11 was not, is one that I would only use for a limited purpose
12 and subject, of course, to any objections.

13 HEARING OFFICER KRAMER: So, has it been filed in
14 the docket, though?

15 MR. SMITH: It was not. It was referenced in
16 testimony by Ms. Love.

17 MR. CARROLL: You mean the one that was not
18 previously identified as an exhibit?

19 MR. SMITH: Yeah.

20 MR. CARROLL: What is that document?

21 MR. SMITH: It's the U.S. Fish and Wildlife Service
22 Tidewater Goby Recovery Plan.

23 MR. CARROLL: I have no objection to that.

24 HEARING OFFICER KRAMER: Okay. So, my only concern
25 is that when we refer to these, we refer to them by their

1 exhibit numbers, with the exception of this one document.

2 Well, we'll give it an exhibit number.

3 So, go ahead and distribute the binders.

4 MR. SMITH: Thank you. I'll do that.

5 HEARING OFFICER KRAMER: Because one of my jobs is
6 to protect the integrity of the record so we can, when we get
7 to the point of hindsight, we can have 20/20 vision and
8 understand what was being talked about at the time.

9 MS. LOVE: Okay. Another binder.

10 MR. SMITH: Okay, Ms. Love --

11 MS. LOVE: Would you give me just a few more minutes
12 to look through this to make sure I understand what's in
13 here?

14 MR. SMITH: Well, I'll direct your attention to
15 individual exhibits. I may not even use all of them with you,
16 so you may be wasting your time. I'm happy to give you more
17 time to review if you want, but in the interest of time you
18 could --

19 MS. LOVE: If you could just give me one minute, I
20 would appreciate it.

21 MR. SMITH: That's fine.

22 (Pause in the proceedings.)

23 MS. LOVE: Okay. I am ready.

24 MR. SMITH: Okay, Ms. Love, let me direct your
25 attention to Tab 3 in the binder, which is an excerpt of

1 Exhibit 1101. That begins at Page 4.2-1. And I'll just ask
2 you, this is the Application for Certification of the
3 project, correct?

4 MS. LOVE: That is correct.

5 MR. SMITH: And you are knowledgeable about the
6 contents of this exhibit?

7 MS. LOVE: Correct.

8 MR. SMITH: And, now, let's take a look at Section
9 4.2.1 on Page 4.2-1 of this Exhibit 1101. And this section
10 sets forth an accurate summary of the biological information
11 on which the Biological Resources section of the application
12 is based. Am I correct?

13 MS. LOVE: In part, yes.

14 MR. SMITH: Okay. Now, you mention in this section
15 of the Biological Resources section several site visits by
16 AECOM biologists. You mention a January 12th, 2015, visit by
17 AECOM Biologist Christopher Julian, and a March 12th and
18 March 31st, two separate visits I assume, by Christopher
19 Julian, yourself, and Alihu Gevirtz; is that correct?

20 MS. LOVE: Correct.

21 MR. SMITH: And I believe you testified just now
22 that you also visited the site on two other dates that are
23 not mentioned here; is that right?

24 MS. LOVE: That's correct.

25 MR. SMITH: And those were?

1 MS. LOVE: Those are documented in the project
2 refinement.

3 MR. SMITH: Thank you.

4 And just to make sure I'm understanding, those were
5 November 19th of what year?

6 MS. LOVE: November 19th of 2015 and October 18th of
7 2016. So, that second one, I don't believe is documented in
8 the project refinement.

9 MR. SMITH: Okay. And none of those visits to the
10 sites involve protocol or focused surveys for specific
11 special status wildlife species, correct?

12 MS. LOVE: Yes. As I mentioned, we did multiple
13 surveys including looking for sensitive plant species and
14 looking for sensitive wildlife species, but since we
15 determined that there was no habitat for special status
16 species on site, we did not do any individual surveys for
17 targeted special status species.

18 MR. SMITH: So just to make sure I understand, the
19 Applicant did not perform any surveys specifically designed
20 to detect the presence of the Globose Dune Beetle, correct?

21 MR. CARROLL: I don't believe that's a fair
22 characterization of her testimony. I believe she testified as
23 to the surveys that were conducted in quite a bit of detail
24 in her direct testimony and in response to your last
25 question.

1 MR. SMITH: Well, let's find out if it is or not.

2 Let me re-ask the question.

3 Ms. Love, so the Applicant, you testified a moment
4 ago that you -- none of site visits involved protocol or
5 focused surveys for specific special status wildlife species?
6 That's correct, right?

7 MS. LOVE: We looked for all -- any species that we
8 would have seen that are special status, we would have
9 recorded them, but there are no individual protocol surveys
10 for special status species because we do not believe that
11 they are present on site due to the characteristics of the
12 habitat there.

13 MR. SMITH: And the protocol survey is a survey that
14 is specifically designed to detect the presence of a
15 particular species, correct?

16 MS. LOVE: Correct.

17 MR. SMITH: So, the fact that you did not perform
18 any protocol surveys for a specific species I may infer means
19 that you did not perform any surveys specifically designed to
20 detect the presence of the Globose Dune Beetle, am I right?

21 MS. LOVE: I believe I've already answered that
22 question.

23 MR. CARROLL: Yes, I'm going to object to the
24 question because what -- she's testified multiple times that
25 she did not conduct the protocol-level survey. But what she's

1 also testified is that the reason she didn't conduct the
2 protocol-level survey was because, based on the prior survey
3 work, she did not see any value --

4 MR. SMITH: Mike, that might be her justification,
5 but I'm still entitled to an answer to my question as to
6 whether --

7 MR. CARROLL: Well, you've had an answer to the
8 question.

9 MR. SMITH: -- she surveyed for a specific species
10 or not.

11 MR. CARROLL: If your question is did she conduct a
12 protocol-level survey, she's answered that question. So, I
13 don't --

14 MR. SMITH: Okay. And I would like to get into a few
15 specific species. I think it's a fair question?

16 Is it irrelevant? Is it -- what's your objection?

17 MR. CARROLL: No. But that the way you are phrasing
18 that last question is you're suggesting that she didn't do
19 anything to detect the presence of that species, and that's
20 not true. She didn't do protocol-level surveys to detect the
21 level -- the presence of that species, but she did do survey
22 work to determine whether or not the protocol-level survey
23 was warranted.

24 MR. SMITH: Mike, I'm about to swear you in. Nice
25 work.

1 HEARING OFFICER KRAMER: Oh, I could swear you all
2 in at this point.

3 MR. SMITH: May I have a ruling from Mr. Kramer on
4 the objection as to whether I can ask this question?

5 HEARING OFFICER KRAMER: Well, considering time,
6 among other things, her answer that she did not conduct any
7 protocol surveys definitely covers any specific question
8 about having conducted a survey about a particular species.

9 It seems repetitive, and the objection is
10 sustained.

11 MR. SMITH: Okay. I understand. Thank you.

12 So, is it fair to say that you concluded that
13 several special status species that you reviewed in the
14 Application for Certification were unlikely to be present on
15 the project site because of highly compacted soil?

16 MS. LOVE: That is correct, in addition to many
17 other reasons.

18 MR. SMITH: And that was true in particular for the
19 legless lizard, correct?

20 MS. LOVE: Yes, that is one reason. So, the soil is
21 very compacted in that area, as well as there being
22 disturbance by adjacent operations and a highly-disturbed
23 vegetation community --

24 MR. SMITH: And that's --

25 MS. LOVE: -- would be one of the reasons why we

1 would not think that that species is there.

2 MR. SMITH: And that's true for -- the presence of
3 highly compacted soil is a reason why you concluded that the
4 Blainville's Horned Lizard was not present on the site as
5 well?

6 MS. LOVE: I would have to refer to the AFC to
7 remind myself of our analysis of that particular species.

8 MR. SMITH: Okay. Do you recall whether that was
9 true also for the Burrowing Owl?

10 MS. LOVE: Burrowing Owl also requires looser soils
11 than are present on site in order to burrow and nest in the
12 area. Yes, that's correct.

13 MR. SMITH: Now, did any of your on-site work
14 include turning over objects that were embedded in the soil
15 to search for any of these species?

16 MS. LOVE: Yes, we did. So, there are several rocks
17 on site that we investigated. As I mentioned, we also did two
18 soil pits associated with our wetland delineation and
19 jurisdictional delineation, so we looked at the soil at that
20 time, too. There's also a lot of debris in the area. As I
21 mentioned, it's been used as storage for, you know, various
22 site-related activities. So, those debris, too, we did look
23 underneath those kinds of areas because lizards, in
24 particular, will like to hide underneath debris like that.

25 MR. SMITH: But that was not done in the

1 context -- I'll withdraw the question.

2 Is it fair to say at that remnant coastal dune
3 scrub habitats are present on the project site?

4 MS. LOVE: Can you repeat that, please?

5 MR. SMITH: Is it fair to say, in your opinion, that
6 remnant coastal dune scrub habitats are present on the
7 project site?

8 MS. LOVE: No, I do not believe that there are any
9 remnant dune scrubs on site. I mean, I -- there is a
10 possibility that some of the vegetation has survived; but, as
11 I mentioned, there's been many efforts of vegetation removal
12 on site. So, it's possible that some of those individuals
13 have been left over, but I also think that there are some
14 individuals that have colonized from the neighboring areas.

15 MR. SMITH: Can I direct your attention to Tab 4 of
16 your binder which is Exhibit 1101, an excerpt thereof.

17 MS. LOVE: I'm sorry. Which number again?

18 MR. SMITH: It's Tab 4. And this is Exhibit 1101.

19 And I'll just ask you that this is your
20 declaration, correct.

21 MS. LOVE: That's correct.

22 MR. SMITH: And the statements you made in that
23 declaration are true and accurate to the best of your
24 knowledge, correct?

25 MS. LOVE: Correct.

1 MR. SMITH: So, let's turn your attention to
2 Paragraph 6B of your declaration, top of Page 4. The first
3 full sentence in the top paragraph begins at Line 3, and it
4 says -- correct me if I'm reading this wrong -- "Remnant
5 coastal dune scrub habitats occur in the southern portion of
6 the site."

7 MS. LOVE: I'm sorry. Can you tell me once again
8 where that is?

9 MR. SMITH: So Page 4 --

10 MS. LOVE: Okay.

11 MR. SMITH: -- of Exhibit 1101, Line 3. The line
12 reads, "Remnant coastal dune scrub habitats occur in the
13 southern portion of the site." Do you see where it says that?

14 MS. LOVE: Yes, so I --

15 MR. SMITH: And that's true and accurate testimony,
16 correct?

17 MS. LOVE: Yes. So, as I mentioned, there are some
18 plants that may have persisted, but more than likely a lot of
19 those individuals have been disturbed or removed as part of
20 site activities.

21 MR. SMITH: Do you know, specifically, whether the
22 remnant coastal dunes -- I'll withdraw the question.

23 What are the on-site coastal dune scrub habitats
24 that you refer to in that line remnants of?

25 MS. LOVE: Remnants of what may have been there in

1 recent use or -- I'm not sure how far back we would want to
2 go to define remnant, but --

3 MR. SMITH: So, they're examples of the habitat that
4 existed on the site at some previous time?

5 MS. LOVE: At some previous time, but I would not
6 like to venture a guess as to when exactly they existed on
7 site.

8 MR. SMITH: As part of your assignment for this
9 project, were you asked to opine specifically on the question
10 of whether Coyote Brush occurring within a dune swale is a
11 rare habitat?

12 MS. LOVE: Can you repeat that, please?

13 MR. SMITH: Sure. So, as part of your assignment for
14 this project, were you asked to give an opinion as to whether
15 Coyote Brush occurring within a dune swale is a rare habitat?

16 MS. LOVE: I analyzed whether or not Coyote Brush as
17 part of a dune swale wetland was present on site, but I did
18 not make an opinion about whether or not it would be
19 considered a rare community, if I understand your question
20 correctly.

21 MR. SMITH: And were you asked as part of your
22 assignment for this project to give an opinion specifically
23 on whether Mulefat occurring within a dune swale is a rare
24 habitat?

25 MS. LOVE: So same thing with that community, I made

1 a determination about whether or not it is on site, but I did
2 not -- I'm sorry. I would like to correct myself there, I
3 think.

4 MR. SMITH: Sure.

5 MS. LOVE: So we did vegetation mapping and
6 characteristic for the project site and, as part of that, we
7 analyzed whether or not it was sensitive or not.

8 So, when we did that, we used the characterization
9 of the Sawyer, Keeler-Wolf Manual of Vegetation, the
10 California Manual of Vegetation, and then we also used the
11 2010 CDFW Sensitive Natural Communities List. So, those are
12 the two sources that we're using to determine whether or not
13 those vegetation communities are sensitive.

14 MR. SMITH: Okay. But I don't think that was
15 actually answering my question.

16 MS. LOVE: Okay.

17 MR. SMITH: My question was just simply were you
18 asked to provide an opinion on whether Mulefat occurring
19 within a dune swale is a rare habitat.

20 MR. CARROLL: I'm sorry. Is the question
21 hypothetically or --

22 MR. SMITH: No. Actually. Was she asked it? Was she
23 asked to provide an opinion on whether Mulefat Scrub
24 occurring within a dune swale is a rare habitat.

25 MR. CARROLL: Are you positing as a premise to the

1 question that that exists or -- is it a hypothetical question
2 or --

3 MR. SMITH: I don't think it's a hypothetical
4 question because I'm asking if she was actually asked to
5 opine on that question.

6 And if you're objecting to a lack of foundation as
7 to whether there's evidence that there's Mulefat present on
8 the project site or not, I'm just going to tell you again
9 that we haven't closed testimony on this issue yet, and this
10 is when this witness is testifying, so we need to ask her
11 now.

12 MR. CARROLL: So, I'm just going to admonish the
13 witness to pay very careful attention to Mr. Smith's question
14 since many of them posit a hypothetical at the beginning,
15 which he moves through very quickly.

16 MR. SMITH: But, Mike, it's not a hypothetical.

17 MR. CARROLL: If you understand the question, I
18 don't have any objection to you answering it.

19 MR. SMITH: Let me just clarify for the witness,
20 this is not a hypothetical question. I'm asking you in
21 reality were you asked to opine whether Mulefat Scrub
22 occurring within a dune swale is a rare habitat?

23 MS. LOVE: In general -- so, as I mentioned, we
24 characterize it for the site, but as to my opinion about
25 whether or not that is a rare community in general, I'm not

1 the one who can determine that. That is something we would
2 base on the 2010 CDFW Sensitive Natural Communities List.

3 MR. SMITH: Is it fair to say you are not offering
4 an opinion today on whether Mulefat or Coyote Brush occurring
5 in the context of a dune swale is a rare or environmentally
6 sensitive habitat configuration, correct?

7 MS. LOVE: Can you please repeat that?

8 MR. SMITH: So, you are not offering an opinion on
9 whether Mulefat or Coyote Brush occurring in the context of a
10 dune swale is a rare or environmentally sensitive habitat
11 configuration, are you?

12 MS. LOVE: I believe I just answered that by saying
13 that I am not the one who is making a determination about
14 whether or not a plant community is rare or sensitive in the
15 grand scheme of things or definition by agency. But I can
16 tell you what I did find on site, and I can use, you know,
17 known sources like the 2010 Sensitive Community List to tell
18 you whether or not what we had on site was sensitive or not.

19 MR. SMITH: So, may I understand the answer to my
20 question is, no, you are not offering an opinion on whether
21 Mulefat or Coyote Brush occurring in the context of a dune
22 swale is a rare or environmentally sensitive habitat
23 configuration?

24 MR. CARROLL: I'm going to object to the question.
25 It --

1 MR. SMITH: Mike, I'm allowed to ask her about the
2 scope of her opinion. She's an expert.

3 MR. CARROLL: You're allowed to ask her about the
4 scope of her opinion as it relates to some condition that
5 exists on the site. But you're posing questions that, you
6 know, Have you been asked to render an opinion about whether
7 or not if this scenario existed somewhere it would
8 constitute --

9 MR. SMITH: Okay.

10 MR. CARROLL: -- X.

11 MR. SMITH: Just one second, please.

12 If the Committee would like, I can make a proffer
13 of evidence on this question to establish the foundation for
14 the question.

15 My whole point is that the witness is on now. We
16 haven't closed the evidence. There will be more testimony on
17 this question. So, I would just like to be able to ask her
18 the question about the scope of her opinion. But if it would
19 satisfy Mr. Carroll, I can make a quick proffer of evidence
20 to establish the foundation. Is that necessary?

21 MR. CARROLL: My suggestion would be that if you
22 have points to be made, make them with your own witness.

23 MR. SMITH: No, because my witness has no opinion on
24 what opinion she's offering, so I need to ask her.

25 Here. Come here.

1 HEARING OFFICER KRAMER: No, hold on.

2 Okay. If you're asking her if she's been asked to
3 give an opinion --

4 Mr. Carroll, would you be satisfied if he simply
5 asked her what her opinion was?

6 MR. SMITH: That's --

7 MR. CARROLL: I don't have -- I will withdraw my
8 objection to the question if Mr. Smith will slow down and
9 clearly articulate the question that is being asked and make
10 it clear if he's positing a hypothetical upon which he's
11 asking her to render a response or if he is referring to
12 something that she has testified actually exists on the site.

13 MR. SMITH: I apologize. I'm sorry, Mr. Kramer. Go
14 ahead.

15 HEARING OFFICER KRAMER: Go ahead. You're going to
16 rephrase, I guess.

17 MR. SMITH: I'll try.

18 HEARING OFFICER KRAMER: Okay. Go ahead.

19 MR. SMITH: I've asked the question twice already,
20 but I will try again.

21 So, this is a non-hypothetical question, Ms. Love

22 MS. LOVE: I understand.

23 MR. SMITH: Are you offering an opinion on whether
24 or not Mulefat or Coyote Brush occurring in the context of a
25 dune swale is a habitat configuration that is rare or

1 environmentally sensitive?

2 MS. LOVE: I feel like I've already answered this,
3 but I -- but, no, it is not up to me to decide whether or not
4 a certain vegetation community is rare by agencies'
5 definitions.

6 MR. SMITH: Thank you.

7 Now, after preparing the Biological Resources
8 section of the Application for Certification, did you review
9 it to ensure that it was accurate before NRG submitted it to
10 this Commission?

11 MS. LOVE: I'm sorry? Can you repeat that one more
12 time?

13 MR. SMITH: Sure. Now, after preparing the
14 Biological Resources section of the Application for
15 Certification, did you review it, Ms. Love, to ensure that it
16 was accurate before NRG submitted it to the Commission?

17 MS. LOVE: So, I -- did I review it? I'm sorry. Can
18 you say that one more time?

19 MR. SMITH: Yeah. So, did you review the Biological
20 Resources section of the Application for Certification to
21 ensure that it was accurate before NRG submitted it to this
22 Commission?

23 MS. LOVE: I did not conduct a technical review of
24 the document, if that's what you're asking.

25 MR. SMITH: Okay. But in your view, the statements

1 and analysis presented in the Bio Resources section are
2 accurate in your opinion --

3 MS. LOVE: That's correct.

4 MR. SMITH: -- correct?

5 So, there is Mulefat on the project site, correct?

6 MS. LOVE: That is not correct.

7 MR. SMITH: Okay. Let me direct your attention to
8 Tab --

9 MS. LOVE: I'm sorry. Can I back up?

10 There are Mulefat individuals, but not Mulefat
11 Scrub on this project site.

12 MR. SMITH: And can you explain to me the
13 distinction you're drawing between individuals and scrub?

14 MS. LOVE: Sure. Individuals are plants that are
15 solitary, by themselves. And, as I mentioned earlier, there
16 are two Mulefat individuals on the site.

17 A scrub community would be more than one
18 individual, multiple individuals. And that community of
19 Mulefat Scrub does not exist on site, as I mentioned earlier.
20 It only exists to the north of the project site in the
21 currently restored area to the north. And that is documented
22 in the AFC Vegetation Community Map, which I believe is 4.2
23 something. I don't know of any.

24 MR. SMITH: Now, there is critical habitat for the
25 Western Snowy Plover on the beaches and dunes located to the

1 west of the project site, correct?

2 MS. LOVE: That is not correct. There -- I'm sorry.
3 Can you repeat the question? I would like to retract what I
4 just said if you could repeat the question.

5 MR. SMITH: The question was, there is critical
6 habitat for the Western Snowy Plover on the beaches and dunes
7 located to the west of the project site, correct?

8 MS. LOVE: Yeah. I misspoke. Yes, there is critical
9 habitat to the west of the project site, though it is
10 confirmed that Snowy Plovers nor Least Terns nest in that
11 area.

12 MR. SMITH: And the operation and maintenance of the
13 project facility could impact the reproductive success of
14 bird species in that area, correct?

15 MS. LOVE: I don't believe that is true because it's
16 been documented by the Ventura Audubon Society that neither
17 California Least Terns nor Western Snowy Plovers nest in that
18 area. And, additionally, in the mitigation measures, there is
19 a condition where we will -- the Applicant will not be
20 conducting demolition activities within the nesting bird
21 season, which I believe is defined as February 1st to
22 October 31st.

23 MR. SMITH: Well, let me turn your attention to Page
24 4.2-16 of Exhibit -- it's contained, I believe, I guess in
25 1008, which is Tab 3 of your binder.

1 MS. LOVE: Can you please state the page number
2 again?

3 MR. SMITH: Sure. It's 4.2-16.

4 Let me know when you're there.

5 MS. LOVE: Okay. 4.2-16. Got it.

6 MR. SMITH: Okay. Do you see down at the bottom
7 paragraph there above the heading for the bottommost section,
8 it's the first sentence of the paragraph, and it says -- and
9 correct me if I'm reading this wrong -- "During operation and
10 maintenance of the facility, reproductive success of
11 migratory and resident bird species could be impacted by
12 lighting in the facility at night"?

13 MS. LOVE: Yes, I see that.

14 MR. SMITH: And that's a true and accurate
15 statement, correct?

16 MS. LOVE: Please hold.

17 Yes.

18 MR. SMITH: And, moreover, during construction of
19 the project, birds nesting 500 feet from the project site
20 could have their reproductive patterns affected, correct?

21 MS. LOVE: Can you repeat that again?

22 MR. SMITH: During construction of the project,
23 birds nesting 500 feet from the project site could have their
24 reproductive patterns affected, correct?

25 MS. LOVE: So, I believe -- are you asking about

1 sensitive birds or just birds in general and are you asking
2 about the project site construction or the demolition of the
3 outfall?

4 MR. SMITH: I'm just asking whether that statement
5 that I just made to you is correct or not.

6 MS. LOVE: Okay. Can you please repeat it then?

7 MR. SMITH: Okay. Let me direct your
8 attention -- let me speed this up a little bit for you. Let's
9 go back to 4.2-16 of Exhibit 1008 and the same page you were
10 on. And the PARAGRAPH with the heading, "Impact --

11 MS. LOVE: I'm sorry. Can you repeat -- I can't hear
12 what you're saying, can you read that one more time?

13 MR. SMITH: Sorry. So, we're back on Page 4.2-16.

14 MS. LOVE: Yes, I got that.

15 MR. SMITH: And -- of Exhibit 1008. And there's a
16 paragraph labeled, "Impacts During Construction." Do you see
17 that?

18 MS. LOVE: Yes.

19 MR. SMITH: And three lines down from the top, do
20 you see there's a sentence that says, "In addition, for those
21 birds nesting within 500 feet of the site, noise generated by
22 construction equipment might negatively impact their
23 reproductive success"? Do you see that?

24 MS. LOVE: Yes, I do.

25 MR. SMITH: And that's a true statement, correct?

1 MS. LOVE: Yes, that is true.

2 MR. SMITH: And the northwest corner of the project
3 site is located about 500 feet from potential nesting areas
4 for the Plover, correct?

5 MS. LOVE: There is a fenced boundary there that I
6 believe I would have to look at the AFC, I think we've
7 documented in here that we found a fenced area that is
8 approximately 500 feet from the project site.

9 However, it is my understanding that, although the
10 symbolic fence is at that location, that the actual nesting
11 activity occurs farther to the north in respects to the
12 Western Snowy Plover.

13 MR. SMITH: Okay. So, let me just turn your
14 attention to Page 4.2-13, Exhibit 1008. Just turn a page
15 back. Do you see the paragraph that's labeled, "Western Snowy
16 Plover"?

17 MS. LOVE: Yes, I do.

18 MR. SMITH: Do you see the bottom sentence of that
19 paragraph states, "The northwest corner of the project site
20 is approximately 500 feet from the closest potential nesting
21 area"?

22 MS. LOVE: Yes, I see that.

23 MR. SMITH: And that's a true statement, correct?

24 MS. LOVE: Yes, but I would argue that potential
25 nesting area is not the same as an area that is actually used

1 for nesting.

2 MR. SMITH: So, it's fair to say that construction
3 of the project may affect Western Snowy Plover's ability to
4 use that area as a nesting area?

5 MS. LOVE: So, as I mentioned, I don't believe that
6 has been documented that there are any Western Snowy Plovers
7 nesting there.

8 If they were there, there is a potential that
9 construction activities may affect them. But it is over
10 500 feet away.

11 And I would like to also add that there will be
12 several mitigation measures that will try to avoid and
13 minimize and mitigate impacts such as that to make sure that
14 impacts are, you know, minimized to the best of the ability
15 of the Applicant.

16 MR. SMITH: And the reason why the mitigation is
17 necessary is because, without the mitigation, the activity
18 could impact that species, correct?

19 MS. LOVE: So, all of our -- all of the impacts for
20 the project are not significant with the implementation of
21 the mitigation measures in the FSA.

22 MR. SMITH: Okay. But let me try the question again.
23 I'm not sure, maybe I didn't articulate it correctly.

24 The reason why the mitigation measures are
25 necessary is because the project activity may affect the

1 species that the mitigation is prescribed for, correct?

2 MS. LOVE: I would say, in general, all mitigation
3 measures are targeted at trying to protect Biological
4 Resources. So, does that answer your question?

5 MR. SMITH: And so the mitigation measure is itself
6 a recognition of the fact that the project activity may
7 affect a particular species. Am I right?

8 MS. LOVE: It may affect it, but I don't believe
9 that by having a mitigation measure you're necessarily saying
10 that it will affect it. So, it may affect it.

11 MR. SMITH: Okay. Thank you.

12 MS. LOVE: May affect a species.

13 MR. SMITH: Now, one consequence of this project
14 being built is the processed wastewater and storm water will
15 be discharged in the Edison Canal; is that correct?

16 MS. LOVE: That's correct.

17 MR. SMITH: And the Edison Canal -- withdraw that.
18 California Least Tern may forage in the Edison
19 Canal, correct?

20 MS. LOVE: That is correct.

21 MR. SMITH: And am I correct in understanding that
22 if the California Least Tern may forage in the Edison Canal,
23 the Edison Canal is potentially suitable foraging habitat for
24 the California Least Tern, correct?

25 MS. LOVE: Can you repeat that because I think you

1 just said the same thing twice.

2 MR. SMITH: Oh, okay. Well, that would answer my
3 question.

4 So, the Edison Canal may be suitable foraging
5 habitat for the California Least Tern; is that correct?

6 MS. LOVE: Yes, it could be foraging habitat for the
7 tern.

8 MR. SMITH: Now, hypothetically, assuming that the
9 salinity of the Edison Canal were changed, a change in the
10 salinity of the Edison Canal could affect the fish that the
11 California Least Tern forages for in the canal,
12 hypothetically, right?

13 MR. CARROLL: Okay. I'm sorry. I lost track of how
14 many hypotheticals there were in the question. So,
15 hypothetically, the salinity in the canal changes and,
16 hypothetically, the Least Tern forages in the canal, and that
17 could -- and the question is, then could that -- so that
18 would be --

19 MR. SMITH: No, I'm sorry, Mike -- or, Mr. Carroll,
20 pardon me. Thank you for the clarification.

21 You testified a moment ago, Ms. Love, that the
22 Edison Canal is suitable foraging habitat for the California
23 Least Tern, correct?

24 MS. LOVE: Correct.

25 MR. SMITH: Hypothetically, if the salinity of the

1 Edison Canal were changed, that might affect the fish species
2 that the California Least Tern forages for in the canal,
3 right?

4 MS. LOVE: I'd feel more comfortable
5 telling -- describing what the project effects were as
6 opposed to a hypothetical scenario that you're describing.

7 MR. SMITH: But in your experience as a biologist,
8 is it hypothetically possible that if you change the salinity
9 of the Edison Canal, the fish that the Tern forages for in
10 the canal might be affected?

11 MR. CARROLL: Look, you know, I object to this
12 question. You know, it's a -- by how much? I mean, we're
13 positing --

14 MR. SMITH: Any.

15 MR. CARROLL: -- general hypotheticals. If the
16 salinity in the canal changes without any -- I mean, first of
17 all, I question the relevancy of it since there's been no
18 indication that that's going to occur.

19 But, you know, I -- you're entitled to ask your
20 questions, obviously, but I fear that your purpose here is to
21 trick the witness into answering questions by positing
22 hypotheticals on top of hypotheticals.

23 MR. SMITH: No. No. There's -- well, let me just
24 reassure you, Mr. Carroll, I'm not trying to trick the
25 witness. I'm just trying to get her opinion as an expert

1 biologist on how changing the salinity of a water body might
2 change the suitability of the water body for the fish in it.
3 So --

4 MR. CARROLL: Well, I would suggest you ask her
5 expert opinion about the impacts associated with the project
6 instead of her expert opinion about a whole host of
7 hypotheticals have nothing to do with the project.

8 MR. SMITH: May I ask the question?

9 HEARING OFFICER KRAMER: Yes.

10 Overruled.

11 Go ahead.

12 MR. SMITH: Now, in your experience as a biologist,
13 Ms. Love, if the salinity of the Edison Canal were changed,
14 that might have an effect on the fish that the California
15 Least Tern forages for in the canal, correct?

16 MS. LOVE: I'm not an expert on Least Terns, so I
17 don't know exactly what type of fish that they forage for.
18 So, I'm not sure if I could make an educated guess about, you
19 know, how -- how some amount of water affected the fish that
20 are in the canal and how that would affect the Tern.

21 MR. SMITH: As a biologist, do you have an opinion
22 on whether changing the salinity of a water body may affect
23 the suitability of that water body for any fish that inhabit
24 that water body?

25 MS. LOVE: Yeah, in general, the -- changing the

1 salinity of a water body could affect the fish, but there are
2 fish that, you know, have a high -- I guess, a high range of
3 salinities or --

4 MR. SMITH: Uh-huh.

5 MS. LOVE: -- that they can tolerate, whereas there
6 are some that do not. So, it would just depend on the species
7 that you're talking about.

8 But, yeah, in general, water quality or salinity is
9 important to the fish that live in it.

10 MR. SMITH: And, so, if the fish -- hypothetically,
11 if the fish that the Tern forages for in the canal were
12 affected by changing the salinity of the water body, then it
13 is possible that the Tern that foraged for those fish would be
14 affected as well, correct?

15 MS. LOVE: I don't know -- like I mentioned, I don't
16 know exactly what the Tern eats, so I'm not sure if they're a
17 generalist or not. So, I don't think I am the right person to
18 ask whether or not if the change in fish in the Edison Canal,
19 how that would affect that particular species. I don't know
20 if I've -- I don't know how broad of a diet they have.

21 MR. SMITH: Okay. Thank you, Ms. Love.

22 Tidewater Gobies have been documented in waters
23 with salinity levels from 0 to 42 parts per thousand, right?

24 MS. LOVE: Yes. They can tolerate a high -- a big
25 range of salinities.

1 MR. SMITH: And the salinity of the Edison Canal
2 near Applicant's proposed discharge point is around 37 parts
3 per thousand, correct?

4 MS. LOVE: So, I believe that there are a few places
5 where we document the salinity of the water. I believe there
6 is one place that it does mention the salinity is above 37.
7 As I mentioned, the testing that does occur at the -- at the
8 site typically comes back with a -- or a range of 32 to 34
9 parts per thousand.

10 MR. SMITH: And, so, that's within the upper range
11 of the salinity levels where the Goby has been documented,
12 correct?

13 MS. LOVE: Yeah. So, as I mentioned earlier, the
14 Tidewater Goby has been documented in water bodies of that
15 salinity, but it's not ideal for their reproductive success
16 or long-term, you know, habitation of a water body that's
17 that high in salinity.

18 MR. SMITH: Now, Ms. Love, are you aware that the
19 Applicant has proposed changing two of the biological
20 mitigation conditions that were initially imposed by the
21 Final Staff Assessment?

22 MS. LOVE: Yes.

23 MR. SMITH: And one of those changes was to modify
24 Condition Bio 7 to refer to McGrath Lake ESHA and coastal
25 dune ESHA that supports Western Snowy Plover and California

1 Least Tern breeding as the only types of ESHA that that
2 condition applies to; is that right?

3 MS. LOVE: I would like to open up that mitigation
4 measure real quick, if you could hold on.

5 MR. SMITH: Sure. Take a look at Tab 9 of your
6 binder, which will be Exhibit 1098, at Page 5.

7 And I'll just ask you if you -- after you look at
8 it, if looking at that document refreshes your memory.

9 MS. LOVE: Okay. I'm there. Can you please repeat
10 the question?

11 MR. SMITH: The Ventura Marsh Milk-vetch is a
12 federally and state listed endangered plant, correct?

13 MS. LOVE: Are you going to repeat the question
14 before that?

15 MR. SMITH: Oh, sure. That's probably a good idea.

16 So, in one of the changes that the Applicant has
17 requested, is to modify Condition Bio 7 to refer to McGrath
18 Lake ESHA and Coastal dune ESHA that supports Western Snowy
19 Plover and California Least Tern breeding is the only types
20 of ESHA that that condition applies to, correct?

21 MS. LOVE: That change was to help define which ESHA
22 should be avoided, yes.

23 MR. SMITH: Okay. And the Ventura Marsh Milk-vetch
24 is a federally and state listed endangered plant, correct?

25 MS. LOVE: I do not have that memorized, but that

1 does sound familiar.

2 MR. SMITH: And the Ventura Marsh Milk-vetch is
3 located in four locations near the project site; isn't that
4 right?

5 MS. LOVE: I don't have that memorized, but I could
6 look it up where we have indicated the Milk -- the Ventura
7 Marsh Milk-vetch is located, if you would like me to --

8 MR. SMITH: Okay.

9 MS. LOVE: -- confirm.

10 MR. SMITH: Let's turn quickly to Tab 3 of your
11 binder, which is Exhibit 1008 at 4.2-10. And I'll direct your
12 attention to that when you're there, to the bottom of the
13 page.

14 MS. LOVE: I'm sorry. Can you tell me what page
15 number again?

16 MR. SMITH: Yeah. 4.2-10.

17 Okay. So, you see in this paragraph it says that
18 the Ventura Marsh Milk-vetch is a federally and state listed
19 endangered plant?

20 MS. LOVE: Correct.

21 MR. SMITH: And that's true and accurate, correct?

22 MS. LOVE: Correct.

23 MR. SMITH: And then you see there is a sentence
24 that begins there "Four known occurrences..." do you see
25 that?

1 MS. LOVE: Yes.

2 MR. SMITH: And that accurately states the four
3 known occurrences of the Ventura Marsh Milk-vetch?

4 MS. LOVE: That is correct.

5 MR. SMITH: Okay. And none of those four locations
6 is McGrath Lake ESHA, correct?

7 MS. LOVE: Can you repeat that again?

8 MR. SMITH: And none of those four locations listed
9 there is McGrath Lake ESHA, right?

10 MS. LOVE: McGrath State Beach? I don't have the --

11 MR. SMITH: Well --

12 MS. LOVE: -- the map of the ESHA if front of me,
13 but I believe that McGrath State Beach includes McGrath Lake
14 which is an ESHA.

15 MR. SMITH: Okay. So, then the remaining three other
16 than McGrath State Beach are not McGrath Lake ESHA; is that
17 correct?

18 MS. LOVE: Correct.

19 MR. SMITH: And do any of those three locations
20 that, other than McGrath State Beach, are any of those three
21 locations able to support Western Snowy Plover or California
22 Least Tern breeding?

23 MS. LOVE: So, this is only an example of where the
24 Milk-vetch was found. I can't make -- I can't make a
25 determination on whether or not those areas would support

1 those other species you just mentioned.

2 MR. SMITH: Okay.

3 MS. LOVE: So, I can tell you what the literature
4 says for the Western Snowy Plover, but I'm not comfortable
5 just picking these locations out from this page and telling
6 you off the top of my head whether or not they support Snowy
7 Plover.

8 MR. SMITH: Okay. Do you have an opinion as to
9 whether or not it's likely that those locations, other than
10 McGrath State Beach, support Snowy Plover breeding?

11 MR. CARROLL: I believe she just said that she is
12 not comfortable rendering an opinion as to that question.

13 MR. SMITH: Is that accurate?

14 Okay.

15 MS. LOVE: Yes, that's correct.

16 But there are literature sources that we cite in
17 here that have documented where the Snowy Plovers are.

18 MR. SMITH: Are you familiar with the Globose Dune
19 Beetle?

20 MS. LOVE: A little bit.

21 MR. SMITH: Okay. It's on the California Department
22 of Fish and Wildlife Special Animals List, correct?

23 MS. LOVE: I do not have that fact memorized, but
24 that sounds correct.

25 MR. SMITH: Well, is it fair to say that the Globose

1 Dune Beetle could occur in the dunes that are adjacent to the
2 site's western boundary?

3 MS. LOVE: So, I do know that Globose Dune Beetles
4 do occur in the dunes. This section does not say where the
5 closest occurrence is, so I would need to look at the CNDBB
6 results to know where the closest known location is. But, in
7 general, yes, the dune beetles do occur in dunes. However,
8 I'm not confident that they would be in the dunes immediately
9 to the west of the site given how -- the nature of those
10 dunes being disturbed and covered in ice plant.

11 There are some areas that are may be a little bit
12 less disturbed, like the areas that have the sensitive dune
13 mat vegetation.

14 So, I mean, the -- those areas do have dune
15 habitat, but like I mentioned earlier, the project -- the
16 component of the project that is going to occur there is only
17 going to occur in the existing road. It's not going to occur
18 on the dunes themselves.

19 MR. SMITH: Okay. Let me direct your attention back
20 to Exhibit 1008, which is 4.2-12, Tab 3 of your binder. And
21 I'll refer you to Page 4.2-12.

22 MS. LOVE: I'm sorry. So, you're in the same -- the
23 AFC and the Page 4.2-16?

24 MR. SMITH: No --

25 MS. LOVE: Or 12?

1 MR. SMITH: -- we're going to go to 4.2-12.

2 MS. LOVE: Oh, 12. Yeah, okay.

3 MR. SMITH: Correct.

4 And, now, let me direct your attention to the
5 paragraph that starts with the words, "Globose Dune
6 Beetle..." towards the top. Do you see that?

7 MS. LOVE: Yes.

8 MR. SMITH: Do you see the last sentence concludes
9 with, "This species could occur in the dunes adjacent to the
10 site's western boundary"?

11 MS. LOVE: I do see that.

12 MR. SMITH: And that's a true and accurate
13 statement?

14 MR. CARROLL: The witness has testified that all of
15 the statements in her exhibits, of which this is one, are
16 true and accurate.

17 MR. SMITH: Mr. Carroll, I just don't know, it's
18 possible that Ms. Love may have reconsidered some of the
19 things that she -- that were written in there and changed
20 them later. So, I just want to confirm that now, hence my
21 question.

22 Is that a true and accurate statement?

23 MS. LOVE: So, I think that there is a possibility
24 that the Globose Dune Beetle could exist in the dunes
25 adjacent to the western side of the site, though I do think

1 it's highly unlikely. And I know that's documented in the AFC
2 about whether or not what the likelihood is of that species.
3 And, as I mentioned, the activities that are going to occur
4 there are not going to be in the actual dunes themselves;
5 they're going to be on the existing sandy road that's there.

6 MR. SMITH: So, is it fair to say that the fact that
7 the Globose Dune Beetle could occur in those dunes means that
8 those dunes may be suitable habitat for the Globose dune
9 beetle?

10 MS. LOVE: It may be, but I'm not certain if it is
11 or not.

12 MR. SMITH: Now, are all of the coastal dunes that
13 could occur -- I withdraw the question.

14 Are all of the coastal dunes in which the Globose
15 Dune Beetle could occur that are located to the west of the
16 project site ESHA that supports Western Snowy Plover and
17 California Least Tern breeding?

18 MS. LOVE: Can you repeat that one more time?

19 MR. SMITH: Sure. Are all of the dunes located to
20 the west of the project site in which the Globose Dune Beetle
21 could occur ESHA that supports Western Snowy Plover and
22 California Least Tern?

23 MR. CARROLL: I'm going to object to the question.
24 It's so undefined that -- the witness does not know of all of
25 the dunes that occur west of the project site that could

1 support --

2 MR. SMITH: Well, let me find out if she does or
3 not.

4 Do you know if they all are?

5 MR. CARROLL: All? How far are you --

6 MR. SMITH: Well --

7 MR. CARROLL: Can you define the scope of the area
8 that we're talking about?

9 MR. SMITH: Yes. Thank you, Mr. Carroll.

10 So back on 4.2-12, there's a sentence that says
11 "This species could occur in the dunes adjacent to the site's
12 western boundary," correct?

13 MS. LOVE: And you're referring to the Globose Dune
14 Beetle, correct?

15 MR. SMITH: Yes. Thank you.

16 MS. LOVE: Okay.

17 MR. SMITH: In regard to those dunes referred to in
18 that --

19 MS. LOVE: Uh-huh.

20 MR. SMITH: -- paragraph in which the Globose Dune
21 Beetle would occur, I will now ask you, are all of those
22 dunes ESHA that supports the Western Snowy Plover and
23 California Least Tern breeding?

24 MS. LOVE: No, they do not. As I mentioned earlier,
25 the Western Snowy Plover and the California Least Tern are

1 known to breed to the north. And that's been documented by
2 the Ventura Audubon Society.

3 Does that answer your question?

4 MR. SMITH: Thank you.

5 The Silvery Legless Lizard is a California species
6 of special concern; is that right?

7 MS. LOVE: As one of their listings, yeah.

8 MR. SMITH: And it has been documented to occur in
9 the dunes adjacent to the project site, correct?

10 MS. LOVE: Let me look real quick to see what the
11 literature --

12 MR. SMITH: I can -- maybe I can help you out,
13 Ms. Love.

14 MS. LOVE: I see it here. I just want to read it.

15 MR. SMITH: Oh, sure. Go ahead, yeah.

16 MS. LOVE: Okay.

17 MR. SMITH: So I'll re-ask the question. And the
18 Silvery Legless Lizard has been documented to occur in the
19 dunes adjacent to the project site, correct?

20 MS. LOVE: Yes.

21 MR. SMITH: And is the area adjacent to the project
22 site where the legless lizard has been documented McGrath
23 Lake ESHA.

24 MS. LOVE: I'd have to look at the map. So, there is
25 a location the in the CNDBB that shows a legless lizard. And,

1 so, give me a moment.

2 So, I'm looking at Figure 4.2-1 of the AFC. So, at
3 the bottom there, it shows the project site and where the
4 Silvery Legless Lizard was documented. Unfortunately, that
5 does not have an aerial behind it.

6 MR. SMITH: And is that area McGrath Lake ESHA?

7 MS. LOVE: I think if I had a different map in front
8 of me, I could tell you if that's at the lake. I'm pretty
9 sure that it is near the lake, but I don't know for sure just
10 based on using this map. If we had one that had both, that
11 would be helpful. But I'm -- give me one minute to maybe pull
12 out an aerial so I can kind of look at them both together.

13 I'm not easily finding an aerial right now.

14 MR. SMITH: Ms. Love, for purposes --

15 MS. LOVE: Okay. So, then I see it. I'm sorry.

16 To backtrack to your original question, so I do see
17 now in the written text that the documented location is
18 immediately north of the site east of McGrath Lake.

19 So, if it was east of McGrath Lake, I'm pretty sure
20 it's close enough to the lake to be in the ESHA area. But you
21 would also need to just cross-reference that with where the
22 ESHA is mapped in the Local Coastal Plan.

23 MR. SMITH: And is the area where the Silvery
24 Legless Lizard has been documented to occur, is that an area
25 that is a coastal dune ESHA that supports the breeding of the

1 Plover or the Tern?

2 MS. LOVE: So, I know that -- oh, can you repeat
3 that, please?

4 MR. SMITH: Sure. So, is the area in which the
5 Silvery Legless Lizard has been documented near to the
6 project site, is that an area that is coastal dune ESHA
7 supporting the breeding of the Plover or the Tern?

8 MS. LOVE: I don't know if it's in the dune or next
9 to the lake, but the lake is considered ESHA and dunes that
10 support Western Snowy Plover are also ESHA.

11 MR. SMITH: So, I guess my question is, do you know
12 whether all of the occurrences that the Silvery Legless
13 Lizard that have been documented near the project site occur
14 in areas that are either McGrath Lake ESHA or Coastal Dune
15 ESHA that supports the breeding of the Plover or the Tern?

16 MS. LOVE: I do not know where all the legless
17 lizards are located.

18 MR. SMITH: I'm saying documented.

19 MS. LOVE: Documented.

20 So, these are the documented ones here, yes. And,
21 so, you're asking me whether or not they're all located
22 within ESHA or not?

23 MR. SMITH: Well, I'm asking you whether they're all
24 located specifically within McGrath Lake ESHA or Coastal Dune
25 ESHA that supports the Plover and Least Tern breeding.

1 MS. LOVE: I don't --

2 MR. SMITH: If you don't know, that's fine. I'm just
3 asking.

4 MS. LOVE: I think it will be safer to say that,
5 like I mentioned before, I'm pretty sure I don't know exactly
6 where that location is located. If it's closer to the lake,
7 then, yeah, it would be within the McGrath Lake ESHA.

8 MR. SMITH: So, is your answer that all of the
9 documented occurrences of the Silvery Legless Lizard near the
10 project site are in the area of McGrath Lake ESHA?

11 MS. LOVE: I'm not totally positive about that.

12 MR. SMITH: And are you totally positive whether all
13 of the documented occurrences of the Silvery Legless Lizard
14 near the project site have been in Coastal Dune ESHA
15 supporting the Plover or Tern breeding?

16 MS. LOVE: I cannot say that either. I'm sorry.

17 MR. SMITH: Okay. Just a few more questions.

18 Ms. Love, as a biologist, you sometimes have had to
19 make decisions, I imagine, about which of several studies by
20 other biologists you will rely on in your own work, I
21 imagine; is that right?

22 MS. LOVE: Uh-huh. Yes.

23 MR. SMITH: Now, let me ask you a hypothetical
24 question. Assume hypothetically that you are interested in
25 finding out if a particular wildlife species is present in a

1 particular location, if you were presented with two studies
2 that you conclude are in all ways equal to each other in
3 quality except that one has performed a focused survey for
4 that species --

5 MR. CARROLL: I object to this question. You know,
6 really? This is getting absurd. This is positing a
7 hypothetical question and asking the witness to speculate on
8 it. If there are questions about the impacts or potential
9 impacts associated with the project, that's fine. This is
10 ridiculous, some sort of an intellectual exercise here in
11 compounding hypotheticals.

12 MR. SMITH: I think I can ask questions about her
13 opinion about how she uses studies and how that relates to
14 this case. That's all I'm doing.

15 MR. CARROLL: Then ask her that question
16 straight -- in a straightforward manner so that she
17 understands what the question is instead of positing it in
18 the form of a compound hypothetical.

19 HEARING OFFICER KRAMER: Sustained.

20 MR. SMITH: Okay.

21 So, Ms. Love, as a biologist, fair to say that, in
22 general, a study that is conducted, a focused survey, for a
23 particular type of species, assuming that it's similar in
24 quality in all other ways to other studies is a more reliable
25 indicator of whether that species is present in a particular

1 area than a study that has not conducted a focus survey?

2 MS. LOVE: Can you repeat that one more time?

3 MR. SMITH: Let me ask it differently.

4 In your opinion as a biologist, does the fact that
5 a particular survey has been conducted in a focused manner
6 for a particular species increase the likelihood that the
7 species being surveyed for will be found?

8 MS. LOVE: Yes.

9 MR. SMITH: And, so, does the fact that the study
10 was a focused survey make it a more reliable indicator of
11 whether that species may be present in a particular area than
12 a survey that was not a focused survey?

13 MS. LOVE: Hypothetically, yes, if you were to do a
14 focus survey, that would be more effective.

15 MR. SMITH: No further questions.

16 HEARING OFFICER KRAMER: Okay. The Center for
17 Biological Diversity. There is Ms. Belenky. Let me unmute
18 her.

19 Ms. Belenky, did you have any questions for this
20 witness?

21 MS. BELENKY: (No audible response.)

22 HEARING OFFICER KRAMER: And I'll unmute Eileen
23 Anderson.

24 MS. BELENKY: Oh, I'm sorry. I was just -- I had
25 muted myself, sorry. Can you hear me now?

1 HEARING OFFICER KRAMER: Yeah. Did you have any
2 questions?

3 MS. BELENKY: Yes, I do, just a couple. I think
4 Mr. Smith actually covered a lot of our questions, so it will
5 be quite short.

6 HEARING OFFICER KRAMER: Go ahead.

7 MS. BELENKY: Ms. Love, this has to do with your
8 rebuttal testimony regarding the Tidewater Goby, so just so
9 you know where we're starting.

10 In your rebuttal testimony, you discussed the
11 Recovery Plan for the tidewater Goby. Did you have a chance
12 to review that plan?

13 MS. LOVE: I have reviewed the plan in the past,
14 yes.

15 MS. BELENKY: And you state on Page 5 of your
16 rebuttal testimony that, and I quote "The Edison Canal does
17 not qualify as a lagoon estuary or river mouth; is that
18 correct?

19 MS. LOVE: Give me one moment to just open the
20 declaration.

21 MS. BELENKY: Yes, of course.

22 MS. LOVE: Can you tell me one more time which
23 exhibit number you're looking at?

24 MS. BELENKY: I'm looking at your rebuttal testimony
25 on Page 5, which I actually am not positive which number that

1 is, that rebuttal testimony has now as an exhibit.

2 MS. LOVE: Give me a second. We're just trying to
3 make sure I'm opening the right thing.

4 HEARING OFFICER KRAMER: Do you have a TN number Ms.
5 Belenky, on the front of it?

6 MS. BELENKY: Oh, it's the Applicant's rebuttal, and
7 it is TN 215553. And then if you go to the PDF at 67.

8 MS. LOVE: Can you repeat the page number for me
9 please?

10 MS. BELENKY: Page 5 of your rebuttal testimony,
11 which is the -- where you discuss the Tidewater Goby.

12 MS. LOVE: Okay. I'm there.

13 MS. BELENKY: Okay. At the top of the page, you note
14 that the tidewater -- that the Edison Canal does not qualify
15 as a lagoon estuary or river mouth; is that correct?

16 MS. LOVE: That's correct.

17 MS. BELENKY: And now I would like to draw your
18 attention to the recommended survey protocol for the
19 Tidewater Goby. They are an exhibit that was filed by the
20 Center with Ms. Anderson's testimony. It's Exhibit 7023. And
21 the protocol is at Appendix F, beginning with PDF 156.

22 Have you reviewed -- I believe you said you have
23 reviewed the Recovery Plan in the past. But I'm not sure if
24 you reviewed it recently.

25 MS. LOVE: I have reviewed it, yes. Honestly, I

1 cannot remember exactly when it reviewed it last. But if you
2 want to point me to that page again, I can look at it. Is
3 that the same one that they have here?

4 MS. BELENKY: I'm not positive. But I believe that
5 Mr. Smith did say that he provided you with the Recovery
6 Plan.

7 MS. LOVE: It doesn't look like it's complete to me,
8 but -- it's -- so if you want to -- I don't believe I have
9 the full Recovery Plan in front of me, but if you want to ask
10 your question, I can see if I can try to answer it.

11 HEARING OFFICER KRAMER: And this is Paul Kramer. I
12 can put it up on the screen.

13 MS. BELENKY: That might be helpful.

14 So, if you have the Exhibit 7023. Do you need the
15 TN number for that?

16 HEARING OFFICER KRAMER: No. Just a page.

17 MS. BELENKY: Okay. The page is -- the PDF page is
18 167 and this is part of Appendix F, which is the survey
19 protocol for the species.

20 (Pause in the proceedings.)

21 MS. BELENKY: It's 167. So, it's Page F-12. Sorry. I
22 think they're finding the page. It's very helpful. That's the
23 right page.

24 In the last -- the last full paragraph or, I guess
25 it's the second to the last, right under the subtitle "Site

1 Assessment," it discusses areas that could be sites that may
2 be assessed for Tidewater Gobies. And the last sentence of
3 that paragraph says, "The size of the discrete water body
4 (lagoon, pond, stream, ditch) under investigation will be
5 used to determine corresponding sampling efforts to be
6 carried out." Do you see that?

7 MS. LOVE: I can barely see it, but I am familiar
8 with the different protocols for small- and large-bodied
9 Tidewater Goby protocol surveys.

10 MS. BELENKY: Thank you.

11 In their opinion, or do you know, if the Edison
12 Canal could be considered a ditch under this protocol?

13 MS. LOVE: A ditch. Oh, sorry, it went away. Hold on
14 a second.

15 Yes. I agree that Edison Canal could be considered
16 a ditch in regards to a water body in the Recovery Plan for
17 Tidewater Goby.

18 MS. BELENKY: Thank you.

19 And, now, in your rebuttal testimony also at Page
20 5, which was PDF 67, this is the page they were talking about
21 before, you state that the Edison Canal has no upstream
22 habitat consistent with -- that's required for consistent
23 Tidewater Goby reproduction; is that correct?

24 MS. LOVE: That is correct.

25 MS. BELENKY: Okay. My question is, is it fair to

1 say that the potential for the presence of the Tidewater Goby
2 is a separate question from whether the Tidewater Goby would
3 thrive and have consistent reproduction in this particular
4 place?

5 MS. LOVE: I think I understand what you said, but
6 could you repeat it one more time, please?

7 MS. BELENKY: Yes. Is it -- is it fair to say that
8 the potential for presence of the Tidewater Goby is a
9 separate question from whether the Tidewater Goby would
10 thrive and have consistent reproduction in a particular
11 place?

12 MS. LOVE: Yes, I agree.

13 MS. BELENKY: Thank you.

14 I have no more questions for this witness.

15 HEARING OFFICER KRAMER: Thank you.

16 Mr. Carroll, redirect?

17 MR. CARROLL: Ms. Love, I just have a couple of
18 questions, most of which are semantic to some extent.

19 Mr. Smith directed you to a number of sections
20 within the Biological Resources section of the AFC and some
21 of the other documents filed by the Applicant in which the
22 text indicated that a particular wildlife or plant species
23 could exist in a particular area.

24 MS. LOVE: Correct.

25 MR. CARROLL: What's your understanding of the

1 statement that a particular wildlife or plant species could
2 exist in a particular area?

3 MR. SMITH: Okay. I think the question is vague and
4 overbroad as to all of the different uses of the word "could"
5 in this document.

6 MR. CARROLL: I'll rephrase the question.

7 Is it your understanding that a statement that a
8 particular species could be present in a particular area mean
9 that the particular species necessarily is present in that
10 area?

11 MR. SMITH: Same objection.

12 HEARING OFFICER KRAMER: Which was what? You didn't
13 project it. I didn't even hear you.

14 MR. SMITH: My objection was that I think the
15 question is vague and overbroad as to all of the different
16 uses of the word "could" in this document.

17 HEARING OFFICER KRAMER: Overruled.

18 Go ahead and answer.

19 MS. LOVE: Oh, sorry, okay.

20 So, I think I already said this earlier, but saying
21 that a species may occur in an area is not the same as saying
22 a species will occur and does occur in an area.

23 MR. CARROLL: And saying that a species could occur
24 in an area, the implications of that statement are --

25 MR. SMITH: Objection. Same objection as before,

1 it's overbroad in its use --

2 MR. CARROLL: Let me take you -- let me take you
3 back to a specific section of the FSA -- I'm sorry, of the
4 AFC that Mr. Smith cited you to.

5 So, this is on Page 4.2-16.

6 MS. LOVE: Which tab is that under again?

7 MR. CARROLL: I'm sorry. This is -- in Mr. Smith's
8 binder, it is Tab 3.

9 MS. LOVE: Yeah.

10 MR. CARROLL: It's the AFC.

11 MS. LOVE: And the page number again, please?

12 MR. CARROLL: 4.2-16.

13 MS. LOVE: Okay.

14 MR. CARROLL: And I believe the paragraph that you
15 were referred to is the one that's headed "Impacts During
16 Construction."

17 MS. LOVE: I see it.

18 MR. CARROLL: Just take a moment and review the
19 entirety of the paragraph.

20 MS. LOVE: Okay.

21 MR. CARROLL: Do you understand the first sentence
22 which states that, "The reproductive success of some
23 migratory and resident bird species could be impacted during
24 construction by elimination of three acres of habitat," to
25 mean that there would be impacts to those migratory and

1 resident birds?

2 MS. LOVE: If they are there, yes, there is a
3 possibility that they could be impacted.

4 MR. CARROLL: But not necessarily that they would be
5 impacted?

6 MS. LOVE: That is correct. So, they could -- if the
7 species is there, that doesn't necessarily mean it would be
8 impacted. And, as it mentions farther down in the paragraph,
9 that the impacts are accepted to be minor if they were to
10 occur.

11 MR. CARROLL: Okay. So, what are the types of
12 circumstances that might occur in a situation where a species
13 could be impacted but ultimately was not impacted?

14 MR. SMITH: Objection. I think that's extremely
15 broad. Any type of species anywhere in the universe?

16 MR. CARROLL: Let's continue to talk about that
17 particular paragraph to use as an example, since that's the
18 paragraph Mr. Smith cited you to.

19 So, what types of intervening circumstances might
20 occur in a situation where migratory and resident birds could
21 be impacted that would cause them to ultimately not be
22 impacted?

23 MS. LOVE: Can you repeat that one more time for me,
24 please?

25 MR. CARROLL: Sure.

1 So, in a situation, in this particular situation,
2 some migratory and resident bird species could be impacted
3 during construction. What sorts of circumstances might
4 intervene that would result in an outcome where the species
5 were not impacted?

6 MS. LOVE: Yeah. Okay. I understand.

7 So, with the implementation of the mitigation
8 measures, which there are several, those would be the
9 conditions or practices of Applicant to help ensure that
10 there is a lesser impact or no impact to, in this case,
11 migratory birds in the area. So, those are, I think as I
12 already mentioned, the mitigation measures are there to help
13 either avoid or minimize or mitigate for potential impacts to
14 species.

15 MR. CARROLL: Okay. And in this particular case, I
16 direct your attention to the very last sentence of the
17 paragraph, what was the conclusion in this case, although the
18 situation was one in which the species could be impacted?

19 MS. LOVE: So, with the implementation of
20 minimization measures or mitigation measures, the impacts
21 would be less than significant.

22 MR. CARROLL: And, in your experience in conducting
23 these types of analyses of projects, is that a typical
24 scenario where you have a situation where a species could be
25 impacted but through the implementation of mitigation

1 measures you conclude that the species would not be impacted?

2 MS. LOVE: That is correct.

3 MR. CARROLL: And with respect to whether or not a
4 species could be present, in your experience, does that
5 necessarily mean that the species is present?

6 MS. LOVE: No, those are not synonymous.

7 MR. CARROLL: And so what sorts of circumstances
8 might you have where a species could be present but
9 ultimately would not be present?

10 MS. LOVE: So --

11 MR. SMITH: Objection. Extremely broad and vague.

12 HEARING OFFICER KRAMER: Well, she's going to
13 give -- I think he's asking for a concrete example.

14 MS. ROESSLER: Well, which species? I guess, can you
15 draw it to a specific species?

16 MR. CARROLL: Sure.

17 Give me a moment to see if I can locate one of the
18 specific examples that was used earlier.

19 So, let me draw your attention to Page 4.2-12,
20 which was a page in the document that Mr. Smith directed your
21 attention to with respect to the Globose Dune Beetle.

22 MS. LOVE: Okay.

23 MR. CARROLL: And I believe Mr. Smith, if I recall
24 correctly, drew your attention to the last sentence of that
25 paragraph which says, "However, the species could occur in

1 the dunes adjacent to the site's western boundary."

2 MS. LOVE: Uh-huh.

3 MR. CARROLL: I believe it was your testimony,
4 correct me if I'm wrong, that you were not sure if, in fact,
5 the species would occur in the dunes adjacent to the site's
6 western boundary.

7 MS. LOVE: That's correct.

8 MR. CARROLL: So, that's a specific example. And if
9 you could with respect to that specific example explain the
10 circumstances under which you could have a situation where a
11 species could occur but, in fact, does not.

12 MS. LOVE: A species could occur but, in fact, does
13 not.

14 So, in that particular instance, there are dunes
15 there and the Globose Dune Beetle, you know, does use dune
16 habitat, you know, to -- they do -- give me a
17 second -- what's the word I'm looking for? They live in the
18 dune habitat.

19 MR. CARROLL: And, so, that's the justification for
20 why they could be there?

21 MS. LOVE: They could be there because that might be
22 suitable habitat, but that doesn't necessarily mean that they
23 are there.

24 MR. CARROLL: And what sort of circumstances would
25 cause them not to be in an area where they could be?

1 MS. LOVE: In that particular area, there is a lot
2 of disturbance that's occurring there. So, the reason why we
3 don't think that is a suitable habitat for the Globose Dune
4 Beetle there is because there is a lot of activity happening.
5 There's just a lot of disturbance. And I would imagine that
6 that species would prefer to live in a -- to inhabit an area
7 that isn't as disturbed and especially with having more
8 suitable habitat to the north, I think that that would be an
9 area that the species would be more likely to inhabit.

10 MR. CARROLL: And is the nature of the project site
11 such that most, if not all of it, is heavily disturbed and
12 affected by existing operations?

13 MS. LOVE: That's correct.

14 MR. CARROLL: Would you say that all of the project
15 site is affected by past activity and current activity?

16 MS. LOVE: That's correct.

17 MR. CARROLL: So, as a result, there are areas
18 either on, near, or adjacent to the project site that could
19 theoretically support species but under the particular
20 circumstances of this case, the one that you analyzed, do
21 not?

22 MS. LOVE: I agree.

23 MR. SMITH: Objection. I think that's compound, and
24 I would kind of like to hear that broken up. On, near, or
25 adjacent to the project site?

1 MR. CARROLL: We'll take them individually.

2 Are there any areas on the project site that in
3 theory could support species that do not, in fact, support
4 species due to past and present action on the project site?

5 MS. LOVE: Could you repeat that one more time?

6 MR. CARROLL: Yes.

7 So, speaking specifically with respect to the
8 three-acre project site --

9 MS. LOVE: Yes.

10 MR. CARROLL: -- are there any particular species
11 that in theory could be present on the project site but based
12 on your survey work it's your opinion that they are not
13 present on the project site as a result of past or current
14 activity at the project site?

15 MS. LOVE: That's correct. So, during our surveys,
16 like I mentioned earlier, we are analyzing, you know, what
17 species are known to occur in the area and whether or not we
18 believe that they would occur on site. And, as I mentioned,
19 the site is significantly disturbed, so we don't believe that
20 the project site supports habitat for special status species.

21 MR. CARROLL: And Mr. Smith asked you a series of
22 questions, and these are my words, not his, but I believe
23 that the import was whether or not more focused surveys
24 produce more reliable results as to the presence of the
25 species in question. Do you recall that series of questions?

1 MS. LOVE: I do.

2 MR. CARROLL: And, so, in your experience, is it the
3 case then that it is always advisable to conduct the
4 protocol-level surveys or the more specific survey to achieve
5 a higher degree of certainty with respect to your
6 conclusions?

7 MS. LOVE: No. Because I think you can use your
8 surveys that you have completed and looking at the habitat to
9 decide whether or not a species in question would be present,
10 or, you know, has -- if that habitat is suitable for the
11 species. So, did --

12 MR. CARROLL: Thank you.

13 MS. LOVE: Welcome.

14 MR. CARROLL: I have no further questions.

15 HEARING OFFICER KRAMER: Any re-cross?

16 I'm seeing shaking heads. Thank you.

17 So, we're going to -- we're going to take a break
18 from the testimony for a few moments, but try to -- go ahead.

19 PUBLIC COMMENT

20 COMMISSIONER SCOTT: We wanted to -- we've got a few
21 hours potentially left on what we wanted to complete today,
22 so what we'd like to do is give the folks who are here now an
23 opportunity to make a comment in case they are not able to
24 stay. And I have only two blue cards in my hand. I don't know
25 whether Michael Ward over there has additional blue cards

1 from folks.

2 If you could like to make a comment, now would be
3 your opportunity. Let me -- but let me double check. I have
4 Kevin Ward. And I believe he left. But, Kevin, if you are
5 here or near the room, please let me know. We'd like to hear
6 from you.

7 Okay. And Shirley Godwin. Who -- I think they left
8 together, but let me just double check. Shirley, if you are
9 here in the room, this would be a great time.

10 Okay. I have no additional blue cards. Let me check
11 on the Spanish WebEx whether or not we have any folks on
12 there.

13 Oh, I'm sorry. Do I have more?

14 I'm sorry. We're out of blue cards.

15 So, I have here, let's see, Tom Dechicoi (phonetic)
16 are you still here? If so, please come on forward. We would
17 like to hear from you.

18 Okay. Nancy Lindholm, if you are here, please come
19 forward. We'd like to hear from you.

20 And Nancy is followed oh, Roger Anshcocia
21 (phonetic) we heard from already.

22 Okay, so, no Nancy. No -- we heard from Roger
23 Anshcocia.

24 Do I have Martin Garcia or --

25 And we heard from Dennis O'Leary as well.

1 So, Martin Garcia or Ian Lilly, if you're here,
2 please come on forward. We'd like to hear from you.

3 Hello. Are you Martin Garcia?

4 MR. SILVA: Tom D. Silva.

5 COMMISSIONER SCOTT: Oh, I'm sorry. Okay, please, go
6 ahead.

7 And then Martin Garcia should come up behind you if
8 he's here.

9 MR. SILVA: I'm going to wait to the end if that's
10 what the plan was, but --

11 COMMISSIONER SCOTT: No. No. Please go ahead.

12 MR. SILVA: Okay. Well, this is just to follow-up on
13 some comments and what we've listened to today. I've just
14 feeling a little compelled to comment on statements
15 particularly regarding really our structure and how we
16 are -- NRG as an organization is not a corporate-centered
17 organization. You know, there is a large majority of the
18 10,000 employees of this organization that are field-based
19 power plant located.

20 So, when we see things on a website and we think
21 it's representing the organization, it's not really pointing
22 out what the actions that take place community related that
23 occur that plant and, you know, community based where the
24 locations are, where they, indeed, reside.

25 So, you know, when we see the postings regarding an

1 outreach activity, it doesn't list all the things plants do
2 in the local communities. You know, these things that we do
3 are just because we believe it's the right thing to do. You
4 know, it's our responsibility. We know that. And it's because
5 we care.

6 You know, it's not comfortable to listen to being
7 mischaracterized for our support or maybe a lack of reception
8 for support for the local community. It's very active in that
9 regard. I'm not going to list by name, because it just
10 doesn't feel appropriate really to talk in those terms, but I
11 will say that the local community support includes, you know,
12 Earth Day event support, and beach cleanup events that we
13 have hosted, supported, support for food share and food bank
14 programs, holiday giving support, many service organizations,
15 abatement programs, community theater and art programs, you
16 know, fundraising relative to festivals, marathon. You know,
17 we support scores of planters for our schools, our service
18 organizations, clubs, military.

19 You know, the employees support school career day
20 events to help enlighten about opportunities, Marine mammal
21 rescue operations. I mean, I'll just stop there.

22 But, in general, I just wanted to close to say, you
23 know, the organization simply will do what it says.

24 So, I felt compelled to cover that point because I
25 think it was misrepresented earlier today.

1 And, thank you.

2 COMMISSIONER SCOTT: Thank you.

3 I have Martin Garcia, followed by Ian Lilly,
4 please.

5 MR. GARCIA: Good evening, Commissioners.

6 COMMISSIONER SCOTT: Good evening.

7 MR. GARCIA: My name is Martin Garcia, and I'm a
8 student the California State University Channel Islands.

9 As a college student, I have heard the arguments
10 from both sides on this project, and it is clear that Oxnard
11 and Ventura County need this power plant.

12 I understand the frustration from any fellow
13 students that have voiced their opinion, and I respect their
14 points of views. But we are a society that needs reliable
15 power, especially in our coastal areas.

16 I have seen power outages over the summer of the
17 heat of summer and most recently the heavy rains caused by
18 some of the Ventura County -- some parts of Ventura County to
19 lose power.

20 I hope that the renewable energy will be part of
21 our future, but, for right now, we will need to ensure that
22 we have power that we can rely on for our daily needs. We
23 can't take a gamble and say this project isn't important when
24 all of us are guilty for using so much in our daily lives.

25 As I ask you today to please approve this project

1 and thank you for your time.

2 COMMISSIONER SCOTT: Thank you.

3 I have Ian Lilly, followed by Abigail Bechert
4 (phonetic).

5 MR. LILLY: Thank you, Commissioners, for taking the
6 time to listen to my comments.

7 My name is Ian Lilly, and I'm a junior at Cal State
8 Fullerton -- or Cal State University Channel Islands.

9 I'm here tonight to show my support for the Puente
10 projects because we all need reliable power and efficient
11 energy.

12 As a student at Cal State Channel Islands, I do
13 believe climate change is a significant challenge
14 for -- facing society. And it is my hope that we continue to
15 explore and develop projects that use more renewable energy
16 sources in the future.

17 But, that being said, I also don't believe that
18 halting all current energy projects that are not 100 percent
19 renewable is the right thing to do.

20 This natural gas-fired plant is much better for the
21 environment, the community, and the energy efficiency than
22 the old plant. This is a huge improvement, and we are moving
23 in the right direction. But, like anything, it's a process.

24 Being a student, I use energy all the time. Having
25 reliable energy for my electronics, communication,

1 transportation, food, and heat is a must. I am constantly
2 using energy all day, and any constraint on that would affect
3 my academics and my life in general.

4 I am sure I'm not alone in saying this, but
5 students don't have time for blackouts and power outages,
6 especially if they can be mitigated or avoided altogether.

7 Having reliable energy is something that I value,
8 appreciate, and support.

9 I sincerely hope you approve this project for the
10 length of the contract. Hopefully, by the time this plant is
11 retired, our society has -- will have made huge strides in
12 transitioning to using more reliable, efficient, and
13 affordable energy.

14 Thank you.

15 COMMISSIONER SCOTT: Thank you.

16 I have Abigail Bechert, followed by Matthew
17 Finnell.

18 MS. BECHERT: Good evening, Commissioners, and thank
19 you for the opportunity for allowing me to speak before you
20 tonight.

21 My name is Abigail Bechert, and I am a senior at
22 California State University Channel Islands.

23 On campus to help pay for my education, I act as a
24 resident assistant for the dorms of the younger classmen.

25 As an RA, we have been prepared for everything,

1 especially power failures. Power outages during the summer
2 have been known to cause heat exhaustion for our summer
3 students, and during those winter months, students have
4 sometimes been without heat. These events don't happen
5 consistently, but it is a threat that we have to prepare for,
6 especially with students like myself who are miles away from
7 their families trying to complete their education.

8 As an RA, I feel much more comfortable for my
9 campus and students knowing that I can rely on local power
10 rather than waiting for extra power from Los Angeles.
11 Projects like Puente provide reliable power and help out our
12 grid -- and help our grid from being overworked.

13 There are over 9 million people that live in Los
14 Angeles County and over 800,000 people that live here in
15 Ventura County. We all need power.

16 I hope you approve this project, and I ask that you
17 support good energy for our community and support this
18 project.

19 Thank you for your time.

20 COMMISSIONER SCOTT: Thank you.

21 I have Matthew Finnell. And that's the last person
22 I have on my list.

23 Go ahead, Matthew.

24 MR. FINNELL: Hello, Commissioners, and thank you
25 for giving me the opportunity to speak tonight.

1 COMMISSIONER SCOTT: Oh, can you pull the mic a
2 little closer to you?

3 MR. FINNELL: Sorry.

4 COMMISSIONER SCOTT: Perfect.

5 MR. FINNELL: My name is Michael Finnell, and I'm a
6 student at CSU Channel Islands. I'm here tonight because I
7 care about not only my future but the future of Ventura
8 County. And to me, caring means supporting the Puente
9 Project.

10 This plant means a more reliable and sufficient
11 energy source for Ventura County. And as a young adult who is
12 about to enter the workforce, this means my livelihood and of
13 others in the community.

14 This means energy I can count on to power my
15 school, my home, and my life. And I cannot count on a system
16 that is unsecure and causes blackouts. Reliable energy is
17 something that we should all support, and I urge you to
18 approve this project and secure the Ventura County's future.

19 My mom is actually a CLS at Ventura County Medical,
20 and she, along with all the other patients and employees,
21 rely on consistent reliable power at Ventura County and -- to
22 save lives and to maintain vital work conditions for them.

23 If we are going to gamble on renewable power alone
24 to power our communities, then we can face a bigger threat of
25 losing patients' lives.

1 And thank you for your time.

2 COMMISSIONER SCOTT: Thank you.

3 I see that we have maybe three folks in the room. I
4 see Mr. Nash over there. I have forgotten your name, the
5 gentleman up front. If you all would like to make a comment,
6 please go ahead.

7 COMMISSIONER DOUGLAS: And, on the other hand, if
8 you would like to stay to the end anyway, then you're welcome
9 to speak at the end.

10 COMMISSIONER SCOTT: Of course.

11 COMMISSIONER DOUGLAS: But we invite you up to speak
12 now if you would like.

13 MR. NASH: I know I'm a little tired. I can only
14 imagine how you must feel.

15 I'm Steve Nash, a resident of Oxnard. And I've
16 spoken and written several times. I just want to thank the
17 members of the Commission, staff, and all of the parties for
18 coming to Oxnard and involving the community in the process.
19 You didn't have to do that. You could have handled this up in
20 Sacramento, would have been a lot more -- or a lot less
21 transparent.

22 So, I've seen the process. I've seen how sausage is
23 made, as they say. I'm not really crazy about the process
24 because it seems like a lot of hours, energy, and treasure
25 has been wasted in this process. And I think it could -- I

1 would hope that there's a better way.

2 I understand that the, you know, the decision you
3 have to make and what it's based on. I just feel that
4 the -- that, you know, it perhaps is not the direction that I
5 want to see California go. We should be, as I said the other
6 day, we should be leaving the world in green technology. I
7 myself, I was an operating engineer for over 30 years, you
8 know. I don't wear my hardhat, I'm retired. But the fact is,
9 is that, you know these tradespeople, if we focus on a green
10 infrastructure, that there will be many more jobs for these
11 people. And I wish they would understand that.

12 So, you know, in light of recent articles, I just
13 read about the proposal to generate wind in the upper
14 Midwest, transmit it to Southern California. You know, that.
15 You know what Cal ISO is doing with the western state
16 intertie. Just, you know, we're making this decision based on
17 old information and we're not acknowledging new technology
18 and new innovations. And I'm very sad to see us go down -- to
19 go down that path.

20 So, anyway, I'm grateful for you trying to involve
21 the communities, and I hope you've had some valuable input.
22 And I don't think I'll show up tomorrow. I have some other
23 stuff to do. So, good luck. And I don't know how you find the
24 willpower to stay awake. I'm not with you in that class, so
25 thank you.

1 COMMISSIONER SCOTT: Thank you, Mr. Nash.

2 COMMISSIONER DOUGLAS: Thank you for being here.

3 COMMISSIONER SCOTT: Were you wanting to make a
4 comment, sir?

5 UNIDENTIFIED SPEAKER: Could I still make one
6 tomorrow?

7 COMMISSIONER SCOTT: Yes, of course.

8 MR. STUBBLEFIELD: Commissioners, good evening.

9 My name is Mike Stubblefield. I'm the Air Quality
10 Chair for the Los Padres Chapter of the Sierra Club, which is
11 all of Ventura and Santa Barbara counties. And I'm also a
12 member of the Statewide Sierra Club California Energy Climate
13 Committee.

14 Natural gas has been around for a while now. We
15 know, no one disputes that it's reliable, no one disputes
16 that there's a lot more in the ground that we can get. But
17 scientists, climate scientists, all agree all over the world
18 that we have to get off fossil fuels.

19 California is the leader in sustainable renewables.
20 We have all kinds of alternatives here.

21 In light of the article that the L.A. Times had on
22 the front page on Sunday, I'm sure all of you have read it by
23 now, we already know that we don't really need to build any
24 more natural gas-fired power plants. We could turn some back
25 on and have the power.

1 Now, I know this is a fast light off local unit
2 that isn't going to run all the time, but it just seems like
3 we're sticking with this old technology. And we here in
4 Oxnard have been saddled with, depending on how you count
5 them, four or five natural gas-fired power plants. No one
6 else in the Moorpark subarea has ever had one since the '50s.
7 Think about that.

8 Now, why would they pick Oxnard. I'll leave that to
9 your imaginations, but I think you've heard enough evidence
10 from the people that have come up to this microphone to know
11 why that is.

12 I think it's about time to stop building natural
13 gas-fired power plants anywhere. And, certainly, in Oxnard we
14 have paid our dues.

15 If big technology companies, energy companies like
16 NRG, want to come here and build wind farms, solar farms,
17 tidal farms, whatever, renewables, we're fine with that.
18 We're down with that. But this is ridiculous that we should
19 have to still be fighting something that's going to be
20 obsolete pretty soon.

21 We can't keep pumping natural gas out of the ground
22 if we're going to turn things around with respect to climate
23 change.

24 Thank you.

25 COMMISSIONER SCOTT: Thank you.

1 We've confirmed that there are no folks who want to
2 comment from the Spanish WebEx.

3 Shall I turn to the other WebEx to see if there are
4 any folks who are not planning to listen to the next couple
5 hours but would like to make a comment?

6 If so, we have an unmuted you. Please, speak up.

7 UNIDENTIFIED SPEAKER: Hello.

8 COMMISSIONER SCOTT: Yes. Hello. Were you trying to
9 comment?

10 UNIDENTIFIED SPEAKER: (No audible response.)

11 COMMISSIONER SCOTT: So, if you are on the WebEx, we
12 are trying to hear from you. If you would like to make a
13 comment, please go ahead and speak up.

14 (No audible response.)

15 COMMISSIONER SCOTT: Okay. Going once, going twice.
16 Okay. I'm going to assume there is no one on the WebEx who
17 wants to make a comment, having heard no one speak up.

18 It is 9:27. We will take a 15-minute break and then
19 get going again.

20 (Off the record at 9:27 p.m.)

21 (On the record at 9:43 p.m.)

22 COMMISSIONER SCOTT: It's back over to our Hearing
23 Officer Paul Kramer.

24 HEARING OFFICER KRAMER: Okay. Next witnesses were Carol
25 Watson and Jon Hilliard.

26 He's going to get Ms. Watson, I believe. No, wait, she's

1 there.

2 MS. WILLIS: Mr. Kramer?

3 HEARING OFFICER KRAMER: He's getting water.

4 MS. WILLIS: I thought -- what about Mr. Street?

5 HEARING OFFICER KRAMER: Would you prefer? I guess

6 Ms. -- okay. That would work.

7 Mr. Street, you're -- well, I don't think he's on

8 the line anymore.

9 MS. WILLIS: Are they un-muted?

10 HEARING OFFICER KRAMER: Yeah, except those who
11 muted themselves. We may have to pick him up tomorrow along
12 with Soil and Water, or maybe he's going to come back. We'll
13 see.

14 But you're not on the line, are you, Mr. Street?

15 He was there under his name before.

16 Let me check the chat and see if he said anything
17 to me.

18 Nope.

19 Okay. So, let's begin with staff then.

20 And, Mr. Hilliard, you were -- I can't remember if
21 you were actually here the other day. You were listed on the
22 panel. Were you sworn previously?

23 Both of you were, okay.

24 MR. HILLIARD: Yes.

25 MS. WILLIS: They were both just sworn.

1 Good evening, Ms. Watson. Could you please state
2 your name for the record?

3 MS. WATSON: Carol Watson.

4 MS. WILLIS: The statement of your qualifications
5 attached to this testimony?

6 MS. WATSON: Yes, it was.

7 MS. WILLIS: And did you prepare the testimony
8 entitled, "Biological Resources," in the Final Staff
9 Assessment, which was been marked Exhibit 2000, and staff's
10 rebuttal testimony, Exhibit 2006?

11 MS. WATSON: Yes, I did.

12 MS. WILLIS: Do you have any changes tonight to
13 your written testimony that you're proposing?

14 MS. WATSON: Yes, I do.

15 Staff --

16 MS. WILLIS: Go for it.

17 MS. WATSON: Staff noticed inadvertent errors in
18 Biological Resources Table 3 on Page 4.3-16 through 20 in the
19 Final Staff Assessment.

20 The Table 3 footnote should reflect, "The potential
21 for occurrence is based on an analysis of impacts within the
22 area of the effect. Also, Ventura Marsh Milk-vetch is
23 federally and state endangered, and California Least Tern is
24 fully protected." And, finally, I would like to up day Table
25 3 to show the following four species, Ventura Marsh

1 Milk-vetch, Western Snowy Plover, California Least Tern, and
2 Least Bell's Vireo have a moderate potential of occurrence
3 within the project impact area.

4 MS. WILLIS: And do the changes you just outlined
5 change any of your conclusions in the Final Staff Assessment?

6 MS. WATSON: No, they do not.

7 MS. WILLIS: And do the opinions contained in your
8 testimony represent your best professional judgment?

9 MS. WATSON: Yes, they do.

10 MS. WILLIS: Mr. Hilliard, can you please state and
11 spell your name for the record?

12 MR. HILLIARD: Yes. My name is Jon Hilliard. It's
13 J-O-N, H-I-L-L-I-A-R-D.

14 MS. WILLIS: And what is your title, please?

15 MR. HILLIARD: I'm the Biological Resources Unit
16 Supervisor with California Energy Commission.

17 MS. WILLIS: Was a statement of your qualifications
18 attached to the testimony?

19 MR. HILLIARD: Yes, it was.

20 MS. WILLIS: And did you assist or supervise in the
21 preparation of the testimony entitled, "Biological
22 Resources," in the Final Staff Assessment marked Exhibit 2000
23 and staff's rebuttal testimony, Exhibit 2006?

24 MR. HILLIARD: Yes. I assisted in the preparation
25 and the edit and the review; however, my role was not as the

1 technical editor on technical expert.

2 MS. WILLIS: And do you have any additional changes
3 to the Biological Resources section that you're proposing
4 today?

5 MR. HILLIARD: None, except for the clarifications
6 to FSA Table 3 that Ms. Watson provided.

7 MS. WILLIS: And do the opinions contained in the
8 testimony represent your best professional judgment?

9 MR. HILLIARD: Yes.

10 MS. WILLIS: Ms. Watson, returning to you.

11 Does the proposed Puente Power Plant comply with
12 all laws, ordinances, regulations, and standards?

13 MS. WATSON: Yes, it does.

14 My analysis includes an assessment of the project
15 relative to federal, state, and local requirements, including
16 the Endangered Species Act, Coastal Act, Fish and Game Code,
17 Native Plant Protection Act, as well as local plans.

18 MS. WILLIS: Ms. Watson, in your professional
19 opinion, with the proposed Conditions of Certification, does
20 the project pose any significant adverse impacts to the
21 environment?

22 MS. WATSON: No. With implementation of staff's
23 recommended Conditions of Certification, the project would
24 reduce, avoid, or minimize all impacts to below the level of
25 significance. The direct impact of the project, as confirmed

1 by the Coastal Commission, is removal of approximately two
2 acres under the jurisdiction of the Coastal Commission. This
3 impact would be mitigated at a four-to-one ratio through the
4 use of the mitigation bank or other wetland restoration
5 program.

6 MS. WILLIS: Ms. Watson, CBG asserts that the
7 potential presence of Tidewater Goby, California Least Tern,
8 Ventura Marsh Milk-vetch and other special status plant and
9 animal species warrants additional mitigation.

10 Do you agree?

11 MS. WATSON: The presence or absence of special
12 status species was thoroughly investigated in staff's PSA and
13 FSA. In some cases, special status species may occur on rare
14 occasions and in very low numbers, but such stray individuals
15 are unlikely to make more than very brief, incidental use of
16 the area. Certainly, there are no substantial populations
17 utilizing the project area at any time of the year.

18 I did not observe -- additionally, I did not
19 observe any of these special status species on the site or
20 perimeter during my three visits to the project. These site
21 visits were spaced over varying seasons of the year,
22 including the bird-nesting seasons.

23 Further evaluations, such as, protocol wildlife
24 surveys were, therefore, not required because the appropriate
25 habitat requirements for special status species were not

1 observed or were marginally present such that significant
2 biological effects are not expected.

3 Consultation with the Fish and Wildlife and U.S.
4 Fish and Wildlife Service following issuance of the FSA did
5 not result in any resolved concerns.

6 Staff's recommended Conditions of Certification are
7 sufficient to avoid and reduce impacts to special status
8 species.

9 MS. WILLIS: Ms. Watson, Environmental Coalition
10 asserts that the on-site Coastal Commission jurisdictional
11 wetlands comprise an environmentally sensitive habitat area.

12 Do you agree?

13 MS. WATSON: No, I do not agree.

14 The on-site wetland does not meet the criteria for
15 an ESHA, which was independently confirmed by the California
16 Coastal Commission in their 30143D report, nor is the site
17 characterized as such in the city's Local Coastal Plan.

18 MS. WILLIS: And do you want to describe what the
19 definition of an ESHA is?

20 MS. WATSON: I can do that.

21 The definition of an ESHA is any area in which
22 plant or animal life or their habitats are either rare or
23 especially valuable because of their special nature or role
24 in an ecosystem and which could be easily disturbed or
25 degraded by human activities and developments.

1 MS. WILLIS: Does this conclude your testimony.

2 MS. WATSON: Yes, it does.

3 MS. WILLIS: These witnesses are available for
4 cross-examination.

5 HEARING OFFICER KRAMER: The Applicant.

6 MR. CARROLL: No questions. Thank you.

7 HEARING OFFICER KRAMER: City of Oxnard. Oops. Is
8 she -- has she left for the day? Do we know?

9 MS. WILLIS: She's gone for the day, for the
10 evening.

11 HEARING OFFICER KRAMER: Okay. The Environmental
12 Coalition.

13 MR. SMITH: Yes, we do, Mr. Kramer.

14 HEARING OFFICER KRAMER: Go ahead.

15 MR. SMITH: Good evening, Ms. Watson, Mr. Hilliard.

16 MS. WILLIS: Could you please speak up. I've been
17 having a really hard time hearing you tonight.

18 MR. SMITH: You bet.

19 MS. WILLIS: Thank you.

20 MR. SMITH: Good evening, Ms. Watson and Mr.

21 Hilliard. My name is Matthew Smith. I'm from the

22 Environmental Defense Center.

23 In the questions I'm about to ask you, I'm going to
24 use a term "site." And when I use that term, I want you to
25 understand that I'm referring to the approximately three-acre

1 area where the new power plant would be built.

2 Do you understand that?

3 MS. WATSON: I understand.

4 MR. SMITH: And you'll let me know if that's
5 confusing or we create inaccuracy in the context of any
6 specific question?

7 MS. WATSON: Yes, sir.

8 MR. SMITH: Okay. Now, I'm going to hand the same
9 binder that Ms. Love was using a moment ago. And my
10 references to tabs in the binder will be to the same binder
11 that I distributed to counsel and the Presiding Member and
12 the reporter.

13 And I'd like to direct your attention to Tab 1,
14 which is an excerpt of Exhibit 2000.

15 And I'll just ask you that this is the Biological
16 Resources section of the Final Staff Assessment, correct?

17 MS. WATSON: Yes, it is.

18 MR. SMITH: And you and Mr. Hilliard prepared this
19 section, right?

20 MS. WATSON: Correct.

21 MR. SMITH: Now, let me direct your attention to
22 Page 4.2-22 of this Exhibit 2000.

23 And do you see on Page 4.2-22 there is a paragraph
24 headed, "Special Status Wildlife"?

25 MS. WATSON: Yes.

1 MR. SMITH: And do you see contained within that
2 paragraph at the beginning of the second sentence of the
3 paragraph, there is a statement, "No protocol or focused
4 surveys were performed"? Do you see where that is written?

5 MS. WATSON: Yes, I do.

6 MR. SMITH: And I correct in understanding that
7 that is an acknowledgment that no protocol or focused surveys
8 were performed on the project site by the staff?

9 MS. WATSON: Yes, with the simple caveat that
10 having listened to some of the descriptions tonight that were
11 given by Ms. Love, they were a bit more detailed by what was
12 initially proffered in the AFC. And, so, I would consider
13 some of those to be focus surveys, including when she
14 mentioned things like raking the soil. I would consider that
15 more of a focus survey.

16 MR. SMITH: So, to your understanding, having heard
17 Ms. Love's testimony, do you believe that there was
18 information that the Applicant did not submit to you about
19 the nature of the surveys that it performed?

20 MS. WATSON: I think that the AFC could have been a
21 bit more detailed.

22 MR. SMITH: And, so, your account of the surveys
23 that were performed in this paragraph that we've just been
24 referring to on Page 4.2-22 of Exhibit 2000, that account is
25 based on the Applicant's description of the surveys they

1 performed; is that correct?

2 MS. WATSON: In some part, yes.

3 MR. SMITH: And did you have an understanding from
4 listening to Ms. Love's testimony tonight as to which species
5 you now believe she conducted focused surveys?

6 MS. WATSON: Off the top of my head, I don't have a
7 complete list. Silvery Legless Lizard, like I mentioned, for
8 one for having raked through the soil. That's the only one I
9 can think of right now.

10 MR. SMITH: Okay. But, other than that, you didn't
11 hear anything in her testimony that made you think that Ms.
12 Love had performed a focused survey for a particular special
13 status species; is that right?

14 MS. WATSON: Not without hearing it read back to
15 me.

16 MR. SMITH: And just so we're clear, the term
17 "focused survey," what does that mean in your understanding?

18 MS. WATSON: To my understanding, a focused survey
19 would be a search for a particular or suite of particular
20 species using specialized survey techniques.

21 MR. SMITH: And, as a general matter in the field
22 of biology, is a focused survey viewed as the most reliable
23 method of detecting particular species in a particular
24 project site?

25 MS. WATSON: (No audible response.)

1 MR. SMITH: Let me withdraw that.

2 Is a focus survey a more reliable method of
3 detecting a particular species than, for example, a general
4 reconnaissance survey?

5 MS. WATSON: I think that depends on the habitat
6 present. If you don't find suitable habitat present, then
7 there would be no point in conducting a focused or a protocol
8 survey.

9 MR. SMITH: But assuming that -- let me withdraw
10 that question.

11 If you were presented with the results of two
12 surveys of the same site, one of which was a focused survey
13 that concluded that a particular species was present on the
14 site and the other was a general survey that concluded that
15 that species was not present on the site, would you be
16 inclined to give more weight to the focused survey because it
17 looks specifically for that species?

18 MS. WILLIS: I'm going to object to, it's not just
19 a comparison of a focus survey versus a general survey. But
20 you had more characteristics to each certain -- they were
21 different.

22 It was very compound and confusing.

23 MR. SMITH: That's fine.

24 Ms. Watson, what is the utility of a focused survey
25 in relation to a general reconnaissance survey, if any?

1 MS. WATSON: A focus survey, in my opinion, or as
2 I've typically seen them done, would follow after having done
3 a survey for habitat suitability, if deemed necessary.

4 MR. SMITH: And a focus survey is a survey that's
5 designed specifically to detect the presence of a particular
6 species; is that correct?

7 MS. WATSON: Or suite of species --

8 MR. SMITH: Thank you.

9 MS. WATSON: -- similar species.

10 MR. SMITH: Now, several special status species may
11 forage in the wetlands located on the project site, correct?

12 MS. WATSON: They may occur, that's correct.

13 MR. SMITH: And, in fact, they may forage in those
14 wetlands located on the project site, correct?

15 MS. WATSON: On occasion.

16 MR. SMITH: So building the project would eliminate
17 that on-site foraging habitat for those special status
18 species, would it not?

19 MS. WATSON: If they are indeed using it.

20 MR. SMITH: And the fact that they forage in the
21 wetlands located on the project site means that the wetlands
22 located on the project site are suitable foraging habitat for
23 those species?

24 MS. WATSON: Can you tell me which species in
25 particular?

1 MR. SMITH: Sure. The Blainsville's Horned Lizard,
2 the Two-Striped Garter -- let's do them one at a time.

3 Since you asked that question, I'm going to break
4 it down a little bit more.

5 So, the Blainsville's Horned Lizard may forage in
6 the wetlands located on the project site. Am I right?

7 MS. WATSON: Can you point me to where you see that
8 in my testimony?

9 MR. SMITH: Sure. Let's look at Exhibit 2000, Page
10 4.2-28. And it actually spans 4.2-27 to 4.2-28.

11 So, I'm going to read you the sentence beginning at
12 the bottom of 4.2-27. "Several special status wildlife
13 species, such as the Western Pond Turtle, Blainsville's
14 Horned Lizard, Two-Striped Garter Snake, Least Tern, Western
15 Snowy Plover, and California Black Rail may occasionally move
16 through on-site wetlands or attempt to forage in this
17 habitat."

18 MS. WATSON: I see that.

19 MR. SMITH: Do you see where it says that?

20 So, is the Blainsville's Horned Lizard one of the
21 special status species that may attempt to forage in the
22 habitat?

23 MS. WATSON: It may attempt to.

24 MR. SMITH: What is the difference between foraging
25 and attempting to forage?

1 MS. WATSON: Well, I should correct what I was
2 saying before, in that, I would like to look up in my
3 testimony the exact potential for occurrence that I listed.
4 I think that's a more clear answer to what you're asking.

5 MR. SMITH: Okay. Let me try something different.

6 If a species attempts to forage -- withdrawn.

7 If a species forages in a particular habitat, it
8 does not always forage successfully, correct?

9 MS. WATSON: Correct.

10 MR. SMITH: So is there any meaningful difference
11 between a species attempting to forage in a particular
12 habitat and a species foraging in a particular habitat?

13 MS. WATSON: Well, if it's an unsuccessful attempt,
14 then the species is just going to be moving through and not
15 finding any viability or usefulness out of that habitat other
16 than, say, as for migration purposes.

17 MR. SMITH: But not all foraging -- but -- okay.

18 But the act of foraging by a species includes
19 unsuccessful foraging attempts, correct?

20 MS. WATSON: I would agree with that.

21 MR. SMITH: So, foraging is when the species is
22 looking for food on the project site, correct?

23 MS. WATSON: I would agree with that.

24 MR. SMITH: And attempting to forage, an attempt to
25 forage, is an unsuccessful effort to forage, right?

1 MS. WATSON: You could say that. There's no
2 official definition of this sort of concept.

3 MR. SMITH: So, I guess what I'm just trying to
4 understand is, isn't attempting to forge the same thing as
5 foraging?

6 MS. WATSON: You could say that.

7 MR. SMITH: Okay. So -- and these may take us back
8 to your question a moment ago, but I'm going to try it
9 anyway.

10 So, my question to you is then, would building the
11 project eliminate suitable foraging habitat on the project
12 site for the Blainsville's Horned Lizard?

13 MS. WATSON: I don't think that the habitat -- I
14 would call it marginally suitable --

15 MR. SMITH: But it still be used to forage?

16 MS. WATSON: -- or low suitability.

17 MR. SMITH: Okay. So, without getting into the
18 degree of suitability, it would eliminate suitable foraging
19 habitat for the Blainsville's Horned Lizard; is that right?

20 MS. WATSON: It could.

21 MR. SMITH: Okay. And let's try this, how about
22 would building the project on the site eliminate suitable
23 foraging habitat for the Two-Striped Garter Snake?

24 MS. WATSON: It could.

25 MR. SMITH: I guess, what would you need to look at

1 in your testimony to clarify for yourself whether or not you
2 believe the project site is suitable foraging habitat for
3 each of the species that you have listed at the top of Page
4 4.2-28?

5 MS. WATSON: In particular, Table 3.

6 MR. SMITH: Okay. Let's take a look at Table 3.
7 And could you give me the page number for that?

8 MS. WATSON: That starts on Page 4.2-16.

9 MR. SMITH: Okay. So, 4.2-16 of Exhibit 2000.

10 And, now that you're looking at that page, I'm
11 going to attempt to ask my question again.

12 So, as to the Blainsville's Horned Lizard, is it
13 fair to say that the project site contains suitable foraging
14 habitat for the Blainsville's Horned Lizard?

15 MS. WATSON: I believe that, specifically, the
16 table states that low quality habitat is present within or
17 near the proposed site. It was given a moderate potential
18 for occurrence.

19 MR. SMITH: Okay. And I just want to know, does
20 that mean that there is suitable foraging habitat for the
21 Blainsville's Horned Lizard on this site?

22 MS. WATSON: I would say of poor quality, marginal
23 habitat.

24 MR. SMITH: But it is habitat that the
25 Blainsville's Horned Lizard --

1 MS. WATSON: It could be.

2 MR. SMITH: -- can use for foraging?

3 MS. WATSON: It could be.

4 MR. SMITH: Right?

5 Is there habitat that the Silvery Legless Lizard
6 can use for foraging on the project site?

7 MS. WATSON: The table describes that most of the
8 site is not suitable habitat.

9 MR. SMITH: But is there any suitable habitat for
10 foraging purposes on the project site?

11 MS. WATSON: Within the outfall structure.

12 MR. SMITH: Okay. And, remember, when I say
13 "site," I'm referring to the three-acre area where the
14 facility would be built.

15 MS. WATSON: Uh-huh.

16 MR. SMITH: So, let me ask the question again.

17 Is there any suitable foraging habitat, in your
18 opinion, for the Silvery Legless Lizard on the project site?

19 MS. WATSON: Yes. Of poor quality.

20 MR. SMITH: Okay. Are there any other species
21 listed in Table 3 that you now -- reviewing it, you now
22 believe there would be suitable foraging habitat of any
23 quality on the project site for that species?

24 MS. WATSON: I believe the Two-Striped Garter Snake
25 was also listed as having moderate potential to occur.

1 MR. SMITH: Anything else?

2 MS. WATSON: As we discussed, the Globose Dune
3 Beetle.

4 MR. SMITH: And the answer for to Globose Dune
5 Beetle, is your testimony that there is suitable foraging
6 habitat for the Globose Dune Beetle on the site?

7 MS. WATSON: Of very low quality.

8 MR. SMITH: But suitable foraging habitat, correct?

9 MS. WATSON: Yes.

10 MR. SMITH: Any others?

11 MS. WATSON: The Western Pond Turtle may disperse
12 through, but I would not call that foraging habitat?

13 MR. SMITH: Would you call that habitat of any
14 kind?

15 MS. WATSON: Dispersal habitat -- well, dispersal
16 habitat.

17 MR. SMITH: Okay. How about for the -- any others
18 that you see there on reviewing that table? I'm sorry. Let
19 me withdraw that question.

20 How about for the Least Tern? Any suitable habitat
21 for the Least Tern on the project site?

22 MS. WATSON: I don't believe that it would forage
23 on the project site. I believe it would forage off the
24 project site in the Edison Canal.

25 MR. SMITH: Any habitat of any kind for the Least

1 Tern on the project site?

2 MS. WATSON: No, there's no suitable habitat on
3 site.

4 MR. SMITH: How about the Western Snowy Plover?

5 MS. WATSON: No.

6 MR. SMITH: But would it move through the project
7 site on occasion?

8 MS. WATSON: It may fly over the site, but I don't
9 think that it would walk through the site.

10 MR. SMITH: And how about the California Black
11 Rail?

12 MS. WATSON: There's no suitable habitat on the
13 project site.

14 MR. SMITH: Now, is it fair to say that as to some
15 of the species listed in Table 3, staff concluded that there
16 was a lower, lower probability of the species occurring on
17 the site because of the presence of highly-compacted soil?

18 MS. WATSON: That would be one factor in why it was
19 ranked as having low potential for occurrence.

20 MR. SMITH: And as to some of these species in
21 Table 3, one would need to interact with the soil in order to
22 detect the species present in the soil; isn't that right?

23 MS. WATSON: Can you ask me that again?

24 MR. SMITH: So, as to some of the species listed in
25 Table 3, one would need to interact with the soil on the

1 project site in order to be able to detect positively the
2 presence of that species on the project site; isn't that
3 right?

4 MS. WILLIS: I'm going to object.

5 When are you talking about would Ms. Watson need
6 to? Or I'm not sure who "one" is referring to.

7 MR. SMITH: I'll withdraw that question. Let me
8 ask it differently.

9 As to some of the species listed in Table 3, a
10 biologist that is doing a survey, in order to detect the
11 presence of those species in highly-compacted soils, would it
12 need to do things like rake the soil or use a sieve or some
13 other interactive method with the soil itself in order to
14 detect those species; isn't that correct?

15 MS. WATSON: I would agree with that.

16 MR. SMITH: And fair to say -- I'm not going to go
17 back through all of them right now, but fair to say that to
18 the extent that in our discussion just now you concluded that
19 there is some on-site habitat for any of the species we just
20 discussed of whatever quality, building the project would
21 eliminate that on-site habitat, would it not?

22 MS. WATSON: That's correct.

23 MR. SMITH: Please turn to 4.2-8 of Exhibit 2000.
24 And this page begins with the heading, "Environmentally
25 sensitive habitat." Do you see that?

1 MS. WATSON: Uh-huh.

2 MR. SMITH: And does this section set forth an
3 accurate summary of your and Mr. Hilliard's conclusions
4 regarding the presence of ESHA on the project site?

5 MS. WATSON: Yes, it does.

6 MR. SMITH: Okay. Now, in the bottom paragraph of
7 that section on Page 4.2-8 of Exhibit 2000, several of the
8 sentences included a citation. Am I reading that right?

9 MS. WATSON: Within the ESHA --

10 MR. SMITH: Correct.

11 MS. WATSON: -- section?

12 MR. SMITH: Yes.

13 MS. WATSON: Yes, I do see some citations.

14 MR. SMITH: And the first citation is to CDFW 2015.
15 Do you see that?

16 MS. WATSON: Yes, I do.

17 MR. SMITH: Now, let me direct your attention to
18 Page 4.2-82 of the FSA, Exhibit 2000.

19 Let me know when you're there

20 MS. WATSON: I'm there.

21 MR. SMITH: Okay. Directing your attention to the
22 third citation from the top, that is a CDFW letter dated
23 2015, right?

24 MS. WATSON: Yes, it is.

25 MR. SMITH: And is the citation CDFW 2015 on Page

1 4.2-8 to CDFW 2015 a citation to that source?

2 MS. WATSON: No. I believe that's incorrect, or I
3 believe it's missing --

4 MR. SMITH: Okay. What do you believe it is a
5 citation to?

6 MS. WATSON: I couldn't tell you right off the top
7 of my head the correct title of the publication, but it's
8 Vegetation Types or Plant Communities and it's published by
9 the Fish and Wildlife Service.

10 MR. SMITH: So, this -- back on 4.2-82, this
11 California Department of Fish and Wildlife Letter
12 Supplementing Previous Comments on the Presiding Member's
13 Proposed Decision, does that source say anything one way or
14 the other about the presence of ESHA on the site of the
15 Puente Power Project?

16 MS. WATSON: I'm sorry? What was your question.

17 MR. SMITH: So does the source on Page 4.2-82
18 that's entitled, California Department of Fish and Wildlife
19 Letter Supplementing Previous Comments..." do see that
20 source?

21 MS. WATSON: Yes.

22 MR. SMITH: Does that source say anything one way
23 or the other about the presence of ESHA on the site of Puente
24 Power Project?

25 MS. WATSON: I don't believe that CDFW made a

1 comment letter regarding ESHA.

2 MR. SMITH: And, so, it's your belief that that
3 source does not say anything one way or the other about the
4 presence of ESHA on the Puente Power Project site?

5 MS. WATSON: I'm confused by your question.

6 MR. SMITH: I'm just trying to ask you if the
7 source that's represented on that Page 4.2-82, do you know
8 whether it says anything one way or the other about the
9 presence of ESHA on the Puente Power Project site?

10 MS. WATSON: I'm still confused over what it is
11 you're asking.

12 MR. SMITH: Do you know what the source that I
13 referred to you just a moment ago on Page 4.2-82 that's
14 entitled, "The California Department of Fish and Wildlife
15 Letter Supplementing Previous Comments..." do you know what
16 that letter is?

17 MS. WATSON: Off the top of my head, I can't tell
18 you what that is.

19 MR. SMITH: Okay. And so -- fine. Let's go back
20 to Page 4.2-8.

21 And, so, understanding that the citation is wrong,
22 you're citing it for the proposition that environmentally
23 sensitive habitat in the vicinity -- well, let me paraphrase.
24 You're citing for the proposition that there is
25 environmentally sensitive habitat in the vicinity of the

1 project site, correct?

2 MS. WATSON: I don't believe that -- I don't agree
3 with the premise of your question. I don't think the
4 citation is wrong. I believe the citation is correct. It's
5 a CDFW publication, but I think this appropriate citation is
6 missing.

7 MR. SMITH: Okay. Would you be able to point me to
8 the correct source that's being cited at the back of the FSA?

9 MS. WILLIS: Objection.

10 She just stated that it was missing from the
11 reference list.

12 MR. SMITH: I'm just trying to understand if that's
13 what she means.

14 Do you mean that it's missing from the reference
15 list?

16 MS. WATSON: I believe the citation, CDFW 2015,
17 which discusses environmentally sensitive -- what they
18 consider -- or what can be considered environmentally
19 sensitive habitats is missing.

20 MR. SMITH: Okay. Thank you.

21 So, the thing that you meant to site, or that you
22 cited, as CDFW 2015, you were citing for the proposition that
23 there is environmentally sensitive habitat in the vicinity of
24 the project site, right?

25 MS. WATSON: Yes.

1 MR. SMITH: Now, fair to say that the fact that
2 there is environmentally sensitive habitat in the area of the
3 project site, does not show that there is not environmentally
4 sensitive habitat on the project site?

5 MS. WATSON: That's correct.

6 MR. SMITH: Now, let's skip the next one, and let's
7 go down to the third citation, which is COO 1982.

8 Do you see that?

9 MS. WATSON: Yes, I do.

10 MR. SMITH: And do you have an understanding of
11 what's that's in reference to?

12 MS. WATSON: The Coastal Land-Use plan.

13 MR. SMITH: And that's the Coastal -- the City of
14 Oxnard's Coastal Land-Use Plan?

15 MS. WATSON: Yes.

16 MR. SMITH: And that's the land-use plan from 1982,
17 right?

18 MS. WATSON: Yes.

19 MR. SMITH: And you're citing that source for the
20 proposition that the 1982 City of Oxnard Coastal Land-Use
21 Plan did not describe the project site as a resource
22 protection area, correct?

23 MS. WATSON: Correct.

24 MR. SMITH: And 1982 is 35 years ago, right?

25 MS. WATSON: I'll take your word for it.

1 MR. SMITH: Okay. Fair to say that the way that
2 the City of Oxnard regarded the project site 35 years ago may
3 not necessarily take into account the biological
4 characteristics of the site as it exists today?

5 MS. WATSON: My understanding is that, in addition
6 to ESHAs being designated in the LCP, that the Coastal
7 Commission may designate them at their -- on a case-by-case
8 basis.

9 MR. SMITH: But the document that you were citing
10 to there was created in 1982, correct?

11 MS. WATSON: That's right.

12 MR. SMITH: And, so, I'll ask my question again.
13 Is it fair to say that the way the City of Oxnard understood
14 the project site 35 years ago may not take into account the
15 biological characteristics of the site as it exists now?

16 MS. WATSON: I can't speak to what the city
17 understood about the project in 1982.

18 MR. SMITH: Do you have any knowledge as to
19 when -- all right.

20 And then the fourth citation in this
21 paragraph -- let me just ask one more question about the
22 land-use plan. Sorry.

23 Do you have any knowledge as to when the last time
24 was that the land-use plan was updated between the present
25 and 1982?

1 MS. WATSON: Off the top of my head, I couldn't
2 tell you.

3 MR. SMITH: And then so the fourth citation in this
4 paragraph is to the Application for Certification, correct?

5 MS. WATSON: (No audible response.)

6 MR. SMITH: AFC Figure 4.2-3 PP --

7 MS. WATSON: Yes, I see that.

8 MR. SMITH: Thank you.

9 And that is a citation of the obligation for
10 certification?

11 MS. WATSON: Yes, it is.

12 MR. SMITH: And that citation is to support the
13 point that there are marshes located within a-mile-and-a-half
14 of the project site; is that right?

15 MS. WATSON: I believe it says mapped within
16 500 feet to the north of the site.

17 MR. SMITH: Okay. Thank you.

18 MS. WATSON: Oh, and as well as to the south of the
19 site.

20 MR. SMITH: Okay. I'll revise the question.

21 So, the citation is for the purpose of showing that
22 there are marshes within the vicinity of the project site; is
23 that correct?

24 MS. WATSON: That's correct.

25 MR. SMITH: And the fact that there are marshes in

1 the vicinity of the project site does not necessarily show
2 that there is no ESHA on the project site; isn't that right?

3 MS. WATSON: That's correct.

4 MR. SMITH: So, let's go back to the second
5 citation, CCC 2016-A.

6 Do you see that?

7 MS. WATSON: Uh-huh.

8 MR. SMITH: And that's a reference to the addendum
9 to the California Coastal Commission 3413D report submitted
10 in this proceeding?

11 MS. WATSON: Yes.

12 MR. SMITH: Okay. And you're citing this for the
13 proposition that the Coastal Commission does not consider the
14 on-site wetlands to be an ESHA, correct?

15 MS. WATSON: That's correct.

16 MR. SMITH: Now, let's look at Tab 2 of your
17 binder, which is Exhibit 3009.

18 And I'll just ask you, this is the final Coastal
19 Commission report submitted in this proceeding, right?

20 MS. WATSON: That's right.

21 MR. SMITH: Now, let me direct your attention to
22 Page 13, Footnote 3.

23 And I'm just going to ask you -- oh, I'm sorry.
24 Let me know when you're there.

25 MS. WATSON: I'm there.

1 MR. SMITH: And I'll ask you, do you consider any
2 portion of this report, other than this footnote, to
3 specifically address whether there is environmentally
4 sensitive habitat located on site?

5 MS. WATSON: I'm sorry? What was your question
6 again?

7 MR. SMITH: Do you consider any portion of this
8 report, other than this Footnote 3 on Page 13, to
9 specifically address whether there is environmentally
10 sensitive habitat located on site?

11 MS. WATSON: I believe the report alludes to ESHA
12 in other than just the citation, but I would have to look
13 through it to tell you where.

14 MR. SMITH: Do you consider any portion of this
15 report other than this footnote to specifically state a
16 conclusion as to whether there is environmentally sensitive
17 habitat located on the site?

18 MS. WATSON: I don't believe there is.

19 MR. SMITH: So when you and Mr. Hilliard wrote on
20 Page 4.2-8 of the FSA, Exhibit 2000, which is Tab 1, you
21 wrote that "...nor does the Coastal Commission consider the
22 on-site wetlands to constitute an ESHA," you were relying on
23 the assertion in Footnote 3 of Exhibit 3009, which is Tab 2
24 of your binder; isn't that right?

25 MS. WATSON: Specifically, the sentence that says,

1 "...thus the project site does not meet the definition of an
2 ESHA."

3 MR. SMITH: Great. And that's what you were
4 relying on, correct?

5 MS. WATSON: Exactly.

6 MR. SMITH: Now, that footnote, Footnote 3, says,
7 "Hydrophytic plant species found on the project site are
8 relatively common in coastal wetlands and the area is not
9 known to support listed rare or sensitive wildlife species."

10 Did I read that right?

11 MS. WATSON: Uh-huh.

12 MR. SMITH: So, as far as you know, did the Coastal
13 Commission staff conduct any protocol or focused surveys for
14 specific status species on the project site before they wrote
15 that footnote?

16 MS. WATSON: I attended a site visit with Coastal
17 Commission staff, but I have no means of knowing if they
18 visited the site otherwise.

19 MR. SMITH: And during that site visit, did they
20 conduct any protocol or focused surveys for special status
21 species on the project site?

22 MS. WATSON: I'm not sure that she didn't conduct
23 some type of focus survey in her own mind. We walked
24 meandering transects.

25 MR. SMITH: So, do you know for sure one way or the

1 other whether the Coastal Commission staff conducted any
2 protocol or focused surveys on the site?

3 MS. WATSON: I don't know that.

4 MR. SMITH: Thank you.

5 Before you and Mr. Hilliard finished writing Bio
6 Resources section, did either one of you inquire of the
7 Coastal Commission staff whether they evaluated the entire
8 project site for the presence of ESHA?

9 MS. WATSON: I didn't inquire specifically, but I
10 personally transmitted the materials to the Coastal
11 Commission, along with, I believe, the Project Manager would
12 have done that as well.

13 MR. SMITH: So, do you have any knowledge as to
14 whether the Coastal Commission staff actually evaluated the
15 entire project site? And, by "site," remember I mean the
16 three-acre area.

17 MR. HILLIARD: They didn't communicate that
18 precisely.

19 UNIDENTIFIED SPEAKER: Microphone.

20 MR. HILLIARD: They didn't communicate that
21 precisely to us.

22 MR. SMITH: Did you assume that they did?

23 MR. HILLIARD: Did I assume --

24 MR. SMITH: That they did conduct a review of the
25 entire three-acre site for the presence of special status

1 species?

2 MR. HILLIARD: No, I assumed -- my assumptions were
3 taken from the report that they gave us.

4 MR. SMITH: So you just relied on the face of the
5 report itself, correct?

6 MR. HILLIARD: Well, I didn't question the Coastal
7 Commission staff or their methods.

8 MR. SMITH: So, do you have an understanding -- and
9 this is to either one of you -- as to whether or not the
10 scope of the Coastal Commission staff's review of the site
11 pertained to the entire site or just to a 2.03-acre wetland
12 on the site?

13 MS. WILLIS: I'm going to object.

14 I thought at one point Dr. Street was going to be
15 available for this type of question.

16 MR. SMITH: Well, I --

17 MS. WILLIS: You're asking them questions about
18 what another agency did.

19 MR. SMITH: I'm just asking for their
20 understanding.

21 MS. WILLIS: And only if you know.

22 MR. SMITH: Correct. Only if you know.

23 MS. ROESSLER: They relied on it in the report.
24 It's definitively relative.

25 MS. WILLIS: Well, they relied on the Coastal

1 Commission report. That doesn't mean they know, as they
2 said -- whether they questioned the protocol or how another
3 agency did their job.

4 MR. SMITH: Yes, ma'am. That's what I'm trying to
5 find out, just what their understanding is.

6 So, may I ask the question again?

7 So, again, to both of you, now, as far as you
8 know -- withdrawn.

9 Do you have any understanding as to whether the
10 Coastal Commission staff reviewed the project site for
11 special status species as to more than just the 2.03-acre
12 wetland on the site?

13 MS. WATSON: As I just mentioned, I transmitted
14 both the Project Description as well as the AFC Biological
15 portion of the AFC to the Coastal Commission, so I would
16 assume -- and this is an assumption -- that in doing their
17 due diligence that they would have reviewed those materials
18 and, yes, would have looked at the entire site.

19 MR. SMITH: But you don't personally know for sure
20 whether they evaluated the entire three-acre parcel where the
21 facility will be built or whether they evaluated just the
22 two-acre wetland, right?

23 MS. WATSON: Yeah, I don't know specifically.

24 MR. SMITH: Okay. So, let's go back to Page 4.2-8
25 of the FSA in Tab 1, Exhibit 2000.

1 So, and I'll ask you, is it fair to say that none
2 of the sources that you cited on this Page 4.2-A in the
3 second paragraph under "Environmentally Sensitive Habitat,"
4 none of those sources that you cited, other than the Coastal
5 Commission report, actually says that there is not ESHA on
6 the project site, right?

7 MS. WATSON: I believe that's correct. Actually,
8 I'd like to amend that answer. I believe that's incorrect.
9 Using the definition of sensitive habitat, such as coastal
10 and fresh water marsh, Southern California coastal lagoon,
11 none of those habitat types occur on the project site.

12 MR. SMITH: And, but just a moment ago, I believe
13 we said that the first proposition in that paragraph that you
14 cited CDFW 2015 for is as to environmentally sensitive
15 habitat located in the vicinity, correct?

16 MS. WATSON: Not in the vicinity and on the site.

17 MR. SMITH: Well, the proposition that you cited
18 for is as to the presence of environmentally sensitive
19 habitat in the vicinity, correct?

20 MS. WATSON: Within a one-mile radius. I believe
21 that includes the project site.

22 MR. SMITH: And, so, is your testimony that the
23 CDFW 2015 source made a finding that there is no ESHA on the
24 site of the Puente Power Project?

25 MS. WATSON: It does not make a finding. It states

1 types of habitats which may be considered sensitive.

2 MR. SMITH: Okay. And does the fact that that
3 source describes other areas as having sensitive habitats but
4 does not make a finding as to whether there is ESHA on the
5 project site, lead you to believe that it's fair to rely on
6 that source for the theory that there is no ESHA on the site?

7 MS. WATSON: I didn't rely on that source to
8 determine that there's no ESHA.

9 MR. SMITH: So you --

10 MS. WATSON: Well, I relied on it in part. It was
11 part of the information that I considered.

12 MR. SMITH: But, again, that source doesn't
13 actually say that there's no ESHA on the site of the Puente
14 Power Project, correct?

15 MS. WATSON: That site doesn't declare an ESHA.

16 MS. WILLIS: Objection.

17 It's becoming argumentative. She's answered that
18 question a couple of times at this point.

19 MR. SMITH: Well, can I just get her answer to the
20 question?

21 MS. WATSON: Can you repeat the question?

22 MR. SMITH: Yeah. The question was, that source
23 does not actually say there is no ESHA on the Puente Power
24 Project site?

25 MS. WATSON: That source does not list ESHA for any

1 site.

2 MR. SMITH: Okay. And, again, do you recall what
3 that CDFW 2015 is?

4 MS. WATSON: Like I mentioned before, it's a list
5 of terrestrial plant communities that are considered
6 sensitive.

7 MR. SMITH: So, let's turn to 4.2-17 of the FSA,
8 Exhibit 2000.

9 Now, down at the bottom of the page on 4.2-17 where
10 it says, the entry for Silvery Legless Lizard, do you see
11 where it says, "...most of the site is not suitable habitat"?

12 MS. WATSON: Uh-huh.

13 MR. SMITH: You -- you wrote that, you or
14 Mr. Watson [sic] wrote that sentence, am I right?

15 MS. WATSON: Correct.

16 MR. SMITH: Now, somebody who
17 wrote -- whoever -- do you recall which of you actually wrote
18 that sentence?

19 MS. WATSON: I believe I probably did.

20 MR. SMITH: Okay. You didn't write all of the site
21 is not suitable habitat, right?

22 MS. WATSON: Correct.

23 MR. SMITH: Why did you choose not to write all of
24 the site is not suitable habitat?

25 MS. WATSON: In part, due to the disturbance. For

1 example, there's that strip of ruderal habitat that runs
2 right through the middle of the site that would not be
3 considered suitable habitat.

4 MR. SMITH: Right. But, so, you choose to write
5 "...most of the site is not suitable habitat" instead of all
6 of the site is not suitable habitat, am I right?

7 MS. WATSON: Because suitable habitat is sparsely
8 vegetated sandy soils, which aren't present on the site.

9 MR. SMITH: I might have misheard. Which are
10 present on the site?

11 MS. WATSON: Which are not --

12 MR. SMITH: Which are not.

13 MS. WATSON: -- present on the site.

14 MR. SMITH: So, in writing "...most of the site is
15 not suitable habitat," do you see a distinction between that
16 and writing all of the site is not suitable habitat?

17 MS. WATSON: Of course.

18 MR. SMITH: And, so, by choosing to write "...most
19 of the site is not suitable habitat," aren't you implying
20 that there is some of the site that is or may be suitable
21 habitat?

22 MS. WATSON: It may be suitable habitat.

23 MS. WILLIS: Mr. Kramer, I'm going to object to
24 this line of questioning.

25 She just went through this entire table and

1 addressed each and every suitable, moderately suitable
2 habitat site, and Mr. Smith is now asking her more questions
3 and just rereading the table to her to say what did she say.
4 And it's actually right there in writing.

5 MR. SMITH: Well, ma'am, it's not really clear from
6 the wording itself what exactly it means. I want to know --

7 MS. WILLIS: I think it says "...most of the site
8 is not suitable habitat." And you've reread that to her
9 about two or three more times.

10 MR. SMITH: Can I just ask one more question on
11 this topic?

12 MS. WILLIS: Well, I'd like to get a ruling first,
13 please.

14 HEARING OFFICER KRAMER: Sustain the objection.
15 Go ahead with your next question.

16 MR. SMITH: Okay. It's actually two more, but that
17 will be it.

18 So, there are other instances in this chart where
19 you have written that most of the site is not suitable
20 habitat for some of the species listed there, correct?

21 MS. WATSON: I believe so.

22 MR. SMITH: And in each those instances where you
23 wrote most of the site is not suitable habitat, are you
24 acknowledging that some of the site is or may be suitable
25 habitat?

1 MS. WATSON: Yes.

2 MR. SMITH: So there is critical habitat for the
3 Western Snowy Plover on the beaches and dunes located at the
4 west of the project site, correct?

5 MS. WATSON: Yes.

6 MR. SMITH: And the construction noise from
7 building the project may impact that critical habitat,
8 correct?

9 MS. WATSON: Yes.

10 MR. SMITH: And California Least Tern and Western
11 Snowy Plover populations that use the adjacent habitat areas
12 also may be affected by the construction noise, correct?

13 MS. WATSON: Any nesting bird could be affected by
14 that noise.

15 MR. SMITH: And one consequence of this project
16 being built is that processed wastewater and stormwater will
17 be discharged into the Edison Canal, correct?

18 MS. WATSON: That's correct.

19 MR. SMITH: And it is possible that by discharging
20 processed wastewater and stormwater into the Edison Canal,
21 the salinity of the water in the canal will change, right?

22 MS. WATSON: It's possible, yes.

23 MR. SMITH: And the Edison Canal is suitable
24 foraging habitat for the California Least Tern, right?

25 MS. WATSON: That's correct.

1 MR. SMITH: Now, changing the salinity of the
2 Edison Canal might affect the fish that the California Least
3 Tern forages for in the canal, right?

4 MS. WATSON: If the salinity change was significant
5 enough and if it affected those species of fish that were
6 sensitive to salinity.

7 MR. SMITH: And if these species of fish that was
8 affected was sensitive to salinity to be
9 affected -- withdrawn, I'm sorry.

10 What I'll ask you is, if the fish that the Tern
11 forages for in the canal would be affected by the discharges,
12 then it is possible that the Tern itself would be affected as
13 well, right, to the extent that the Tern forages in that
14 habitat for those fish, right?

15 MS. WATSON: It would maybe have to shift foraging
16 patterns if it lost a primary food source.

17 MR. SMITH: The Tidewater Goby could occur in the
18 Edison Canal, right?

19 MS. WATSON: I believe there's a slim chance.

20 MR. SMITH: And changing the salinity of the canal
21 could affect any Tidewater Goby that are present in the
22 canal, right?

23 MS. WATSON: It could.

24 MR. SMITH: And, now, you're aware that the
25 Applicant has proposed changing two of the Bio Mitigation

1 Conditions that were imposed by the original of the Final
2 Staff Assessment?

3 MS. WATSON: Yes, I am.

4 MR. SMITH: And one of those changes -- let me help
5 you out. Why don't you draw your attention to Tab 9 of the
6 binder, which is Exhibit 1098, and please direct your
7 attention to Tab 5 -- or, I'm sorry, Page 5.

8 MS. WATSON: I'm sorry? Tab 9 Page 5?

9 MR. SMITH: Correct. And that's Exhibit 1098.

10 MS. WATSON: The pages aren't numbered.

11 MR. SMITH: If you look at the top left.

12 MS. WATSON: Oh, I see.

13 MR. SMITH: So that is a change proposed by the
14 Applicant to Condition Bio 7, correct?

15 MS. WATSON: Correct.

16 MR. SMITH: And I believe that with its rebuttal
17 testimony, staff agreed to make that change; isn't that
18 right?

19 MS. WATSON: That's correct.

20 MR. SMITH: The Ventura Marsh Milk-vetch is a
21 federally and state listed endangered plant, isn't it?

22 MS. WATSON: That's correct.

23 MR. SMITH: And it's located in four locations near
24 the project site, right?

25 MS. WATSON: I believe that's correct.

1 MR. SMITH: And is any of those four locations
2 McGrath Lake ESHA?

3 MS. WATSON: Yes, it is.

4 MR. SMITH: Which one?

5 MS. WATSON: Which one of the four --

6 MR. SMITH: Which one of the four locations.

7 MS. WATSON: -- locations?

8 As numbered by whom?

9 MR. SMITH: I'm sorry. So, you testified a moment
10 ago that there are four locations where, in the vicinity of
11 the project, where the milk-vetch is present. I'm asking you
12 which of those locations is McGrath Lake ESHA?

13 MS. WATSON: I still don't understand your
14 question. There's four locations. McGrath is one of the
15 four.

16 MR. SMITH: Oh, okay.

17 So, the four locations where the milk-vetch occurs
18 near the project site are the Santa Clara river mouth, the
19 McGrath State Beach, and two locations in Oxnard near the
20 corner of West Fifth and Harbor Street; isn't that right?

21 MS. WATSON: I believe there's also a location in
22 Ormond Beach.

23 MR. SMITH: Okay. Now, can you tell me which of
24 those locations we just discussed are McGrath Lake ESHA?

25 MS. WATSON: I'm still not following you.

1 MS. WILLIS: Yeah, I --

2 MR. SMITH: So the --

3 MS. WILLIS: I'm going to object.

4 It's very unclear what you're asking for. She
5 said -- you said there are four locations and you mentioned
6 them and then you asked her which one is the location.

7 MR. SMITH: Thank you. Let me try it differently.

8 So, the Applicant's change to Condition Bio 7
9 suggests defining the environmentally sensitive habitat areas
10 as McGrath Lake ESHA and coastal dune ESHA that supports
11 Western Snowy Plover and California Least Tern breeding,
12 correct?

13 MS. WATSON: Correct.

14 MR. SMITH: Now, McGrath Lake ESHA is a
15 particular -- refers to a particular area, right?

16 MS. WATSON: Correct.

17 MR. SMITH: Now, what I want to ask you is which,
18 if any, of the locations where the Ventura Marsh Milk-vetch
19 occurs is described in the FSA is included in McGrath Lake
20 ESHA as referred to in Bio 7?

21 MS. WATSON: I'm still not following you.

22 MR. SMITH: To your understanding, does all of the
23 locations where the Ventura Marsh Milk-vetch is present in
24 the vicinity of the project site, are all of those locations
25 included in the McGrath Lake ESHA that is protected by Bio 7?

1 MS. WATSON: Oh, no. No.

2 MR. SMITH: Thank you.

3 So, if -- okay. Are you familiar with the Globose
4 Dune Beetle?

5 MS. WATSON: I'm sorry? Could you repeat that?

6 MR. SMITH: Sure. Sorry. Are you familiar with
7 the Globose Dune Beetle?

8 MS. WATSON: Yes.

9 MR. SMITH: And it's listed on the California
10 Department of Fish and Wildlife Special Animals List?

11 MS. WATSON: Yes.

12 MR. SMITH: And it could occur in the dunes that
13 are adjacent to the site's western boundary, right?

14 MS. WATSON: Yes.

15 MR. SMITH: Similar question, are all of the dunes
16 located adjacent to the site's western boundary where the
17 dune beetle could occur included in McGrath Lake ESHA?

18 MS. WATSON: No.

19 MR. SMITH: And are all of those dunes coastal dune
20 ESHA that supports Western Snowy Plover and California Least
21 Tern breeding?

22 MS. WATSON: I'm sorry? Could you repeat that?

23 MR. SMITH: Sure. Are all of the dunes located
24 near to the project site where the Globose Dune Beetle could
25 occur coastal dune ESHA that supports Western Snowy Plover

1 and California Least Tern breeding?

2 MS. WATSON: You're adding in so many species
3 and --

4 MR. SMITH: I know. It's a very complicated
5 definition. That's what is giving me a hard time.

6 So, let me try it differently. Are all of the
7 dunes adjacent to the site's western boundary where the dune
8 beetle could occur, capable of supporting Western Snowy
9 Plover and California Least Tern breeding?

10 MS. WATSON: All of the dunes? I could speak to
11 all of the dunes being suitable for Globose Dune Beetle.

12 MR. SMITH: So, you don't -- so, the question,
13 though, is there are some -- let my do this differently.
14 There are some dunes located to the west of the project site
15 that -- where the Globose Dune Beetle could be present,
16 right?

17 MS. WATSON: Correct.

18 MR. SMITH: And taking those dunes, of those dunes,
19 are all of those dunes where the Globose Dune Beetle could be
20 present, capable of supporting Western Snowy Plover and
21 California Least Tern breeding?

22 MS. WATSON: No.

23 MR. SMITH: Okay. And the Silvery Legless lizard
24 is a California species of special concern, right?

25 MS. WATSON: Right.

1 MR. SMITH: And has been documented to occur
2 immediately north of the site and adjacent to the site as
3 well, right?

4 MS. WATSON: Correct.

5 MR. SMITH: And a similar question, are all of the
6 areas adjacent to the site where the legless lizard has been
7 documented included within McGrath Lake ESHA?

8 MS. WATSON: No.

9 MR. SMITH: And are all of those areas ESHA that
10 supports the Western Snowy Plover and California Least Tern
11 breeding?

12 MS. WATSON: Can you repeat that slower, please?

13 MR. SMITH: Sure. Sorry.

14 So, are all of those areas where the Silvery
15 Legless lizard has been documented to occur near the project
16 site, are all of those areas ESHA that supports Western Snowy
17 Plover and California Least Tern breeding?

18 MS. WATSON: (No audible response.)

19 MR. SMITH: Let me ask it differently. I'm sorry
20 if I'm confusing. I'm doing my best. I know it's late.

21 So, the Silvery Legless Lizard has been documented
22 to occur in adjacent areas -- I'm sorry. The Silvery Legless
23 Lizard has been documented to occur in areas adjacent to the
24 site, correct?

25 MS. WATSON: Correct.

1 MR. SMITH: And are all of the areas in which the
2 Silvery Legless Lizard has been documented to occur capable
3 of supporting Western Snowy Plover and California Least Tern
4 breeding?

5 MS. WATSON: I don't know.

6 MR. SMITH: Okay. So, regarding Bio Condition 9,
7 am I correct in understanding that Bio Condition 9 does not
8 require mitigation for loss of the dune swale that is located
9 on the project site?

10 MS. WATSON: That's correct.

11 MR. SMITH: So, just to be clear, Bio Condition 9
12 requires four-to-one mitigation, but only for the loss of the
13 2.03-acre wetland located on the project site, correct?

14 MS. WATSON: It may be compensated using dune swale
15 wetlands, but it does not compensate for dune swale wetlands.

16 MR. SMITH: Thank you.

17 If there were ESHA on the project site, would that
18 change your conclusion as to whether the project has a
19 significant impact?

20 MS. WATSON: "If there were..." Can you repeat
21 that?

22 MR. SMITH: Sure. If there were ESHA on the
23 project site, the three-acre project site, would that change
24 your conclusion as to whether the project has significant
25 impacts?

1 MS. WATSON: I don't believe it would.

2 MR. SMITH: So, if there were ESHA on the project
3 site, that ESHA would be destroyed by building the project,
4 correct?

5 MS. WATSON: No. There are plenty of policies that
6 would prevent that.

7 MR. SMITH: So, you're assuming that the project
8 would not be built if there were ESHA on the project site?

9 MS. WATSON: No. I believe the Coastal Act says
10 that you can develop in an ESHA if there is no feasible
11 alternative.

12 MR. SMITH: Okay. So, assuming that the project is
13 built on the project site and the project site is ESHA, would
14 that change your conclusion as to whether the project had a
15 significant impact?

16 MS. WATSON: I already have a conclusion that the
17 project has a significant impact. So, are you asking me if
18 it would be more significant?

19 MR. SMITH: Well, I guess my question is, a
20 significant impact that could not be -- that had not been
21 adequately mitigated by the project as it exists now.

22 MS. WATSON: I didn't look into mitigation of ESHAs
23 since that wasn't necessary. So, I can't answer that
24 question.

25 MR. SMITH: How would it change your conclusions as

1 to whether -- as to the significance of the project impacts?

2 MS. WILLIS: I'm going to object.

3 She just answered that. She said she already found
4 a significant impact, and/or if you were asking her if she
5 wanted a more significant impact?

6 MR. SMITH: Well, I just -- and I would just
7 like -- I'm just asking her an open question, asking her to
8 explain how, if the project site were ESHA, building the
9 project would change her conclusions as to the significance
10 of the impacts.

11 MS. WATSON: I would assume that commensurate with
12 an ESHA, there would be a different type of mitigation, which
13 I didn't look into. So, that would definitely change the
14 conclusions.

15 MR. SMITH: And it would change the nature of the
16 mitigation as well, correct?

17 MS. WATSON: Likely.

18 MR. SMITH: Would it change anything else you can
19 think of?

20 MS. WATSON: I'd have to look through all the
21 conditions.

22 MR. SMITH: No further questions for this witness.

23 HEARING OFFICER KRAMER: Thank you.

24 Ms. Belenky?

25 MS. BELENKY: Yes.

1 HEARING OFFICER KRAMER: Go ahead if you had
2 questions.

3 MS. BELENKY: Yes. I have a few questions for
4 Ms. Watson.

5 First, I just wanted to thank you for the
6 corrections in regards to the Biology section. That's very
7 helpful.

8 My first question comes from your testimony tonight
9 and it relates to my second question, and I only have three
10 questions. Tonight, when you were discussing the U.S. Fish
11 and Wildlife Service and their concerns, or lack of concerns,
12 about the Tidewater Goby, you used the term "consultation."
13 Did you mean that you had a formal consultation with them, or
14 was it in some other manner?

15 MS. WATSON: It was an informal discussion.

16 MS. BELENKY: Thank you.

17 And in your rebuttal at Page 3, you state that the
18 U.S. Fish and Wildlife Service has stated that they have no
19 concerns with the Tidewater Goby occurring in the Edison
20 Canal. And you cite to a personal communication. I
21 just -- I want to ask you a few things about that personal
22 communication. Was it with you directly?

23 MS. WATSON: Yes, it was between myself and Chris
24 Derleth.

25 MS. BELENKY: Thank you.

1 Did Mr. Derleth say that the Tidewater Goby could
2 not occur in the Edison Canal?

3 MS. WATSON: No, he did not.

4 MS. BELENKY: Did he say that if they occurred, the
5 potential impacts were not of concern to him?

6 MS. WATSON: I didn't ask him that question.

7 MS. BELENKY: Well, perhaps you could illuminate us
8 a bit more on what it means in your statement that they
9 stated they have no concern?

10 MS. WATSON: I asked Chris specifically if he
11 thought that Tidewater Goby occurred in the canal.

12 MS. BELENKY: And what was his answer?

13 MS. WATSON: I believe he stated that he did not
14 believe that they occurred in the canal but there was a
15 possibility that they may enter into the canal, but it is not
16 considered suitable habitat.

17 MS. BELENKY: Do you have any documentation of that
18 communication to provide for this record?

19 MS. WATSON: None other than what's given.

20 MS. BELENKY: Thank you.

21 Lastly, you said you and Mr. Smith were discussing
22 a missing citation to a CDFW document from 2015 regarding
23 sensitive habitats.

24 Can you provide that to the parties now that you
25 realize it's missing?

1 MS. WATSON: I don't have that in front of me.

2 MS. BELENKY: Oh, I didn't mean right now. I mean
3 in the next day or so, could you provide at least the
4 citation, if there's a link to it online, something like
5 that?

6 MS. WATSON: Of course.

7 MS. BELENKY: Thank you so much.

8 I have no more questions for this witness tonight.

9 HEARING OFFICER KRAMER: Thank you.

10 Any redirect?

11 Staff?

12 MS. WILLIS: None. Thank you.

13 HEARING OFFICER KRAMER: Without redirect, we
14 normally wouldn't have recross.

15 MR. SMITH: No. I simply have a question for the
16 panel, for you Mr. Kramer.

17 HEARING OFFICER KRAMER: Okay. Go ahead.

18 MR. SMITH: The question is, I'm just wondering if
19 staff could agree to produce the source that Mr. Watson [sic]
20 and Ms. Hilliard [sic] were actually relying on with that
21 citation that we discussed in the testimony today.

22 MS. WILLIS: The CDF?

23 MR. SMITH: The CDF of 2015.

24 MS. WILLIS: Right. That's what she just answered
25 for Mr. Belenky, that she said she would provide that

1 citation.

2 MR. SMITH: Oh, I'm sorry. Thank you. I
3 appreciate that.

4 HEARING OFFICER KRAMER: Okay. So, should we
5 create a holding exhibit number for that so it could be
6 filed --

7 MS. WILLIS: I'm not sure.

8 HEARING OFFICER KRAMER: -- I don't know, probably
9 next week, and then we could --

10 MS. WILLIS: Just a minute, one moment, Mr. Kramer.
11 I'm not sure if you have the actual document or if you were
12 just going to provide the citation.

13 MS. WATSON: I understood Ms. Belenky to be asking
14 for the citation. The actual document would be highly
15 difficult to docket.

16 HEARING OFFICER KRAMER: And that's because it's
17 not available electronically, or why?

18 MS. WATSON: I'm not familiar with it being
19 available electronically.

20 HEARING OFFICER KRAMER: So, is it going to be hard
21 for the parties to look it up then once they --

22 MS. WATSON: I don't think see. It's a common
23 citation.

24 HEARING OFFICER KRAMER: Okay. So, then if you
25 could file a memo that explains this, you know, so it's

1 self-explanatory, and give the cite.

2 I'll look up the next number while we're dealing
3 with the next witness.

4 Let's go off the record for a minute.

5 (Off the record at 10:44 p.m.)

6 (On the record at 10:46 p.m.)

7 HEARING OFFICER KRAMER: Okay. Now, we're back on
8 the record.

9 And we're going to go with Ileene Anderson as a
10 witness.

11 So, we'll swear her in again.

12 Ms. Anderson, do you swear or affirm that the
13 testimony you are about to give in this proceeding is the
14 truth to the best of your ability?

15 MS. ANDERSON: I do.

16 HEARING OFFICER KRAMER: Thank you.

17 Go ahead, Ms. Belenky.

18 MS. BELENKY: Thank you.

19 Can you just please state and spell your name for
20 court reporter?

21 MS. ANDERSON: Yes. My name is Ileene Anderson.
22 My first name is spelled I-L-E-E-N-E. Last name is Anderson,
23 A-N-D-E-R-S-O-N.

24 MS. BELENKY: Thank you.

25 Did you prepare the opening and rebuttal testimony

1 filed as Exhibit 7022 and 7026 in this matter?

2 MS. ANDERSON: Yes, I did.

3 MS. BELENKY: Do you have any corrections or
4 additions to make at this time?

5 MS. ANDERSON: No, I don't.

6 MS. BELENKY: Can you briefly summarize your
7 testimony and concerns regarding the project?

8 MS. ANDERSON: Yes. So, overall, in my review of
9 the Biology sections, they didn't seem to equitably address
10 all of the sensitive species. Instead of sort of appropriate
11 protocol-level surveys being done, document conjectures about
12 the possible presence or absence of these species.

13 While I recognize that absence can never be
14 unequivocally proven, presence can be. And that's the whole
15 purpose of surveys. That's what they're for.

16 So, the lack of these consistent species-specific
17 surveys for the rare species really concerns me.

18 MS. BELENKY: And, specifically, turning to the
19 Ventura Marsh Milk-vetch, can you summarize your concerns
20 about this statement that (unintelligible) endangered
21 species?

22 MS. ANDERSON: Sure. Starting with the Ventura
23 Marsh Milk-vetch, I mean, that species has critical habitat
24 designated directly north of the proposed project site, as
25 well as south of it, but not as directly.

1 And there is a lot of different milk-vetch species
2 in coastal California. And in order to identify them, one
3 needs both fruits and flowers. They're not the easiest
4 species to identify.

5 So, in the FSA and additional documents, I could
6 not find any indication that surveys were -- specifically for
7 this very highly-endangered milk-vetch actually ever occurred
8 despite that fact that some open space remains on the north
9 and into the proposed project site, which is directly
10 adjacent to the critical habitat.

11 While I recognize that the sort of general
12 botanical surveys were performed, focus surveys are essential
13 for this listed species. It was thought to be extinct up
14 until it was rediscovered in 1997. So, you know, obviously,
15 it's been out there and people just don't recognize it.

16 So, this lack of species-specific surveys leads to
17 a conclusion of absence which is really not defensible.

18 Because of the presumed absence then, there's no
19 mention, much less any analysis, of the impacts. So, in my
20 opinion, it would be much more prudent to do the surveys, and
21 based on those data, do an analysis of impacts. I know that
22 there's pre-construction surveys for the milk-vetch proposed
23 in the Application for Certification. But these surveys
24 should have been implemented as part of this environmental
25 review.

1 So, that's sort of my concerns about the
2 milk-vetch.

3 With regards to the Least Tern, it's unclear to me
4 if surveys were actually done for that species, not only on
5 the proposed project site, but also on the adjacent dune
6 habitat. Even the Fish and Wildlife Service was concerned
7 about the impacts from the project to Tern eggs. So, no
8 doubt that the Applicant will follow certain protocols
9 because they can't take these Terns, including the eggs,
10 because it's a fully protected species.

11 But the point here is that a full analysis of
12 potential impacts is necessary before adequate measures can
13 be proposed. And those can't occur until you actually know
14 what's going on with the Terns through surveys.

15 And that's a similar concern then I have with
16 federally endangered Tidewater Goby. Again, it gets back to
17 this lack of surveys.

18 The FSA seemed to be very contradictory that, yes,
19 they can be there in the Edison Canal, that, no, they can't
20 be in it. And Fish and Wildlife Service has a protocol
21 survey methodology that's been discussed earlier tonight, and
22 that includes constructed waterways.

23 So, it's my opinion that this type of survey should
24 have been implemented to provide the data on which to base
25 the FSA's analysis.

1 MS. BELENKY: Thank you.

2 I have just one more question. As to the other
3 rare plants that were outlined in your earlier testimony, do
4 you have similar concerns?

5 MS. ANDERSON: Sure. Well, you know, very
6 comprehensive surveys would include rare plant surveys for
7 all rare plants that have potential to occur in the habitats
8 present on site. And most surveys would include visits to
9 reference populations to determine the current phenology of
10 the plants, so that when you went to look for them on the
11 site and adjacent lands, you would know what the plants were
12 doing at that time of year.

13 You know, with plants, it's all in the timing,
14 basically when they're flowering and fruiting, which is
15 usually the structures of the plants that are essential in
16 order to make a definitive identification.

17 Hello.

18 MS. BELENKY: Oh, thank you. Do you have anything
19 else to add?

20 MS. ANDERSON: No, that's basically a highlight of
21 my concerns about this, is just the sort of lack of data on
22 these rare species and due to lack of surveys.

23 MS. BELENKY: Thank you.

24 HEARING OFFICER KRAMER: Okay. Any cross
25 examination?

1 Nobody has specifically listed Ms. Anderson, but
2 Mr. Carroll is indicating he could like to.

3 MR. CARROLL: I believe we did.

4 HEARING OFFICER KRAMER: Oh, you might have. I
5 just didn't list it here. So, go ahead.

6 MR. CARROLL: Thank you.

7 Ms. Anderson, this is Mike Carroll. I represent
8 the Applicant. Good evening.

9 MS. ANDERSON: Good evening.

10 MR. CARROLL: Hi. Have you -- have you been on the
11 project site?

12 MS. ANDERSON: I have not been on the project site.

13 MR. CARROLL: I take it then that you have not
14 conducted any wildlife or habitat surveys on the project
15 site?

16 MS. ANDERSON: That's correct.

17 MR. CARROLL: Okay. Could it be the case that
18 those biologists from the Energy Commission staff and the
19 Applicant who have been on the site and conducted those
20 surveys made appropriate professional judgments about the
21 need for additional survey work?

22 MS. ANDERSON: Well, I think that they made
23 decisions, but I don't know that they are appropriate based
24 on the data that was presented, or the lack of data that was
25 presented in the documents that were submitted.

1 MR. CARROLL: Could they have been appropriate
2 based on the information that they obtained firsthand in
3 their firsthand observations?

4 MS. BELENKY: Objection. That calls for
5 speculation.

6 HEARING OFFICER KRAMER: Overruled.

7 MS. ANDERSON: Can you repeat the question, please?

8 MR. CARROLL: Could it have been the case that
9 biologists from the CEC staff and the Applicant who conducted
10 the on-site surveys made appropriate judgments about the need
11 for additional surveys notwithstanding your view that the
12 information that's been made available doesn't support that
13 conclusion?

14 MS. ANDERSON: Well, it's my opinion that they
15 should have. I mean, these are surveys that could have
16 easily been implemented and answered these questions that
17 appear to be unanswered or -- in the FSA and other documents,
18 and so one way to resolve this is to actually do the surveys.

19 MR. CARROLL: Do you disagree that under certain
20 circumstances based on the information that's been obtained
21 it's appropriate to make a determination not to conduct
22 additional surveys?

23 MS. ANDERSON: I would -- can you say that once
24 again? I'm sorry.

25 MR. CARROLL: Yes. Do you disagree that under

1 certain circumstances based on the information that is
2 collected as a result of initial surveys it's appropriate to
3 make a professional judgment to not conduct any -- to not
4 conduct any additional surveys?

5 MS. ANDERSON: I think that because you're dealing
6 with highly-imperiled species, surveys are appropriate.

7 MR. CARROLL: I'm sorry? I didn't -- because
8 you're dealing with?

9 MS. ANDERSON: Highly-imperiled species.

10 MR. CARROLL: And is that your judgment regardless
11 of the information that's gathered through the initial
12 surveys?

13 MS. ANDERSON: Yes.

14 MR. CARROLL: And is that your judgment regardless
15 of the condition of the project site that's being surveyed?

16 MS. ANDERSON: Yes.

17 MR. CARROLL: So, in your view, it could not
18 be -- well, let me rephrase the question.

19 Could it be the case that the activities that have
20 occurred at or near the project site since initial
21 development of Mandalay Generating Station as power facility
22 approximately 50 years ago have resulted in circumstances
23 such that, with the exception of Woolly Seablite, which the
24 Applicant and the staff have acknowledged is present on the
25 site, that there is no suitable habitat on the project site

1 for any special status species?

2 MS. ANDERSON: I think in order for them to back
3 that up, they needed to have survey data.

4 MR. CARROLL: And you don't believe that it might
5 be appropriate for them to have made a judgment based on the
6 survey data they have that no additional surveys were
7 necessary?

8 MS. ANDERSON: Can you say that again?

9 MR. CARROLL: You don't believe that it
10 might -- you don't believe that it might have been an
11 appropriate judgment on their part in their professional
12 capacity to make a determination that based on the
13 information gathered in the initial surveys and given the
14 condition of the site that it was not necessary or
15 appropriate to conduct additional surveys?

16 MS. BELENKY: Objection. Asked and answered.
17 It was the same question that he's asked three
18 times.

19 MR. CARROLL: Let me ask a different question.

20 In your view, is it always necessary to conduct all
21 of the available surveys prior to making a judgment as to
22 whether or not there's suitable habitat or species present on
23 the proposed project site?

24 MS. ANDERSON: I think as a professional that
25 people should error on the side of caution when dealing with

1 making assumptions about whether or not highly-imperiled
2 species like the ones we're talking about that are federally,
3 state listed, fully protected, I think that to side on the
4 error of making sure that the surveys get done so you
5 actually have some data to back up your professional opinion,
6 is prudent.

7 MR. CARROLL: Do you agree that one's professional
8 opinion with respect to whether or not additional surveys
9 were required might be influenced by the conditions of the
10 site and one's firsthand observations of the conditions of
11 the site?

12 MS. ANDERSON: I think you asked me that already.

13 MR. CARROLL: I'm sorry. I don't recall the
14 answer.

15 Would you mind answering it again?

16 MS. ANDERSON: Can you state the question again,
17 please?

18 MR. CARROLL: Yes. Do you agree that one's
19 professional opinions regarding the necessity for additional
20 survey work would be influenced by their firsthand
21 observations of the condition of the site?

22 MS. ANDERSON: I recognize that the site has been
23 disturbed, but I also know of a number of different instances
24 where people have written off the site because it's been
25 disturbed and rare species have occurred on them.

1 MR. CARROLL: All right. Well, that's not really
2 the question I asked.

3 The question I asked was, is it appropriate to take
4 into consideration the condition of the site when making a
5 determination as to whether or not additional surveys are
6 called for?

7 MS. ANDERSON: I think it's one factor, but it's
8 one of many that should be considered.

9 MR. CARROLL: Are you familiar with the proposed
10 discharge to the Edison Canal to service the project?

11 MS. ANDERSON: I'm sorry? Can you say that again?

12 MR. CARROLL: Are you familiar with the proposed
13 discharge from the Puente Power Project to the Edison Canal?

14 MS. ANDERSON: Gosh, I'm sorry? I'm on my computer
15 and I couldn't understand the first part of your sentence.

16 MR. CARROLL: Sure. Let me try to rephrase it.

17 Is it your understanding that the proposal for the
18 project is to discharge wastewater to the Edison Canal?

19 MS. ANDERSON: No.

20 MR. CARROLL: What, then, is your understanding of
21 the activities that could potentially impact the Edison
22 Canal?

23 MS. ANDERSON: I don't have a clear understanding
24 of it.

25 MS. BELENKY: I think the question was unclear.

1 MR. CARROLL: No. I think the answer and the
2 question were both clear. Just one moment. I'm looking at
3 my notes to see if there are any other questions.

4 You indicated that you believed one's firsthand
5 observations of the condition of the site are one factor to
6 be taken into consideration when making a determination as to
7 whether or not conduct additional protocols. Under certain
8 circumstances, could that be a determinative factor?

9 MS. ANDERSON: I don't believe so when it involves
10 these very threatened species.

11 MR. CARROLL: So, your view is that regardless of
12 the condition of the site, it would always be appropriate to
13 proceed with additional protocols -- I'm sorry -- additional
14 surveys?

15 MS. ANDERSON: Yes.

16 MR. CARROLL: No further questions.

17 HEARING OFFICER KRAMER: Staff?

18 MS. WILLIS: No questions. Thank you.

19 HEARING OFFICER KRAMER: Environmental Coalition?

20 Okay. Thank you, Ms. Anderson.

21 MS. ANDERSON: Thank you.

22 HEARING OFFICER KRAMER: Or, actually, Ms. Belenky,
23 did you have any redirect?

24 MS. BELENKY: I did, yes, thank you.

25 (Unintelligible) just for a minute?

1 MS. ANDERSON: I am.

2 MS. BELENKY: Yes. Mr. Carroll asked you about the
3 impacts of the project on the Edison Canal. And -- which
4 would change the discharge from the beach to the Edison
5 Canal --

6 MR. CARROLL: Objection. Objection. Leading the
7 witness.

8 The witness has already testified that she's not
9 familiar with the activities that might result in impacts to
10 the canal. And the questioner is educating the witness about
11 what those might be in the form of a question.

12 HEARING OFFICER KRAMER: Sustained.

13 MS. BELENKY: Ms. Anderson, is it your
14 understanding that there would be an impact from the project
15 to the Edison Canal?

16 MS. ANDERSON: Yes, that is my understanding. And
17 that was my concern about the Tidewater Goby. What was not
18 clear --

19 MS. BELENKY: Thank you.

20 MS. ANDERSON: -- to me was exactly what the
21 impacts would be from the project.

22 MS. BELENKY: Thank you.

23 I have no further redirect.

24 HEARING OFFICER KRAMER: Okay. Thank you.

25 Thank you for sure, Ms. Anderson.

1 Let's move on to our last witness, which will be
2 Mr. Hunt.

3 MS. ROESSLER: If I may? Do we have a hard stop at
4 11:30? Because given that it's 10 after and I'm assuming
5 there's going to be cross if Mr. Hunt -- it might be best
6 just to stop and bring him back tomorrow morning, because I'm
7 not going to be able to get through all of his direct right
8 now.

9 HEARING OFFICER KRAMER: Okay. Your choice.
10 That's probably not a bad idea. We --

11 MS. ROESSLER: I think we're all pretty tired.

12 HEARING OFFICER KRAMER: We can go to 11:30.

13 MR. CARROLL: That would be a good idea, in fact.

14 MS. ROESSLER: I think we're all toast.

15 HEARING OFFICER KRAMER: Okay.

16 MS. WILLIS: Mr. Kramer, I just want to ask about
17 tomorrow to make sure that we will be able to make our 8:35
18 flight out of Burbank.

19 HEARING OFFICER KRAMER: Well, I can't guarantee
20 anything. But we have one witness on Bio which I guess -- we
21 will have Mr. Street back probably. So --

22 MS. WILLIS: If it's at all possible, we do not
23 have hotel reservations and most of us have family and plans
24 for Saturday because that was not really noticed that we
25 would be here late on Friday night. I thought that was kind

1 of the purpose tonight, to finish this. And I'm willing to
2 stay longer if it means we can get out of here on time.

3 HEARING OFFICER KRAMER: Okay. Let's talk about
4 the floater topics.

5 MR. SMITH: Mr. Kramer, may I ask you a quick
6 question? Can we release Mr. Hunt for tonight?

7 HEARING OFFICER KRAMER: It sounds like a yes.
8 Thank you, sir.

9 MR. SMITH: Thank you, sir.

10 MS. ROESSLER: And can he -- will he start first
11 thing tomorrow? Or is that possible?

12 HEARING OFFICER KRAMER: Yes.

13 MS. ROESSLER: Okay. Thank you.

14 MS. WILLIS: Mr. Kramer, can I propose that we go
15 to Compliance?

16 HEARING OFFICER KRAMER: Okay. Yes, we could have
17 Mr. Pittard.

18 (Applause.)

19 HEARING OFFICER KRAMER: Thank you.

20 He was ten minutes of direct with no cross from
21 anyone.

22 This is Compliance and Closure, so let's go ahead.
23 Previously sworn for another topic?

24 MR. PITTARD: Yes.

25 HEARING OFFICER KRAMER: And he said "yes" for the

1 record.

2 MR. PITTARD: Yes.

3 MS. CHESTER: Mr. Pittard can you please state your
4 name for the record?

5 MR. PITTARD: Shawn Pittard.

6 MS. CHESTER: Was a statement of your
7 qualifications attached to your testimony?

8 MR. PITTARD: Yes. Yes, it was, Exhibit 2003.

9 MS. CHESTER: Are you sponsoring the testimony
10 entitled Compliance Conditions and Compliance Monitoring Plan
11 in the Final Staff Assessment marked as Exhibit 2000?

12 MR. PITTARD: Yes, I am.

13 MS. CHESTER: Do you have any changes to your
14 testimony?

15 MR. PITTARD: I do not.

16 MS. CHESTER: Did you review Exhibit 1098,
17 entitled, "Applicant's Comments on the Proposed Conditions of
18 Certification" in the Final Staff Assessment for the Puente
19 Power Project?

20 MR. PITTARD: Yes, I did. And I would like to
21 respond specifically to -- I'm going to slow down.

22 I would like to respond specifically to Applicant's
23 recommended clarifying changes to Com-13, Incident Reporting
24 Requirements.

25 This condition describes how and when the project

1 owner will notify the Compliance Project Manager of incidents
2 that occur at the project.

3 And, Mr. Kramer, could we look at Exhibit 1098?
4 That would make this go probably a lot easier.

5 HEARING OFFICER KRAMER: Okay. Which page would
6 you like?

7 MR. PITTARD: It's toward the bottom. I don't have
8 the -- I have the document in this pile of papers somewhere.

9 MS. CHESTER: It's Page 8.

10 MR. PITTARD: There we go.

11 So, I'd like to preface my response to those
12 comments by saying that we did not have an opportunity to
13 discuss these comments at a workshop. Staff made changes to
14 Com-13 between the PSA and the FSA, and the change represents
15 the Compliance Unit's intent to standardize the incident
16 reporting requirements for all projects.

17 This change was developed during the workshops in
18 the Alamitos Project FSA and the FSA for the Huntington Beach
19 NRG Project Petition to Amend, both of which are pending
20 before the Commission.

21 MS. CHESTER: Mr. Pittard, what changes to the
22 conditions is the Applicant suggesting?

23 MR. PITTARD: The Applicant recommends three
24 changes.

25 The first relates to reporting forced outages, that

1 is, how to define them.

2 The second recommends that only serious injuries
3 are reported. They ask for that distinction.

4 And the third relates to submitting notifications
5 under confidential cover.

6 MS. CHESTER: Do you agree with the Applicant's
7 proposed changes?

8 MR. PITTARD: We disagree with Comments 1 and 2 and
9 want to clarify 3.

10 As you can see, the Applicant has struck
11 out -- what Applicant has struck out, we would like to keep.
12 Staff believes that this standardizing the definition of a
13 forced outage this way across all our projects would provide
14 us with the information that we need in the most timely
15 manner to know what's happening at the projects that we
16 monitor.

17 The second point, if you could scroll down, please,
18 on serious injury. The intent here is that any time there is
19 a response, an emergency response, that the Compliance
20 Project Manager is notified. And we know that it's -- the
21 Compliance Project Manager tries to get a sense of the flow
22 of the project and kind of has his or her finger on the
23 pulse. And, so, this is something that if there's a
24 response, we'd simply like to know.

25 And, finally -- if you can scroll down a little

1 further, Mr. Kramer. Not there. That's a weird font thing
2 that happened up there. Down a little bit further.

3 The Applicant adds the language at the end of the
4 paragraph, "The project owner may submit notifications and
5 reports under confidential cover to the CPM. And we want to
6 clarify that they're not recommending a duplicative
7 confidentiality process to the one that already exists for
8 providing these requests through the Executive Director.

9 MS. CHESTER: Does that conclude your testimony on
10 this topic?

11 MR. PITTARD: Yes, it does.

12 MS. CHESTER: This witness is available for
13 cross-examination.

14 MR. CARROLL: Thank you.

15 Mike Carroll for the Applicant.

16 Just so I understood the proposal, then,
17 Mr. Pittard, you are prepared to make the third change
18 subject to confirmation from the Applicant that they are not
19 seeking a duplicative confidentiality provision but the
20 intent would be the standard confidentiality provisions --

21 MR. PITTARD: Correct.

22 MR. CARROLL: -- and processes?

23 We can confirm that that was the intent. There was
24 no intent to create any sort of additional or new process.

25 And, again, just for clarification, and you are not

1 proposing to make the other two changes to the conditions
2 that Applicant requested; is that correct?

3 MR. PITTARD: That is correct.

4 MR. CARROLL: Thank you.

5 We very much appreciate staff's consideration of
6 the changes and the willingness to make the third change, and
7 we don't have anything further to discuss about it. So,
8 thank you very much.

9 MR. PITTARD: All right. Thank you.

10 HEARING OFFICER KRAMER: Okay. Well -- okay,
11 before you guys shake hands. To me, this new sentence about
12 confidentiality suggests that perhaps it is granting a
13 blanket approval that these reports would be considered
14 confidential and doesn't make it clear, as I believe you were
15 saying, that you have to convince the Executive Director that
16 they satisfy the requirements to be designated that.

17 MR. CARROLL: Let me make a suggestion. Perhaps we
18 can work up some language that specifically references the
19 provisions governing confidentiality. The provision may say
20 something like, The project owner may submit notifications
21 and reports under a request for confidentiality pursuant to
22 20 CCR or --

23 MS. CHESTER: 2505.

24 MR. CARROLL: 2505.

25 MS. CHESTER: I would agree to changing the current

1 language as it stands that it does not accurately reflect our
2 current confidentiality procedure.

3 HEARING OFFICER KRAMER: Okay. So, you're going to
4 work on something and file something?

5 MR. CARROLL: I think what I'd -- yes, we'll
6 confirm, but I think perhaps the language we just agreed to
7 may be appropriate.

8 MR. PITTARD: Now, I know my boss would like me to
9 say this, so I will, which is that we would think it's
10 simpler to not add that sentence to the end of the paragraph
11 because that other process already exists and is available.
12 And that simply by not adding that sentence, we wouldn't
13 create confusion.

14 MR. CARROLL: The reason for making the request was
15 our view that there was a need to clarify the availability of
16 that mechanism under these circumstances. So, our preference
17 would been to have the sentence, but, again, not to create
18 anything beyond what otherwise exists, but just to clarify
19 that what does exist is available in this circumstance.

20 HEARING OFFICER KRAMER: Okay. Well --

21 MR. PITTARD: We'd be happy to look at it.

22 HEARING OFFICER KRAMER: We'll look for a report.

23 MR. PITTARD: Very good.

24 MR. CARROLL: Thank you.

25 HEARING OFFICER KRAMER: Okay. With that --

1 UNIDENTIFIED SPEAKER: Do you have anymore?

2 HEARING OFFICER KRAMER: We have floaters.

3 So, what we can do is -- well, we don't have all
4 the parties here. I think it will only take a couple of
5 minutes just to confirm and just for the record say we are
6 closing the record on these various topics and I'll just read
7 the titles. So, we can do that in the morning or during our
8 housekeeping.

9 So, then, really I think that's just about all we
10 can do tonight. I'll just let -- oh, that's right. Let's do
11 that.

12 COMMISSIONER SCOTT: This is Commissioner Scott.

13 We did include in the Notice that at the end of our
14 day's proceeding, we would take public comment. I am not
15 seeing anyone in the room who is not associated with the
16 parties or are helping us out this evening.

17 If there is anyone here and you would like to make
18 public comment, now is your chance. Please, stand up and
19 come to the mic.

20 (No audible response.)

21 COMMISSIONER SCOTT: Okay. Just confirming.

22 Let me check with Christy. Is there anyone on the
23 Spanish WebEx? Okay. No comments on the Spanish WebEx.

24 Let's please open up the English WebEx and see
25 whether or not anyone would like to make a comment.

1 If would you like to make a comment, now is your
2 opportunity. We are listening and would love to hear from
3 you.

4 (No audible response.)

5 COMMISSIONER SCOTT: The lines are un-muted. If
6 you are on the WebEx and would like to make public comment,
7 please go ahead and speak up.

8 (No audible response.)

9 COMMISSIONER SCOTT: Okay. Going once, going
10 twice -- okay. There is no one on the WebEx who would like
11 to make public comment.

12 I will turn it back to Hearing Officer Kramer to
13 adjourn us for the day.

14 HEARING OFFICER KRAMER: Okay. We'll be adjourned
15 and we will see you back here at 9:30 a.m.

16 Thank you and good night.

17 (Whereupon, the proceedings for the day concluded
18 at 11:18 p.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 2017.



MARTHA L. NELSON, CERT**367

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 2017.

A handwritten signature in black ink, appearing to read "Barbara Little", is written over a horizontal line.

Barbara Little
Certified Transcriber
AAERT No. CET**D-520