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Filer:	Robert Simpson
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STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:
Petition to Amend
The Carlsbad Energy Center **Docket No. 07-AFC-06C**

REPLY TO ENERGY COMMISSION STAFF AND APPLICANT RESPONSE TO PETITIONS FOR RECONSIDERATION AND MOTION TO REISSUE THE PMPD AND REOPEN THE EVIDENTIARY RECORD

CEC staff and the applicant did not seem to put much effort into response to the pending issues. Staff argues the applicability of CEQA and the applicant argues that the Commission is not subject to the constraints of CEQA. Staff bases a number of conclusions and attributes quotes to; *Laurel Heights Improvement Association v. Regents of the University of California (1988) 470 Cal.3d 376*, none of which are included in the Laurel heights decision referenced. The decision is relevant in that it states; We find the EIR was inadequate because: (1) it fails to discuss the anticipated future uses of the new facility and the environmental effects of those uses, and (2) the discussion of alternatives is inadequate under CEQA.

Staff states; "Mr. Simpson raises a number of issues in his petition for reconsideration. To the extent that Staff does not specifically rebut each and every statement made by Mr. Simpson, his comments regarding solar flux1 and stack "collision" impacts on birds2 , undergrounding of transmission wires3 , and noise impacts4 were discussed during the proceedings and therefore are not "new" matters."

First my comments were not about solar flux or stack collision; they were about thermal plume and avian plume impacts. Second each of the footnotes referenced cannot be responsive to my comments because my comments were after the FSA and staff brief referenced, They were in fact a rebuttal to the conclusions reached in the 2 documents so there is no way that they can be responsive to my comments. This circular logic and reframing of the issues that I raised is an example of why my issues could not have been considered during the evidentiary proceeding.

Staff further wishes to introduce a new basis for failing to consider the impacts from the thermal plume in footnote 1. The absurd statement appears to conclude that birds will not be harmed by flying into the 800 degree plume. This ignores all scientific evidence to the contrary. They cite no scientific basis for the assertion, merely another attorney's play on words. The statement completely ignores the 80 mile an hour updraft and toxic emissions effects.

Second, Staff changes the threshold for consideration by claiming that; "the issues were discussed during the proceedings and therefore are not "new" matters" The threshold is not new matters; it is new evidence which I have amply provided and staff has not disputed. Staff states; "Staff does not specifically rebut each and every statement made by Mr. Simpson" so all other issues raised in my motions and notice has not been disputed.

It is not enough that issues were "discussed", some issues were discussed, I refuted the adequacy of the discussion and lack of scientific basis and this was not considered despite my forceful presentation. A rule of reason applies "basic mandate" to the Commission to "take

the initiative" in considering environmental issues. Such judgments present mixed questions of law and fact which can only be intelligently resolved based on a factual record based upon scientific evidence.

Intervenor's comments raised a colorable alternative not presently considered. We should only need to bring sufficient attention to the issue's to stimulate the Commission's consideration of them. Thereafter, it is incumbent on the Commission to undertake its own preliminary investigation of the proffered alternative sufficient to reach a rational judgment whether it is worthy of detailed consideration. Moreover, the Commission must explain the basis for each conclusion that further consideration of a suggested alternative is unwarranted. An explicit statement is essential to enable the parties to challenge the agency's action through motions for reconsideration, and to facilitate judicial review. Thus, the procedures provided by the CEC were not sufficient to ventilate the issues.

The final Decision's inadequate and obfuscatory analysis, clearly fails to satisfy the requirement that, once comments are received from the public, "`[*t*]*here must be good faith, reasoned analysis in response*.'" (*Sutter Sensible Planning, Inc.* v. *Board of Supervisors* (1981) 122 Cal. App.3d 813, 820 [176 Cal. Rptr. 342], quoting *Silva* v. *Lynn* (1st Cir.1973) 482 F.2d 1282, 1285, italics by the *Sutter* court; see also *Mountain Lion Coalition* v. *Fish and Game Com., supra,* 214 Cal. App.3d at p. 1051 [rejecting attempt "to circulate a document that simply swept the serious criticisms of the project under the rug"].)

Staff states; "Mr. Simpson disagrees with the Energy Commission's findings and decision but there is substantial evidence to support the Final Decision and no new facts upon which to grant the petition." The relevant threshold here is not "new facts" it is "errors of fact" which I have adequately presented and staff has not substantively disputed.

Staff states; "Mr. Simpson alleges an error of law in citing the Energy Commission's deletion of prior condition of certification AQ-SC11. The Commission did not unilaterally decide that Prevention of Significant Deterioration does not apply: the San Diego Air Pollution Control District's Final Determination of Compliance also confirmed this fact (see Exhibit 3041, pp. 4-5)." Page 4-5 of the FDOC contains no such determination. The FDOC does state, to the contrary; "The district is not currently authorized to implement the Federal PSD program by EPA. This analysis is, therefore, directed toward determining applicability and requirements for District PSD and not directed toward determining applicability and requirements of federal PSD" It is only the CEC that excluded the project from PSD review. Even if the APCD FDOC somehow was interpreted to support the CEC decision to exclude the project from federal oversite, the APCD has no such authority, just like the CEC. So, relying on another agency error of law to support the CEC error of law in not compelling.

Staff states "The California Department of Fish and Wildlife (CDFW) is not on the list-serves for this project although many other State agencies are." This should be the end of the analysis for consideration of re-noticing the PMPD. The CEC failed its vital duty to provide notice of the amendment and PMPD. The only cure is to properly distribute the PMPD.

Staff states; "However, it would be erroneous to believe that the CDFW was not informed, aware of or included in Staff's drafting of the FSA Biology section. On August 12, 2014,

Staff emailed a copy of the petition to amend to CDFW and other interested agencies, including U.S. Fish and Wildlife and the Coastal Commission."

Staff seems to wish to misunderstand the regulatory requirement. A short email in 2014, the entire text of which is in the footnote below[1], cannot serve to demonstrate distribution of the of the 2015 PMPD as the law requires. At the time of the email there were 2 amendments pending regarding the project. It is clear from the communication that the Staff was focussed on the demolition amendment. In a prior email which did not appear to include CDFW she stated; The amendment is the demolition and removal of the once-through cooled power units at Encina and the actual plant, and other as they repower and hook into city recycled water.

She appeared to invite the recipients to a workshop that never occurred. In response to my records requests I received the attached communications which ostensibly would be all of the communications between CDFW and the CEC, they conclude on August 12, 2014 so the CDFW did not receive notice of the PSA, FSA, PMPD or any other action. There is no solicitation for participation, requests for comments, or effective notice in the short email. If there was an amendment attached to the email it would have likely been only one of the 2 pending at the time. A subsequent email states; "I had to resend original email without the attachment. You can find the petition here, : https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=07-AFC-06C" The amendment was probably too big to send by email so it is likely that the agencies never received the amendment.

The email did not request CDFW to do any of the things that 1714.5 requires the commission to request of the agency, Failure to follow necessary procedures is a prejudicial abuse of discretion. This failure resulted in a domino effect violating all of the following laws;

25506. Comments and recommendations; governmental agencies The commission shall request the appropriate local, regional, state, and federal agencies to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice, in relation to environmental quality, public health and safety, and other factors on which they may have expertise.

§ 25506.5. Comments and recommendations; public utilities commission The commission shall request the Public Utilities Commission, for sites and related facilities requiring a certificate of public convenience and necessity, to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice in

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Greetings, I'm working on the Carlsbad Energy Center Amendment. You're probably aware already that the project is retooling itself, removing the actual Encina Power Plant and once-cooled units 1-5. I'm trying to plan a site visit, and if possible, meet you onsite. The project description is still changing, but it appears as though noise/vibratory impacts from demolition would be the primary impacts; and it remains to be determined if a new 316b permit is necessary. I attached the petition for amendment.

There will be a public workshop on the 20th or 21st of August, and so I'm hoping to do a site visit the day before or following the workshop. I will send specific info when I have it. Given these limited scheduling parameters, is there interest/availability in joining me onsite? Best, Carol Watson

relation to the economic, financial, rate, system reliability, and service implications of the proposed facilities.

1714. Distribution of Copies to Public Agencies; Request for Comments.
(c) The executive director shall also transmit a copy of the notice or application to… to the California Department of Fish and Game,

1714.3. Agency Comments on a Notice; Purpose and Scope.
Any agency requested, pursuant to Section 1714 of this article, to transmit its comments and recommendations to the commission on a site and related facility proposed in the notice shall be requested to do each of the following:
(a) Identify each aspect of the proposed site and related facility for which the agency has land use or related jurisdiction or would have such jurisdiction but for the exclusive authority of the commission to certify sites and related facilities;
(b) List and summarize the nature of the laws, regulations, ordinances, or standards which the agency administers or enforces and which are applicable to the proposed site and related facility or would be applicable but for the commission's exclusive authority to certify sites and related facilities pursuant to Section 25500 of the Public Resources Code;
(c) Describe the nature and scope of the information requirements which the applicant must eventually meet in order to satisfy the substantive requirements of the agency; summarize the agency's procedures for resolution of such requirements and indicate the amount of time necessary to do so; describe any other studies, analyses, or other data collection which the applicant, agency, or commission should perform in order to resolve each substantive or permit requirement of the agency;
(d) Based upon available information, conduct a preliminary analysis and provide comments and recommendations to the commission regarding the design, operation, and location of the facilities proposed in the notice, in relation to environmental quality, public health and safety, and other factors on which the agency has expertise or jurisdiction. The preliminary analysis shall be limited to that necessary to advise the commission on whether there is a reasonable likelihood that the proposal will be able to comply with the agency's applicable laws or concerns. The analyses should identify aspects of the proposed site and facilities which are likely to disqualify a proposal as an acceptable site and related facility; and
(e) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the notice, the results of the agency's analyses, studies, or other review relevant to the notice.
Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25506 and 25509.5, Public Resources Code.

§ 1714.5. Agency Comments on an Application; Purpose and Scope.
(a) Any agency requested, pursuant to Section 1714 of this article, to submit its comments and recommendations to the commission on any aspect of the application shall be requested to do each of the following:
(1) Update as necessary the information requested or submitted by the agency during the notice proceedings;
(2) Perform or conduct such analyses or studies as needed to resolve any significant concerns of the agency, or to satisfy any remaining substantive requirements for the issuance of a final permit by the agency which would have jurisdiction but for the commission's exclusive authority, or for the certification by the commission for the construction, operation,

and use of the proposed site and related facilities; and
(3) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the application, the results of the agency's analyses, studies, or other review relevant to the application. The agency may submit comments and recommendations on any aspect of the application, including among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area, and other aspects of the design, construction, or operation of the proposed site and related facility.
(b) Consistent with Section 1747, comments and recommendations submitted to the commission pursuant to this section regarding the project's conformance with applicable laws, ordinances, and standards under the agency's jurisdiction shall be given due deference by the commission staff.
Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25519(f), (g), (j), Public Resources Code.

§ 1742. Review of Environmental Factors; Staff and Agency Assessment
(b) Upon acceptance of the application pursuant to Section 1709, the commission staff and all concerned environmental agencies shall review the application and assess whether the report's list of environmental impacts is complete and accurate, whether the mitigation plan is complete and effective, and whether additional or more effective mitigation measures and reasonably necessary, feasible, and available.
(c) The applicant shall present information on environmental effects and mitigation and the staff and concerned agencies shall submit the results of their assessments at hearings held pursuant to Section 1748. The staff's assessment shall focus on those environmental matters not expected to be considered by other agencies, in order to ensure a complete assessment of significant environmental issues in the proceeding.

1742.5. Environmental Review; Staff Responsibilities. (d) The staff shall monitor the assessment of environmental factors by interested
agencies and shall assist and supplement the agencies' assessment to ensure a complete consideration of significant environmental issues in the proceeding.

1744. Review of Compliance with Applicable Laws.
(b) Upon acceptance of the application, each agency responsible for enforcing the applicable mandate shall assess the adequacy of the applicant's proposed compliance measures to determine whether the facility will comply with the mandate. The commission staff shall assist and coordinate the assessment of the conditions of certification to ensure that all aspects of the facility's compliance with applicable laws are considered.
(c) The applicant's proposed compliance measures and each responsible agency's assessment of compliance shall be presented and considered at hearings on the application held pursuant to Section 1748.
(d) If the applicant or any responsible agency asserts that an applicable mandate cannot be complied with, the commission staff shall independently verify the non-compliance,
and advise the commission of its findings in the hearings.
(e) Comments and recommendations by a interested agency on matters within that agency's jurisdiction shall be given due deference by Commission staff.
1747. Final Staff Assessment.
At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports

required under sections 1742.5, 1743, and 1744 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

1748. Hearings; Purposes; Burden of Proof.

No earlier than ninety (90) days after the acceptance of the application, the committee shall commence hearings on the application.

(a) The hearings shall be used to identify significant adverse impacts of the proposal on the environment which were not identified in proceedings on the notice of intention and shall assess the feasibility of measures to mitigate the adverse impacts. The applicant's environmental information and staff and agency assessments required by Section 1742 shall be presented.

(b) The hearings shall consider whether the facilities can be constructed and operated safely and reliably and in compliance with applicable health and safety standards, and shall assess the need for and feasibility of modifications in the design, construction, or operation of the facility or any other condition necessary to assure safe and reliable operation of the facilities. The applicant's safety and reliability information and staff and agency assessments required by Section 1743 shall be presented.

(c) The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility. The applicant's proposed compliance measures and the staff and agency assessments required by Section 1744 shall be presented. The determination of compliance required by Section 1744.5 shall also be presented.

1749. Presiding Member's Proposed Decision; Distribution; Comment Period.

(a) At the conclusion of the hearings, the presiding member, in consultation with the other committee members shall prepare a proposed decision on the application based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.

(b) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution.

1752. Presiding Member's Proposed Decision; Contents.

(e) With respect to any facility to be located in the coastal zone or any other area with recreational, scenic, or historic value, proposed findings and conditions relating to the area that shall be acquired, established, and maintained by the applicant for public use and access; and with respect to any facility to be located along the coast or shoreline of any major body of water, proposed findings and conditions on the extent to which the proposed facility shall be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

(f) With respect to any of the following areas:

(1) State, regional, county or city parks;

(2) Wilderness, scenic, or natural reserves;

(3) Areas for wildlife protection, recreation or historic preservation;

(4) Natural preservation areas in existence as of January 7, 1975;

(5) Estuaries in an essentially natural and undeveloped state; Findings and

conclusions on whether the facility will be consistent with the primary land use of the area; whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects; and whether the approval of the public agency having ownership or control of the land has been obtained.

1754. Hearings on Presiding Member's Proposed Decision.
(a) Adoption hearings on the presiding member's proposed decision or the revised proposed decision, if any, shall be held before the full commission after the comment period on the presiding member's proposed decision. The hearing shall be conducted for the purpose of considering final oral and written statements of the parties and final comments and recommendations from interested agencies and members of the public.

§ 1727. Final Report and Proposed Decision Hearings.
(a) The Commission or the assigned committee may hold one or more hearings to consider any statements of the parties on the final report and on the proposed decision, and the comments and recommendations of interested agencies and members of the public. Such statements may contain recommendations for amendments to the final report and proposed decision.

The courts have held that an agency which has a certified regulatory program exemption under Guidelines Section 15251 must also consult trustee agencies in the process of preparing an EIR substitute. (See: *Environmental Protection Information Center v. Johnson*, (1985) 170 Cal. App. 3d 604.)

Staff moves from ignorance to absurdity in attempting to dismiss CDFW jurisdictions in its statement; “There are no listed species on-site and vegetation on the project site that would fall within CDFW’s purview9. Staff does not have the authority to determine this post hoc rationalizations of CDFW jurisdiction. The project is almost completely surrounded by protected habitat. This failure to consider the other side of the fence plagues the Commissions consideration of this project. The same page of the FSA that Staff cites for the above conclusion states; “the adjacent Agua Hedionda Lagoon does provide suitable nesting and foraging habitat for various special-status species that have the potential to be affected by construction activity and noise, and future operations of the power plant.” CDFW certainly has jurisdiction and given the Commissions failure to provide an opportunity for CDFW participation or adequately consider the obvious environmental impacts of the project, the Commission must re-notice the PMPD to allow CDFW the opportunity to consider matters under its jurisdiction.

Staff continues to grasp at straws in its statement; “It is clear from the conditions of certification that the CDFW was consulted with respect to ensuring appropriate mitigation.” Staff points to no specific condition because none exist. No conditions of certification indicate that CDFW was consulted. The new evidence resulting from my public records requests to CDFW and the CEC prove that there was no such consultation. The only references to CDFW are in the following conditions;

BIO-6 The project owner shall submit two copies of the proposed BRMIMP to the CPM (for review and approval) and to CDFW and USFWS (for review and comment) and shall implement the measures identified in the approved BRMIMP.

BIO-8 The project owner shall implement the following measures to manage its construction site (and related facilities) in a manner to avoid or minimize impacts to local biological resources:
1. install temporary fencing and provide wildlife escape ramps for construction areas that contain steep-walled holes or trenches if outside an approved, permanent exclusionary fence. The temporary fence shall be hardware cloth or similar material that is approved by USFWS and CDFW;
7. report all inadvertent deaths of sensitive species to the biological monitor, who will notify CDFW or USFWS, as appropriate;

The Applicant takes a different path, still ignoring the substantive issues raised in my motion, instead determining that the "Warren-Alquist Act, and its corresponding regulations, far exceeds CEQA requirements for public participation and comment", except for the pesky aspect of responding to comments. This interpretation would certainly streamline licensing for the applicant. Under this interpretation public participation would be as effective as yelling into a hole.

1. ***The Scope of the Certified Regulatory Program***

Section 21080.5 establishes a limited exemption from CEQA's EIR requirements for qualifying state agencies having environmental protection responsibilities. An agency that carries out its discretionary activities according to a regulatory program requiring an environmental plan or document may submit such a document in lieu of an EIR if the Secretary has certified that the regulatory program meets certain statutory criteria. (§ 21080.5, subds. (a), (d), (e).) For example, an agency seeking certification must adopt regulations requiring that final action on the proposed activity include written responses to significant environmental points raised during the decisionmaking process. (§ 21080.5, subd. (d)(2)(F).) The agency must also implement guidelines for evaluating the proposed activity consistently with the environmental protection purposes of the regulatory program . (§ 21080.5, subd. (d)(2)(B).) The document generated pursuant to the agency's regulatory program must include alternatives to the proposed project and mitigation measures to minimize significant adverse environmental effects (§ 21080.5, subd. (d)(3)(A)), and be made available for review by other public agencies and the public (§ 21080.5, subd. (d)(3)(B)).

The Commission's post-decisionmaking responses to significant environmental concerns do not satisfy the written response component of its certified regulatory program . Nor do they comply with the spirit of this requirement. The written response requirement ensures that members of the Commission will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. (Cf. *Sutter Sensible Planning, Inc.* v. *Board of Supervisors* (1981) 122 Cal. App.3d 813, 820 [176 Cal. Rptr. 342]; *Rural Landowners Assn.* v. *City Council, supra*, 143 Cal. App.3d 1013, 1020-1021.) It also promotes the policy of citizen input underlying CEQA. (*People* v. *County of Kern*(1974) 39 Cal. App.3d 830, 841 [115 Cal. Rptr. 67].) When the written responses are prepared and issued after a decision has been made, however, the purpose served by such a requirement cannot be achieved.

When an agency is making a "`quasijudicial'" determination by which even a very small number of persons are "`exceptionally affected, in each case upon individual grounds,'" in some circumstances additional procedures may be required in order to afford the aggrieved

individuals due process.[16] *United States* v. *Florida East Coast R. Co.*,410 U. S., at 242, 245, quoting from *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U. S. 441, 446 (1915). The taking of airspace in the Coastal zone is an action that requires due process.

"There are certain fundamentals of just procedure which are the same for every type of tribunal and every type of proceeding." R. Pound,*Administrative Law* 75 (1942). "Concededly, a `fair trial in a fair tribunal is a basic requirement of due process.' *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). This applies to administrative agencies which adjudicate as well as to courts. *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973)." *Withrow v. Larkin*, 421 U.S. 35, 46-47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975).

25521. Public hearings The commission hearings shall provide a reasonable opportunity for the public and all parties to the proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000)

In *Gallegos* and in *Society for California Archaeology* v. *County of Butte* (1977), 839-840], the reviewing courts found violation of the requirement of providing sufficient responses to the public's objections to be prejudicial, without discussion. In *No Oil, Inc.* v. *City of Los Angeles, supra,* our Supreme Court found a violation of a basic CEQA provision to be a prejudicial failure to proceed as required by law, with virtually no discussion. Finally, in *Plaggmier*, the court, while not phrasing its discussion in terms of prejudice, found substantial rather than complete compliance with CEQA-mandated notice procedures to be an abuse of discretion requiring vacating of the administrative decision.

The purpose of this requirement is to provide the public with a good faith, reasoned analysis why a specific comment or objection was not accepted. (9) For this reason, conclusory responses unsupported by empirical information, scientific authorities or explanatory information have been held insufficient to satisfy the requirement of a meaningful, reasoned response: conclusory responses fail to crystallize issues, and afford no basis for a comparison of the problems caused by the project and the difficulties involved in the alternatives. (*Whitman* v. *Board of Supervisors* (1979) 88 397, 411 [151 Rptr. 866], quoting *People* v. *County of Kern, supra*,39 at pp. 841-842; *Gallegos* v. *State Bd. of Forestry, supra*, at p. 954; *Society for California Archaeology* v. *County of Butte, supra*, 6 at pp. 839-840.)

In the course of preparing a final EIR, the lead agency must evaluate and respond to comments relating to significant environmental issues. (§ 21092.5, subd. (a); Guidelines, §§ 15088, 15132, subds. (b-d).) In particular, the lead agency must explain in detail its reasons for rejecting suggestions and proceeding with the project despite its environmental effects. (Guidelines, § 15088, subd. (b).) "There must be good faith, reasoned analysis in response [to the comments received]. Conclusory statements unsupported by factual information will not suffice."

As part of the CEQA review process, an agency that proposes to carry out a discretionary project must provide written responses to significant environmental objections prior to the agency's final decision. (Guidelines, *123 §§ 15132, subd. (d), 15362, subd. (b); cf. *Rural Landowners Assn.* v. *City Council* (1983) 143 Cal. App.3d 1013, 1020-1021 [192 Cal. Rptr. 325].)

Gallegos v. *State Bd. of Forestry, supra*, 76 Cal. App.3d 945, set forth the controlling standard for the sufficiency of the required written responses to significant environmental objections. Adapting the analogous criteria governing responses to objections to a proposed project requiring an EIR, the *Gallegos* court ruled that the responding agency (in that case, the State Board of Forestry) "need not respond to every comment raised in the course of the review and consultation process, but [the agency] must specifically respond to the most significant environmental questions raised in opposition to the project." (*Id.*, at p. 954; see*People* v. *County of Kern* (1974) 39 Cal. App.3d 830 [115 Cal. Rptr. 67].) Such responses must include a description of the issue raised "and must particularly set forth in detail the reasons why the particular comments and objections were rejected and why the [agency] considered the development of the project to be of overriding importance." (*Id.*, at p. 841.)

The purpose of this requirement is to provide the public with a good faith, reasoned analysis why a specific comment or objection was not accepted. For this reason, conclusory responses unsupported by empirical information, scientific authorities or explanatory information have been held insufficient to satisfy the requirement of a meaningful, reasoned response: conclusory responses fail to crystallize issues, and afford no basis for a comparison of the problems caused by the project and the difficulties involved in the alternatives. (*Whitman* v. *Board of Supervisors* (1979) 88 Cal. App.3d 397, 411 [151 Cal. Rptr. 866], quoting *People* v.*County of Kern*, *supra*, 39 Cal. App.3d at pp. 841-842; *Gallegos* v. *State Bd. of Forestry*, *supra*, 76 Cal. App.3d at p. 954; *Society for California Archaeology* v.*County of Butte*, *supra*, 65 Cal. App.3d at pp. 839-840.)

The public input into the plan approval process is mandated by law and supported by strong public policy. The written response is a keystone to the public participation in the approval process, and an important element in the public right to prepare and file a challenge within the maximum time allowed under the rules.

In reviewing an agency's determination, finding or decision under CEQA, a court must determine whether the agency prejudicially abused its discretion. (s 21168.5.) [FN17] "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Ibid., italics added.)

The Applicant did not object to my motion to re-notice the PMPD and staff's response was incorrect and unpersuasive at best. Neither provided a substantive dispute of the issues raised in my motion for reconsideration. All issues raised in the motions should be considered as undisputed facts. Both motions should be sustained. If the Commission at least accepts the motion to re-notice the PMPD, the rest of the issues may be resolved in the administrative proceeding.

Rob Simpson
Executive Director
Helping Hand Tools
27126 Grandview Ave.
Hayward CA. 94542
rob@redwoodrob.com